

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

3rd March 2023

Dear Sirs,

Barclays response to Consultation on PRIIPs and UK Retail Disclosure

Barclays welcomes the HMT review of PRIIPs and the future of the Retail Disclosure in the UK post Brexit. As the largest UK Investment Bank, and with significant Corporate Bank, Wealth and Private Bank businesses, Barclays is a key participant in the UK capital markets on behalf of our clients of all sizes. Our structure means that we both manufacture and distribute PRIIPs products to retail clients and therefore will be especially impacted by changes to any future framework.

We are supportive of the Treasury's view that there is no need to maintain any PRIIPs related retail disclosure elements in legislation as the process to make changes to level one texts is onerous and time consuming. Additionally, from the perspective of being able to react proactively to changes in markets and technology, we note that it would be more beneficial for the rules governing retail disclosure to be contained within the FCA Handbook or Guidance.

The delivery of next generation, digitalised consumer financial services is one of Barclays' key strategic priorities and therefore, we are encouraged by the direction of travel set out by the Government in the HMT paper and see this as an opportunity to reset retail disclosure for a digital future which includes more innovative features and supports the layering of information in a way which is consumer friendly.

Barclays remains committed to providing high-quality investment products and services to our clients and we believe that clear, transparent, and easily accessible information is key to informed decision-making. We are therefore strongly aligned to the principles that the Treasury outlines in the consultation paper that they have been guided by when undertaking this initial view of retail disclosure documents within the UK. We note however that retail engagement with financial markets is not just driven through the provision of product level information but is also supported by the advice that they receive on how to match their investment aims with financial instruments, regulations on the marketing of investment products and product governance rules. The review of retail disclosure rules therefore cannot be undertaken in a vacuum but needs to be considered holistically along with rules financial advice, financial promotions, COBs, MiFID and the Consumer Duty so that the implementation of a 'new' regime is demonstratively beneficial for consumers and does not place any undue burdens on firms.

With respect to ensuring that UK investors have the opportunity to invest in the best product for their investment aims, for cross border trades, we would encourage the Treasury and FCA to consider providing firms with the flexibility to use the disclosure documents of other major jurisdictions. We note here that this is the current approach taken by regulators in Switzerland, under which it is permissible for firms to provide Swiss retail clients with a KID that is compliant with EU PRIIPs requirements.

Although Barclays have contributed to and are largely supportive of the views that have been expressed within the AFME and the Investment Association responses that you will receive, we wanted to highlight additional points that may complement the Trade Association responses.

Further, we would like to draw your attention to our response to the FCA discussion paper which is a companion piece to this paper. We have focused our efforts in responding to the FCA on the basis that they will be responsible

for the retail investment framework going forwards however we have provided specific feedback to the areas not covered within the scope of the DP below.

We would be very happy to discuss any of the points raised in this response and our response to the FCA discussion paper with you in more detail. Please note that the information provided in this response is confidential. It has been provided to you in confidence for the purpose of assisting with the HMT PRIIPs and UK Retail Disclosure Consultation. As such, it must not be used for another purpose or disclosed to a third party.

Yours sincerely,
BARCLAYS

Specific feedback on topics raised within the Consultation Paper.

Regulatory Landscape

Barclays believes that it would be unhelpful to design an entirely new and separate retail disclosure regime that leads to multiple sets of rules or principles for different products being developed as in our view, this would lead to more confusion for retail investors and undue burden on firms. It is our view that whilst consumers would value engaging and innovative disclosure documents, consistency in the level and type of information that they are receiving for similar product types is key to ensuring that clients are equipped with the appropriate level of detail to make effective investment decisions.

We note here that there is already an extensive array of legislation and regulation in place which works to achieve the best outcomes for retail investors. When developing the guidance around the retail disclosure framework, it is imperative that the FCA considers the current disclosure rules in place and how they may already amount to a framework, including enhancements where necessary to enable greater digitalisation of disclosure. This approach would also help to minimise costs for firms who have only recently implemented the UK RTS changes that came into effect in the beginning of the year.

Further, we believe that the FCA should take into account that firms are already implementing incoming rules on Consumer Duty and in particular, they should consider the findings of the consumer testing firms are required to undertaken as part of the Consumer Understanding outcome. This outcome, which requires firms to support their customer's understanding of communications to allow them to make effective, timely and well-informed investment decisions is in our opinion key to ensuring that the new framework contains the elements of disclosure design are the most engaging and useful for a consumer audience. To that end, we would recommend that the FCA sets up an industry working group after one review cycle to gather feedback on the experience of firms in this regard.

