

Chapter 2

Scope rules under article 4A of the PRIIPs Regulation

2.1 Interpretation

- 2.1.1
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- (1) As set out in more detail in article 4(1) of the *PRIIPs Regulation*, a packaged retail investment product or ‘PRIP’ means an investment, including instruments issued by special purpose vehicles, 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 to the performance of one or more assets which are not directly purchased by the retail investor.

(2) The PRIP definition in the *PRIIPs Regulation* should be read together with the rules in this Chapter, which supplement article 4.
- 2.1.2
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- A *PRIIP* is defined in article 4(3) of the *PRIIPs Regulation* as a product that is a PRIP and/or an insurance-based investment product.

2.2 Scope rules

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General distinction between PRIIP and non-PRIIP debt securities

2.2.1

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- (1) A *debt security* is not a PRIIP if it meets the following criteria:
- (a) it does not fall within ■ DISC 2.2.2R;
 - (b) the *issuer's* default risk is wholly or predominantly determined by the economic performance of the commercial or industrial activities of the *issuer* (or, where the *debt security* is guaranteed by a *group person*, that *person*); and
 - (c) the terms of the *debt security* do not impose any modification, structuring, or conditionality on the *issuer's* obligation to pay interest or repay the principal save for the effect of any feature listed under ■ DISC 2.2.4R.
- (2) For the purposes of (1)(b), lending, investment, and any other financial sector activities are not commercial or industrial activities.

2.2.2

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- (1) A *debt security* is a PRIIP where the level of interest payable, any conditionality of principal repayment, or the *issuer's* default risk, is linked to or materially dependent on the following, whether or not modified by a pre-determined formula:
- (a) fluctuations in reference indices or benchmarks relating to investment assets or a class of investment assets, for example a stock market index;
 - (b) the value or performance of reference investment assets, such as a basket of *shares* or specified *commodities*; or
 - (c) the value or performance of *investments* held by the *issuer* (or by a *person* connected to the *issuer*).
- (2) For avoidance of doubt, the following are excluded from (1)(a):
- (a) the Bank of England official Bank Rate; and
 - (b) any benchmarks or indices tracking the rate of inflation, money market interest rates, or other indicators pertaining to the performance of the general economy.

2.2.3

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In ■ DISC 2.2.2R(1)(c):

the *investments* include, for example, *derivatives*, real estate holdings, a pool of receivables, or a portfolio of *securities*; and

a *person* is connected to the *issuer* if it is a member of the same *group* as the *issuer*, has a relevant business relationship with the *issuer*, or otherwise does not have an arm's-length relationship with the *issuer*.

Neutral features

2.2.4

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The following features do not cause a *debt security* to meet the criteria for a PRIIP in article 4(1) of the *PRIIPs Regulation*:

- (1) a fixed *coupon* rate, including where:
 - (a) a set *coupon* rate applies until maturity, including a nil or zero rate; and
 - (b) the *coupon* rate is subject to pre-defined changes at fixed times prior to maturity – that is, a stepped *coupon*;
- (2) a floating or variable *coupon*, provided that:
 - (a) the interest payable is determined by an index or benchmark of the kind described by ■ DISC 2.2.2R(2), with or without a spread reflecting the credit risk of the *issuer*; and
 - (b) the interest payable is not subject to any additional modification or structuring such as, for example, a cap, or a floor other than zero;
- (3) a put *option* giving the investor a discretion to demand early repayment of the *debt security* on pre-agreed terms, or giving the investor the choice to convert or exchange their *debt security* into one or more *shares* of the same *issuer* at a pre-determined price;
- (4) a call *option* allowing the *issuer* to redeem a *debt security* early at a price higher than or equal to par, where:
 - (a) the *option* becomes exercisable due to changes in the financial health, market confidence in, or control of, the *issuer*, or general economic conditions, but not including *options* exercisable in response to fluctuations, price movements or performance of an index, benchmark, specified asset or underlying asset falling within ■ DISC 2.2.2R(1); and
 - (b) the mechanism to calculate the net present value of the future *coupon* payments is made clear to the investor in the terms of the *debt security*;
- (5) a perpetual or indefinite term; or
- (6) the *debt security's* subordination in the creditor hierarchy in the event of the *issuer's* insolvency.

Legacy products traded on secondary markets

2.2.5

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A *financial instrument* issued prior to 1 January 2018 is not a *PRIIP*.

2.3 Guidance on when a PRIIP is not 'made available' to a retail investor

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2.3.1

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In the FCA's view, and for the purposes of the *PRIIPs Regulation*, a *financial instrument* is not 'made available' to a retail investor where the following conditions are met:

- (1) the marketing materials for the *financial instrument* (including the *prospectus*, if there is one) feature prominent and clear disclosures to the effect that the *financial instrument*:
 - (a) is being offered only to investors eligible for categorisation as *professional clients* or *eligible counterparties* under the FCA's rules; and
 - (b) is not intended for retail investors;
- (2) the *issuer* of the *financial instrument* or, in relation to secondary market offers, the distributor, has taken reasonable steps to ensure the offer and any associated promotional communications are directed only to investors eligible for categorisation as *professional clients* or *eligible counterparties*; and
- (3) a denomination or minimum investment of £100,000 applies to the *financial instrument*, or equivalent amount for a *financial instrument* denominated in another currency, where the equivalent amount is calculated not more than 3 *business days* before the date of issue of the *financial instrument*.

