

Email: UCISdata@fsa.gov.uk



20 June 2012

Dear Compliance Officer

This letter requires your immediate attention. Please respond to the FSA by Wednesday 27 June 2012.

Unregulated Collective Investment Schemes (UCIS)

The unlawful promotion and mis-selling of UCIS is a key risk we have identified in the retail investment market. Our concerns include how firms' behaviour further up the UCIS product chain may be contributing to the risk of UCIS being inappropriately marketed to retail clients. Addressing these concerns is a priority for us and will continue to be until we are satisfied that the risk is mitigated.

Our intelligence suggests that your firm is either currently establishing, operating and/or managing UCIS funds that have been sold to retail clients, or has carried out these regulated activities in the past. This letter asks you to provide information on your UCIS activities and related systems and controls as part of our information-gathering exercise.

This letter requests that you provide us with information in relation to your current UCIS activities.

Background to our request

Our direct engagement with you is part of the FSA's wider supervisory focus on firms undertaking UCIS activities that are directed towards retail clients. We are sending similar letters to other firms. We have also sent letters to firms that are or have been advising on, or arranging investments in, UCIS for retail clients.

Template copies of both letters are available on a new UCIS webpage: http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/investment/ucis.shtml

This webpage can also be used to access previous FSA publications that set out some examples of the poor behaviours we have seen to date in relation to UCIS. It also provides examples of the numerous Enforcement cases that we have taken against firms in relation to inappropriate promotion of UCIS.

We intend to consult on new rules for UCIS later this year which will give effect to our view that UCIS are niche products and generally unsuitable for those investors of ordinary means and experience who make up the vast majority of the retail market in the UK.

Key areas of concern

The FSA's Retail Conduct Risk Outlook published in March 2012¹ highlighted our concerns that firms further up the UCIS product chain may be contributing to the risk of UCIS being mis-sold to retail clients. These include:

- providers (being firms that establish, operate and manage UCIS funds) and promoters targeting UCIS at retail intermediaries in ways that encourage inappropriate marketing of these products;
- providers making UCIS available to the retail market without conducting sufficient due diligence or establishing appropriate systems and controls to ensure that these products are only marketed to eligible investors; and
- insufficient product governance controls at firms that establish, operate and manage UCIS funds to ensure that consumers are treated fairly.

The regulatory guide on the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) sets out, in general terms, the FSA's view of what the combination of Principles for Businesses and detailed rules require of providers and distributors in terms of treating customers fairly. Paragraph 1.14 of the RPPD notes that providers and distributors should consider the impact of their action (or inaction) on the customer in various stages of the product life-cycle, or the various stages of provision of the service. Depending on the precise nature of a firm's business, this could mean addressing the fair treatment of customers at the following stages: design and governance; identifying target markets; marketing and promotion; sales and advice processes; after-sales information and service; and complaints handling.

For further details on the FSA regulatory requirements, please consider in particular paragraphs 1.17 to 1.22 of the RPPD (specifically on 'Provider responsibilities') and Appendix 2 to this letter which contains a summary of some of the relevant Handbook provisions.

¹ <http://www.fsa.gov.uk/static/pubs/other/rcro12.pdf>

Retail Distribution Review

The Retail Distribution Review is due to be implemented on 31 December 2012. It requires that, in order for firms to hold themselves out as offering independent advice, they must make personal recommendations that are based on a comprehensive and fair analysis of the relevant market and that are unbiased and unrestricted. It has come to our attention that some UCIS providers are suggesting to distributor firms operating in the general retail market that they must consider and/or recommend UCIS to their clients in order to demonstrate that they offer independent advice. This is incorrect. Our recently published Finalised Guidance¹ has addressed this issue and clearly states that *“It may be possible for a firm to conclude for many clients, early on in the advice process, that certain product types are not going to be suitable, and therefore not consider these product types further for those clients. A firm’s independent status will not be affected if it never recommends these products because it deems them to be unsuitable for its clients”*.

What you need to do next

Please provide written responses providing the information requested in Steps 1 – 3 below.

Step 1: Acknowledgement of receipt (required by Wednesday 27 June 2012)

Please acknowledge receipt of this letter and inform us of the name and job title of the person who has responsibility for the compliance oversight function of the UCIS activities in your firm.

