

1.1 Pre-Sale Disclosure

1.1.1 TA Service

Pre-sale disclosure requirements are generally completed “up-stream” of the TA services e.g. by a broker or the provision of materials from the Manco to the investor. The TA service generally starts with the execution of the sale to the investor rather than the pre-sale process.

However the TA service may include a procedure that aims to assist client firms to achieve their regulatory obligations in respect of pre-Sale disclosure. The regulatory responsibility for the Pre-sale disclosure remains the responsibility of the client firm.

Where the client firm is identified as having the regulatory responsibility for Pre-sale disclosure and that the Pre-sale disclosure requirement has not been fulfilled then the TA would arrange for the client firm to send the required disclosure information.

1.1.2 PRIIPs (Packaged Retail and Insurance based Products) Regulation

At present, the regulatory disclosure requirements applicable to retail investment firms (including investment managers) are detailed in the FCA handbook. This will change with the introduction of PRIIPS Regulation in the European Union (EU). The PRIIPS Regulation is directly applicable without any additional domestic legislation being passed. Firms impacted will need to comply with the PRIIPS regulation, in addition to relevant disclosure provisions in the FCA Handbook, and any separate legislation that might also apply to them.

The PRIIPS Regulation requires firms to prepare, publish and provide a Key Information Document (KID). The form of the KID is prescribed. It must be a short document (no more than 3 sides of A4) and written in non-technical language and in a common format. The information required includes the identity of the product and its manufacturer, the nature and main features of the product, the risk and reward profile, past performance and any applicable compensation or guarantee schemes.

A PRIIP is a type of product defined in the PRIIPS Regulation. The PRIIPS definition applies regardless of the legal form of the investment product; it is the characteristics of the product that are the key consideration.

The PRIIPS Regulation states that a PRIIP is an investment where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or the performance of one or more assets which are not directly purchased by the retail investor. For insurance products there is a similar definition.

Insurance products are outside of the scope of the services provided and are not considered further in this document.

Although UCITS schemes and EEA UCITS schemes are PRIIPs, the requirements in the PRIIPs Regulation will not apply to such schemes until 31 December 2019, due to exemptions detailed in the PRIIPs Regulation Article 32 and recital 35.

1.1.3 Pre-sale disclosure From January 2018

The requirements set out below apply to the firm that ***sells*** the product. The firm that sells the product might not (and commonly is not) our client firm.

- The Simplified Prospectus and KFD/KFI disclosure documents are no longer relevant.
- For a UCITS scheme a KIID is required to be provided to all investors. There is no change to this requirement.
- For a NURS scheme the pre-sale disclosure documents will either be a NURS KII document or a PRIIPS KID to retail investors.
- For a QIS scheme the pre-disclosure documents will be a PRIIPS KID to retail investors.
- For MIFID business the Pre-disclosure requirements include the ex-ante pre-sale disclosure of costs in addition to the KIID or KID.

1.1.4 The obligation for an authorised fund manager to provide Pre-sale disclosure documents to investors from January 2018

- COBS 14.2.1 (7) requires a firm that sells a UCITS scheme to provide all investors with the KIID¹. COBS 14.2.5 states that the KIID need not be provided by the firm that produces the product, if another firm is required to provide the document to the investor. This means that the authorised fund manager of a UCITS scheme would be required to provide the KIID for direct (non-intermediated sales) to any investor (not just retail investors).

¹ Assuming the KIID includes the additional information required by COBS 13.3.1R(2)

- COBS 14.2.1 (5A) requires a firm that sells a unit in a KII-Compliant NURS scheme to provide Retail investors with the NURS KII-document². COBS 14.2.5 states that the KIID need not be provided by the firm that produces the product, if another firm is required to provide the document to the investor. Note. COBS 14.2.5 mentions the KIID not the NURS KII-document but this looks like a drafting issue for the FCA. This means that the authorised fund manager of a KII-Compliant NURS scheme would be required to provide Retail investors with the NURS KII for direct (non-intermediated sales).
- Where the firm sells a unit in a NURS scheme and does not elect to provide the NURS KII document or the firm sells a unit in a QIS scheme it is required to provide the PRIIPS KID in accordance with the PRIIPS Regulation (Article 13 – see Appendix). This requires the authorised fund manager of such a scheme to provide the PRIIPS KID for direct (non-intermediated sales) to Retail Investors (i.e. the same circumstances as 4.1.2 but not 4.1.1)

1.1.5 Summary - Scheme disclosure documents

- For a UCITs a KIID
- For a NURS a NURS-KII or a PRIIPS KID
- For a QIS a PRIIPS KID

Note: In each case above and for MIFID business there is an additional requirement for the COBS 6 ex-ante disclosure of costs.

For an authorised fund manager the obligation to provide the disclosure documentation arises in the following circumstances;

Scheme Disclosure Documents required	Transmission type	Intermediated Y/N	Disclosure Declaration	Client Type
UCITS or NURS KIID	Paper	N	N	ALL
UCITS or NURS KIID	Phone	N	N	ALL
KID (NURS or QIS)	Paper	N	N	Retail
KID (NURS or QIS)	Phone	N	N	Retail

² Assuming the NURS KII-document contains the additional information in COBS 14.2.1 (5A) (b)

1.2 Post Sale Investor Communication

For MIFID products, COBS16 requires unit holding statements and client money statements to be provided quarterly. The unitholding statement and client money statement can be separate documents sent to client investors.

There is a new requirement within COBS 6 (effective January 2018³) that applies to MIFID products. This requirement is to provide a personalised ex-post disclosure of costs in ££'s and % in the year. The COBS16 and COBS6 reporting requirements are **separate requirements in COBS** (i.e. they appear in different sections of the handbook as the chapter numbers indicate).

Importantly the costs that require disclosure within COBS6 include those costs that arose **before** the fund price is determined **and** those costs that were incurred **after** the fund price has been determined **and** those costs that are **not** related to the fund price.

Examples costs

1. AMC is an example of a charge incurred by the investor as a cost before the fund price is struck.
2. Initial commission is an example of a post fund price charge incurred as a cost by the investor
3. A product charge (e.g. £25 per annum for an ISA) is an example of a Product (non-fund) charge incurred as a cost by the investor.

All 3 types of cost must be included in the disclosure.

The pre-sale (or ex ante) COBS6 cost and disclosure statements would not normally be considered within the scope of a TA service. Pre-sale disclosure requirements are generally completed “up-stream” of the TA services e.g. by a broker or the provision of materials from the Manco to the investor. The TA service generally starts with the execution of the sale to the investor rather than the pre-sale process.

1.2.1 Industry Guidance

TISA have produced and published a document (include link here). This document provides the form of the reporting required and how the values are derived.

³ The fact that the rule is effective January 2018 does not infer that the first reporting is required on this date. The first ex post reporting required is likely to be that in respect of the year ending Dec 2018. See the TISA guide for more information.