Product Scope

Whilst we note that the consultation paper does not ask any specific questions regarding the financial instruments that are caught by the definition of a PRIIP, we would recommend that the Treasury utilises this review to reconsider the scope of products that the PRIIPs definition is applied to but where the intended benefits of the regime may not be relevant.

In particular, we do not consider retail disclosure documents to be useful documents for investors in Deliverable FX Forwards and Swaps. These products are predominantly entered into for commercial hedging purposes and not as investments, and so information regarding potential exposure is not relevant and potentially confuses clients. We note here that the FCA has provided guidance that derivatives offered to retail investors would fall into the definition of a PRIIP. Whilst we acknowledge that FX Forwards can fall within the definition of a derivative (and hence are subject to related regulatory obligations), from a level 1 perspective, it remains unclear why FX Forwards and Swaps would be included within the PRIIPs regime in light of the fact that the amount repayable to the investor is not subject to fluctuations because of exposure to reference values or performance of one or more assets as required by the definition of a PRIIP. Rather, the amount repayable at maturity is fixed at the outset of the contract. We therefore believe that those products should be brought entirely out of the scope of the regulation.

Furthermore, Barclays would also urge a review of the applicability of the MiFID II product governance regime to non-complex instruments with a view to ensuring that simple investment products such as ordinary shares and non-complex bonds are more easily accessible to retail clients for investment. The application of PRIIPs and MiFID II has resulted in restrictions in the ability of firms to offer certain standardised, liquid and relatively simple products that could otherwise be capable of meeting the straightforward investment needs of a broader range of investors as part of a diversified investment portfolio.

Interoperability of Disclosure

In order to avoid limiting the availability of products to UK consumers, for cross border trades, we would encourage the Treasury and FCA to consider providing firms with the flexibility to use the disclosure documents of other major jurisdictions. We note that this is the current approach taken by regulators in Switzerland, under which it is permissible for firms to provide Swiss retail clients with a KID that is compliant with EU PRIIPs requirements.

We believe that if that if the UK were to implement such an approach, this would help UK manufacturers distribution of products overseas and vice versa.

As competitiveness needs to be supported both in terms of the domestic and export market, it is crucial that the right balance is struck so that UK investors can access both overseas funds and domestic products in a way that does not hinder their investment journey nor adds so much friction that non-UK produced investments are excluded from the market.

Comparability

We largely agree with the Treasury's assessment of the issues that they have observed with respect to comparability and we believe that attempting to achieve full comparability of product disclosure across diverse sets of products has not been useful to end investors as comparability implies an attempt to apply some form of standardised approach across investments, into which it has been difficult to shoe-horn products with very different objectives, characteristics, structures, risks and payoffs. The PRIIPs experience somewhat demonstrates this, considering the wide range of issues that have had to be addressed in applying a single KID concept to all in-scope products.

Barclays does however believe that retail investors should have a more consistent way to match their investment aims to product and services and as such there is merit in achieving some degree of comparability among investments in families or types of products that are suitably alike.

We note here that the implementation of PRIIPs has in some ways achieved this, for instance by allowing for /or requiring differences in how certain information is represented in a KID for exchange traded vs. OTC derivatives however we observed numerous areas where inconsistent treatment by firms in trying to apply a common disclosure standard have led to outcomes where the disclosure did not provide the requisite level of detail in order to make an informed investment decision.

It is our view that it is more important to provide our clients with information that is proportionate to the risk that they are taking when investing into a product and which empowers them to make well informed decisions. This, we note aligns with the Consumer Duty outcomes focused objectives.

Digital Disclosure & Interaction with the Consumer Duty

As we have highlighted in our summary above, it is one of Barclays' strategic objectives to deliver next generation, digitised consumer financial services and therefore we are highly supportive of the efforts that both Treasury and the FCA are making to introduce flexibility into the rules to enable digital disclosure.

We are however conscious that the move towards a digital disclosure regime needs to be balanced with ensuring that those investors who are unable or choose not to engage with digital disclosures do not receive a different level of disclosure from those that are fully digital.

Further, we note that the ongoing work that is being undertaken by firms to implement the Consumer Duty which covers the concept of layering at length under the Consumer Understanding and therefore it is not clear to us why

additional guidance on this subject would be required within the new retail disclosure framework. We would ask that both the FCA and Treasury considers providing firms time to gather evidence on which elements of layering retail customers engage with following the implementation of the Consumer Duty before setting out any additional rules in a new disclosure framework.