Brussels, 19 January 2016

Martin Schulz, President of the European Parliament

Roberto Gualtieri, Chair ECON

Pervenche Berès, MEP

Jonathan Hill, Commissioner

Jyrki Katainen, Commissioner

Re: **The elimination of past performance in the contents of the Key Information Document, and its replacement by "future performance scenarios"**

The Financial Services User Group (FSUG) advises the European Commission in the preparation of legislation or policy initiatives which affect the users of financial services, provides insight, opinion and advice concerning the practical implementation of such policies, and proactively seeks to identify key financial services issues which affect users of financial services.

We are writing to you to express our serious concerns about the decision to eliminate past performance data from the Key Information Document under the PRIIPs Regulation. The FSUG is of the view that eliminating standardised, easily comparable data on past performance will be a regressive step for investors and will reverse some of the partial progress made on making the investment market more transparent and accountable. Moreover, we are also very concerned that UCITS funds will also have to eliminate this key information from their KIID by the end of 2019. We fully support the letter sent to you by the ESMA Securities and Markets Stakeholder Group on the subject (see attached).

The FSUG, of course, recognises that past performance is not a reliable predictor of future performance. It is important that policymakers and regulators introduce measures which prevent investment firms and intermediaries misleading investors through the selective use of past performance data and unrealistic projections for marketing and promotions (we set out some proposals, below). But, eliminating past performance data to achieve this would create more problems than it would solve.

As a matter of principle, it would be wrong to eliminate past performance. Investment managers are in the business of managing other people's money. Investors have a right to know how well investment managers are performing.

FSUG Secretariat, European Commission, BE-1049 Brussels, Belgium
DG FISMA, Unit D3, SPA2 4/69
Telephone: direct line +32 2 2950540

Email: fisma-fsug@ec.europa.eu

There are a number of practical reasons why eliminating past performance would be a bad outcome for investors. Without consistently reported past performance data, it is not possible to establish: if the fund manager has produced value; if the product has met its investment objectives; how well the product has performed against the chosen benchmark; and the relative performance of the product against peer groups.

Economic theory supports the view that past performance data should be retained and, importantly, that the presentation of data should not be used to mislead investors. Rational expectations hypothesis holds that economic agents form rational expectations about the future, using all the past and present information on all factors that influence or have influenced the state of the economy. It is not possible to eliminate errors in decision making completely. But errors can be minimised and prevented from having a systematic effect.

The consistent reporting of past performance is a pre-requisite for transparency and for holding the investment industry to account. Furthermore, we fear that eliminating past performance data would further undermine effective competition. Effective competition needs transparency. Underperforming investment managers would be able to shelter behind the lack of disclosure.

This is not the time to eliminate a measure that benefits investors. Indeed, this provides a good opportunity to toughen up regulations to fix industry behaviours which distort investor decisions. There are a number of measures which policymakers and regulators/ supervisors could adopt to ensure that investment managers are held to account and minimise the potentially negative impacts of the use of past performance data on investor behaviour.

The selective use of past performance data for marketing and advertising supports selection bias, survivorship bias and reporting bias by fund managers and intermediaries. Tougher conduct of business rules for investment managers should be introduced to ensure that:

- fund managers disclose past performance of all funds against objective benchmarks (and specific time periods) agreed by regulators;
- fund managers (and custodians/ trustees/ fiduciaries) are required to explain in detail: why funds have underperformed against benchmarks, what actions have been taken to address this poor performance, and justify why they are not cutting investor charges to compensate for poor value;
- fund managers cannot change the benchmark unless approved by regulators/ supervisors;
- selective use of past performance data and benchmarks for reporting and marketing/ promotions are breaches of regulation and can be enforced against; and
- custodians/ fund trustees or similar fiduciaries act more responsibly and monitor the behaviour of fund managers and disclosure to investors.

Similar measures should also apply to investment intermediaries given the role they play in influencing investor decisions including a requirement to report and explain why funds recommended have underperformed and justify clearly why higher charging funds are being recommended when similar lower cost funds are available.

The FSUG asks the Level I EU Authorities to take urgent action and reintroduce, in article 8 of the Regulation, the disclosure of past performance of investment products and their chosen objective benchmark. This should be done as soon as possible and must happen before 31 December 2016 (the date when the Regulation will apply). Furthermore, this is a good opportunity to enhance, not weaken, accountability mechanisms and improve the behaviours and performance of investment managers. We also urge Authorities to consider the measures outlined above. We are happy to provide more detail if required.

We look forward to hearing from you.

Yours sincerely,

Mick McAteer
Chairman of the FSUG

Guillaume Prache
Vice Chair of the FSUG

About FSUG

The Financial Services Users' Group (FSUG) is an external expert group coordinated by DG FISMA and DG JUST to:

- *advise the Commission in the preparation of legislation or policy initiatives which affect the users of financial services*
- *provide insight, opinion and advice concerning the practical implementation of such policies*
- *proactively seek to identify key financial services issues which affect users of financial services*
- *liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level.*

FSUG has up to 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.