

THE EU PRIIPs REGULATION: PROPOSED RULES CHANGES

New Rule to be added to Section I (Contract Rules: General Provisions) of the ICE Futures Europe Regulations:

“I.26 PRIIPs Restrictions

- (a) The Exchange understands that certain Members may offer trading and intermediary services related to PRIIPs Contracts traded on the Exchange to EEA Retail Investors and certain EEA Retail Investors may also have direct trading access to PRIIPs Contracts traded on the Exchange. The Exchange has therefore produced Key Information Documents (“KIDs”) in the English language and may at its sole discretion from time to time produce KIDs in the Specified Languages (defined below) for its PRIIPs Contracts. To the extent permitted under the PRIIPs Regulation, the Exchange undertakes no duty of care for the contents of any KIDs and makes no warranty, representation or undertaking as to the accuracy of any KID. The Exchange has not considered the specific circumstances of any Member or EEA Retail Investor. Members are responsible for verifying whether the KIDs produced by the Exchange are sufficient for their purposes or their clients' purposes, for adding any further disclosures as may be required for their clients and for assessing the appropriateness for their clients of any PRIIPs Contracts traded on the Exchange. Effective as from 1 January 2018, no Member shall advise on, offer, sell, distribute or otherwise make available any PRIIPs Contracts to any EEA Retail Investor, unless:
- (i) *for PRIIPs Contracts offered to EEA Retail Investors in EEA Member States where English is an official language or where the Exchange has produced a translated KID in an official language of that EEA Member State:* the KID has been provided to the EEA Retail Investor by the Member in good time and in accordance with the PRIIPs Regulation (together with any necessary Member-specific disclosures) before such EEA Retail Investor is bound by any contract or offer relating to a PRIIPs Contract; or
 - (ii) *for PRIIPs Contracts offered to EEA Retail Investors in any other EEA Member States:* a key information document (which may be faithfully and accurately translated from the KID or otherwise produced in an official language of the EEA Member State in which the EEA Retail Investor is located) has been provided to such EEA Retail Investor by the Member in good time and in accordance with the PRIIPs Regulation (together with any necessary Member-specific disclosures) before the EEA Retail Investor is bound by any contract or offer relating to a PRIIPs Contract.
- (b) The Exchange will only produce and publish English language KIDs and translated KIDs in other languages determined by the Exchange at its sole discretion from time to time (“**Specified Languages**”). As a result:
- (i) the Exchange will not be responsible for producing, publishing or providing EEA Retail Investors with KIDs in any other official language of an EEA Member State in which an EEA Retail Investor is located nor for ensuring that any applicable requirements under the PRIIPs Regulation have been satisfied for any local language key information document produced by Members; and
 - (ii) the Exchange is not a ‘manufacturer’ of any PRIIPs for the purposes of the PRIIPs Regulation with respect to any offer to EEA Retail Investors in any EEA Member State other than those in which English is an official language or otherwise where a translated KID in a Specified Language is published on its website; and accordingly, any Member or other person offering such products to EEA Retail Investors in such EEA Member States will itself be the ‘manufacturer’ for the purposes of the PRIIPs Regulation, since PRIIPs Contracts for which no such translation is provided are not

intended by the Exchange for distribution to EEA Retail Investors in such EEA Member States;

- (iii) any Member which produces and makes available to EEA Retail Investors any local language key information documents for PRIIP Contracts in any language or format that has not been produced and published by the Exchange agrees to indemnify the Exchange for any losses or liabilities suffered by the Exchange as a result of the Member publishing and making available to such EEA Retail Investors such key information documents which are misleading or inaccurate or are inconsistent with: (A) the English language KID produced by the Exchange for that PRIIP Contract (or any revised versions of the same); (B) the relevant parts of any legally binding pre-contractual and contractual documents; or (C) the requirements of Article 8 of the PRIIPs Regulation.
- (c) Members must have adequate systems, controls and policies to ensure compliance with the requirements of this Rule 1.26 and the PRIIPs Regulation, and, at the request of the Exchange, be able to show evidence of any such systems, controls, policies and, subject to Applicable Law, evidence that those requirements have been met in relation to any single EEA Retail Investor that is a client of a Member.
- (d) Members whose clients offer PRIIPs Contracts to EEA Retail Investors must ensure that all such clients agree to terms equivalent to those set forth in this Rule 1.26 regarding their dealings with EEA Retail Investors and the position and liability of the Exchange.
- (e) In this Rule 1.26, the following words and expressions shall, unless the context otherwise requires, have the following meanings:-

"EEA Retail Investor" means a retail investor as defined in Article 4(6) of the PRIIPs Regulation who is located in a Member State of the European Economic Area;

"Key Information Document" or "KID" means the key information document drafted by the Exchange (including any non-English language translated version produced by the Exchange at its discretion) and published on its website (including any revised versions produced by the Exchange from time to time) for a PRIIPs Contract for purposes of facilitating compliance with the PRIIPs Regulation. The KIDs (and any revised versions) published by the Exchange can be found on the Exchange's website;

"PRIIP" means a packaged retail and insurance-based investment product as defined in Article 4(3) of the PRIIPs Regulation;

"PRIIPs Contract" means a Contract that is (or is determined by the Exchange from time to time as likely to be or to have a material risk of being) a PRIIP;

"PRIIPs Regulation" means Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on Key Information Documents for packaged retail and insurance-based investment products (PRIIPs), as amended from time to time, together with any regulatory technical standards adopted by the European Commission pursuant to the PRIIPs Regulation, as amended from time to time."