Frankfurt am Main,
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The exemption from scope of the PRIIPs framework for retail investment funds should be extended by another two years until 31 December 2021.

Meaningful information for investors should be maintained
BVI[1] acknowledges the overarching goal of the PRIIPs initiative to provide investors with comparable information about substitutable or equivalent investment products. At the same time, in view of the severe shortcomings identified below, we believe it would be irresponsible to replace sensible investor information in the UCITS KIID by the contested PRIIPs standards which can be misleading for investors. EU legislators should therefore take action in order to extend the fund exemption until the deficiencies of the current PRIIPs regime will be rectified and reasonable standards for investor information can be applied to all retail investment products. Realistically, the exemption from scope of the PRIIPs Regulation should be allowed for another two years until 31 December 2021.

The fund exemption needs to be extended to avoid investors' confusion
UCITS and retail AIFs which provide for a UCITS-like KIID according to national rules are exempt from the scope of the PRIIPs Regulation until 31 December 2019.[2] The EU legislators requested the Commission to assess the possible options for future treatment of retail funds in the context of the PRIIPs review. Prolongation of the current exemption is explicitly listed among those options, alongside the possibility to consider the UCITS KIID as equivalent to the PRIIPs KID or to be fully replaced by the latter.[3] The review is meant to be initiated by 31 December 2018. However, in view of the complex technical aspects of the PRIIPs framework and bearing in mind the EU elections scheduled for May 2019, it is unlikely that any legislative measures following from the PRIIPs review will be finalised before end of 2019.

In the absence of legislative actions, the fund exemption from scope will expire and all retail funds will be bound to produce PRIIPs KIDs from 1 January 2020 onwards. At the same time, UCITS will be still subject to the obligation to provide investors with UCITS KIIDs for which no sunset clause exists under the UCITS framework. Thus, corrective legislative steps must be undertaken early enough in 2019 in order to prevent a situation in which two similar legal information documents with largely inconsistent data would need to be provided at once to UCITS investors.

Severe shortcomings in the PRIIPs KID's methodologies must be rectified
Currently, the UCITS KIID comprises a coherent and comprehensible set of information which is widely accepted by the markets. The first months of experience with the PRIIPs KID, on the other hand, have revealed alarming deficiencies in the underlying methodologies which lead to obviously wrong and misleading figures being disclosed to investors. These shortcomings pertain in particular to the following items of the PRIIPs KID:

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's over 100 members manage assets of more than 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.
[2] Art. 32 of Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation).
[3] Cf. Art. 33 (1) PRIIPs Regulation.

- Performance scenarios are biased by the historic performance of the product/market:
  In the UCITS KIID, performance information is provided by disclosing figures on past performance. Such disclosure must be accompanied by the warning about the limited value of past performance as a guide for future performance prospects.[4] Despite the long-lasting awareness of such limitation, the PRIIPs standards require calculation of future performance scenarios on the basis of past performance figures for the last five years which are then projected into the future (based on the recommended holding period of a fund). For most funds this means that the excellent market performance of the last five years is indiscriminately projected into the future, regardless whether the recommended holding period is 1 year, 5 years or, in the context of unit-linked insurance contracts, 30 or even 40 years. Especially for those long recommended holding periods, the prospective returns calculated in accordance with the PRIIPs methodology amount to several hundred percent even in the moderate scenario. Examples of such calculation results have been provided by EFAMA in its evidence paper from 23 March 2018. Assuming that the market conditions of the last five years will last for so long is obviously unrealistic. Nonetheless, the PRIIPs framework does neither provide for any flexibility for the PRIIPs manufacturer to lower the performance estimates in case he deems them overly optimistic, nor does it allow for additional explanations of their limited relevance. One should be aware that the PRIIPs approach to performance scenarios will become most problematic in case the currently bullish markets start to fall. In this case, PRIIPs manufacturers will not be able to reflect the changed return prospects in the performance scenarios and thus will be effectively forced to mislead and misinform investors by complying with the PRIIPs requirements.

- Transaction costs are highly impacted by price movements:
  When developing the technicalities of transaction cost disclosure under PRIIPs, the ESAs have invented an entirely new calculation methodology in order to capture implicit costs. In short, this methodology requires to determine transaction costs as the difference between the execution price and the mid-market price of an asset (so-called “arrival price”). It assumes that in every market and for every asset, there is a valid and determinable “arrival price” as a reference value for the calculations. This is absolutely not the case. The “arrival price” approach does not work in bond and currency markets due to the current lack of price transparency and in general with regard to less liquid assets. In these cases, calculations are severely flawed by outdated data used as “arrival prices” which means that movements in the market price of assets are systematically treated as costs. Further deficits of the “arrival price” methodology are highlighted in the EFAMA evidence paper from 23 March 2018. Overall, the methodology results in consistently under- or overestimating costs and in many cases produces negative cost figures.[5] Disclosure of negative transaction costs is highly problematic as it suggests that investors make profits by the sole transaction activities in a fund which is never the case. Moreover, negative figures for transaction costs must be accounted for in the summary cost indicator and lead to a general understatement of costs. Negative transaction costs are, in our view, not a teething problem of the “arrival price” methodology, but must be even expected to propagate once markets start to fall. While there is clearly a need to measure and disclose implicit costs, the “arrival price” methodology systematically generates false and misleading figures.

[4] Art. 15 (5) (a) of the Commission Regulation (EU) No 583/2010 of 1 July 2010.
[5] Currently it is not possible to determine exactly the market share of funds which would display negative transaction costs in PRIIPs KIDs. However, roughly 3 percent of funds available for sale in Europe currently report negative transaction costs for MiFID II purposes, even though only a fraction is calculated in accordance with the “arrival price” methodology (as of March 2018; source: Morningstar). The share of negative transaction costs could be at least two to three times higher should the “arrival price” approach become a binding standard.

While we are willing to provide any requested support in technical terms in order to develop solutions for meaningful information of European investors, the regulatory process for adapting the PRIIPs KIDs will take time. The fund exemption from scope should thus be extended in order to accommodate discussions on substance and to allow for orderly implementation of the accordingly revised PRIIPs requirements.