Step 2: Confirmation of future UCIS activity (required by Wednesday 18 July 2012)

Your firm’s response to the FSA’s survey in October 2011 stated that the firm intends to continue its UCIS activities (which would include providing UCIS to the retail market) in the next 18 months.

Please confirm whether this remains your firm’s intention. If it is no longer your firm’s intention to continue its UCIS activities, please confirm when you ceased (or will cease) providing UCIS to the retail market.

Step 3: Attestation of current compliance by CF10 (also required by Wednesday 18 July 2012) This response should be provided by the person who has responsibility for the compliance oversight function of the UCIS activities in the firm (CF10).

Please provide us with a written response confirming whether you are satisfied that:

1. your firm has in place robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the UCIS risks it is or might be exposed (see further SYSC 4.1.1R and Appendix 2); and

¹ http://www.fsa.gov.uk/library/policy/final_guides/2012/fg1215

2. your firm has adequate policies and procedures sufficient to ensure compliance with its obligations under the regulatory system in relation to its UCIS activities (see further SYSC 6.1 and Appendix 2).

Please also confirm whether your firm has carried out any targeted review of its UCIS activities to date. If such a review was carried out, or is currently underway, then please also provide the additional information requested in Appendix 1. If you have not carried out a review then please provide a nil response.

Instructions for completion

Your responses should be submitted to UCISdata@fsa.gov.uk copying in your FSA supervisor/Firm Contact Centre. Please state your Firm Registration Number (FRN) in the subject box. Your response will help inform our supervisory approach.

When completing your response, you may wish to consider Principle 11 of the FSA's Principles for Businesses which states that: 'A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.'

More generally, we would also like to remind you that when considering your UCIS activities you should take into account the guidance in DISP 1.3.6G which states:

- *'Where a firm identifies (from its complaints or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service, it should (in accordance with Principle 6 (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those customers are given appropriate redress or a proper opportunity to obtain it. In particular, the firm should:*
- *ascertain the scope and severity of the consumer detriment that might have arisen; and*
- *consider whether it is fair and reasonable for the firm to undertake proactively a redress or remediation exercise, which may include contacting customers who have not complained.'*

Please note that the contents of this letter do not prevent, or in any other way limit, the FSA from investigating and taking any action in respect of any matter against any firm either before 20 June 2012 or after in relation to the subject matter in this letter, where we consider it appropriate in the light of any particular facts.

If you have any queries regarding the letter please email these to UCISdata@fsa.gov.uk.

Yours sincerely

A handwritten signature in cursive script that reads "L. Woodall".

Linda Woodall
Head of Investment Intermediaries Department
Financial Services Authority

Appendix 1: Additional points to include when completing Step 3

Please provide us with details of the most recent review of UCIS activity that was undertaken, or is currently underway at your firm.

Your answer should include the following information:

- when the review was (or is due to be) completed and the period of UCIS activity that it relates/related to;
- the reason that the review was/is being carried out;
- who carried out (or is carrying out) the review, including whether they were independent to the UCIS adviser and whether they were/are internal or external to the firm;
- an outline of the methodology and parameters of the review; and
- the name, job title and Significant Influence Function (if applicable) of the people in the firm that considered the findings and decided what actions were to be taken in response (or will be responsible for doing so when the review is complete).

If the relevant review is already complete please also provide us with a brief description of the findings and any actions taken in response to these, in particular how any gaps identified have been or are being addressed.

If the review is still currently underway please confirm when you will be able to provide us with this information.

Appendix 2: Key Principles and Rules

Area of focus	Relevant regulatory provisions
Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) ¹	Paragraph 1.6 Paragraph 1.14 Paragraphs 1.16 – 1.20
Promotion of UCIS to retail customers	S.238 Financial Services and Markets Act 2000 COBS 4.12R ²
Systems and controls	SYSC 4.1 SYSC 5.1R SYSC 6.1R SYSC 10.1R
Key principles relevant to UCIS activities	FSA Principles for Businesses 1, 2, 3, 6, 7, 8, 9 and 11

¹ For the full text of the RPPD please refer to FSA's Regulatory Handbook Guide - <http://fsahandbook.info/FSA/html/handbook/RPPD/link/PDF>

² For a full list of exemptions please refer to the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 and COBS 4.12. For further commentary on the promotion of UCIS please refer to The Perimeter Guidance Manual (PERG), Chapter 8.20 ('Additional restriction on the promotion of collective investment schemes').