



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Director General

Brussels,
FISMA C4 LB/mp (2018) 4985716

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Subject: Guidance on bonds

Dear Chairmen,

I refer to your letter dated 19 July 2018 in which you seek the assistance of the Commission with regard to the treatment of bonds under the PRIIPs Regulation (EU) No 1286/2014 (hereafter PRIIPs Regulation).¹

Allow me first to remind you that only the Court of Justice of the European Union can provide binding interpretations of European Union law. Bearing this in mind, the following considerations can nevertheless be made.

The transparency of bonds made available to retail investors is an important investor protection measure and a precondition for boosting the confidence of retail investors in the financial market. In view of the current state of harmonisation of bond law at EU level, the assessment whether a particular bond made available to retail investors is a packaged retail investment product (hereafter PRIP) or not is to be performed on a case-by-case basis and should consider all features of a given bond, regardless of the bond's type or name.²

By virtue of point (1) of Article 4 of the PRIIPs Regulation, a bond made available to retail investors qualifies as a PRIP solely in the case where potential or compulsory payment in terms of either interest,

¹ Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

² See also Communication from the Commission — Guidelines on the application of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ C 218, 7.7.2017, p. 11).

principal or both, in accordance with the applicable terms and conditions of the bond, may vary due to its exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investors. As a consequence, the actual amount to be repaid is not certain at the outset of the contract.

It is, therefore, necessary to assess whether the terms and conditions of the bond provide for different payments depending on a variety of pay-out events. The reason or purpose for which retail investors acquire the bond, such as speculation, risk management or hedging, is however irrelevant for the assessment of the application of point (1) of Article 4 of the PRIIPs Regulation.

In consequence, even categories of bonds that could seem to fall outside the scope of the PRIIPs Regulation could still be based on contractual terms and conditions that would qualify those bonds as PRIIPs. Therefore, it is neither feasible nor prudent to agree *ex-ante* and in abstract terms whether some categories of bonds fall under the PRIIPs Regulation or not.

The PRIIPs Regulation ensures neutrality in relation to business models, product designs or legal forms by imposing no specific requirements in this regard. In consequence, manufacturers also remain free to offer retail investors exposures or features through a process of wrapping or packaging, in particular in situations where investment strategies would otherwise be inaccessible for their investors.

Yours sincerely,



Olivier Guersent

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