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Corporate Bonds with customary clauses should not fall in the scope of PRIIPs

The Legislator should ensure legal certainty

Comment on the proposal to amend the PRIIPs Regulation, 24 January 2024

An extensive exemption is needed

We welcome the European Commission's proposal to exempt corporate bonds including "make-whole clauses" from the scope of PRIIPs. So far, existing uncertainties have been a barrier for retail investors to invest into corporate bonds, although corporate bonds including "make-whole clauses" are assets that can be held directly by retail investors (not only through funds) and should definitely not fall within the scope of PRIIPs.

As a clarification is of utmost importance, it should be adopted as soon as possible, and should not be delayed by the ongoing and longer lasting discussions on other aspects of the Retail Investment Strategy.

Nevertheless, the definition of PRIIPs in Art. 4 relates to investments where 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. This concerns not only "make-whole clauses", but a wider variety of contractual features, including:

- Caps and floors on the interest rate;
- Convertible bonds.

Instead of focusing solely on "make-whole clauses," an extensive exemption including all non-equity securities is preferable. This is the intention of the draft compromise tabled in the ECON Committee including "non-equity securities which are issued by non-financial issuers and for which a prospectus is established pursuant to Regulation (EU) 2017/1129". However, although this goes in the right direction, we strictly oppose two aspects of the proposal:

- The scope regarding non-financial issuers is too narrow, as PRIIPs does not focus on the issuer, but on the financial instrument. Therefore, the exemption should be available for every issuer, irrespective of whether the issuer is financial or non-financial;
- The focus of the transparency requirements should be expanded. Many companies issue bonds on trading platforms that are not categorized as regulated markets. Even if the issuer prepares a prospectus that is not in line with the EU Regulation, it does comply with national regulations, e.g. the Rules and Regulations of the Luxembourg Stock Exchange. To facilitate non-discrimination of these issuers, the exemption should state that a preparation of a prospectus is sufficient, irrespective of whether it fulfils the EU Regulation or other national regulations.

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