11 February 2013

Dear

Consultation paper 12/19: restrictions on the retail distribution of unregulated collective investment schemes and close substitutes

Last August we published a consultation paper which proposed new rules to address problems we have identified in the marketing of high-risk, complex investments to ordinary retail investors. The consultation proposed to ban the promotion of unregulated collective investment schemes (UCIS) and close substitutes to ordinary retail investors. We termed this range of products ‘non-mainstream pooled investments’. In this way, we aimed to address emerging risks posed by alternative product structures and unusual or exotic investment assets, as well as to guard against arbitrage where UCIS investment strategies are structured as other legal forms.

I am writing to update you on our progress since the consultation closed in November last year. We now aim to publish a policy statement in late April and, as ever, will give sufficient time for firms to implement any new rules (for substantial rule changes this is usually one year). However, I am aware that the proposed new rules have given rise to a number of concerns and I thought it would be helpful if I set out our current thinking on some of the most common questions posed to us during the consultation period.

Changes to the scope of the draft rules

Having reflected on responses to the consultation, we are considering how best to refine the scope of the marketing restriction.

The draft rules on which we consulted applied to a range of products and we specifically requested feedback on whether they affected products that should not face restrictions to their marketing. Following analysis of responses, we are currently considering amending our proposals to exclude the following investment vehicles from the scope of the new marketing restriction:

- venture capital trusts;
- real estate investment trusts;

- exchange traded products; and
- overseas investment companies that would meet the criteria for investment trust status if based in the UK.

We are also aware of concerns in relation to other products, such as, for instance, enterprise investment scheme funds and seed enterprise investment scheme funds. It is important to find the right balance between consumer protection and choice so we are also considering these issues further.

Other proposals

Our central aim is to prevent the promotion of non-mainstream pooled investments to ordinary retail investors while allowing scope for firms to market these products, where appropriate, to high net worth or sophisticated retail investors (promotion to non-retail investors is not affected by the new rules).

In order to achieve this, our original proposals allowed firms to market products where the promotion met criteria outlined in secondary legislation (the Financial Promotions Order and the Promotion of Collective Investment Schemes Order). We are considering whether this provides sufficient flexibility for firms with high net worth or sophisticated customers.

For instance, we are considering whether we should allow firms to promote schemes that allow high net worth individuals to benefit from Business Property Relief and Business Premises Renovation Allowance.

Finally, we are also considering how best to ensure an effective and proportionate approach for any additional sign-off requirements on each promotion's compliance with the rules.

Next steps

As ever, these considerations are subject to our policy-making process and will only be confirmed once the FCA Board has considered them in April. We will be contacting key stakeholders to discuss any changes to the new rules in more detail over the next couple of months.

Please let me know if you have any questions.

Yours sincerely,

David Geale
Head of Investments Policy