

135 newsletter

Financial Services Authority

New Collective Investment Scheme products –

- Proposals to implement the UCITS Amending Directive (2001/108/EEC)
- Limited Issue Funds
- Guaranteed Funds

April 2002

About this newsletter

This newsletter provides a summary of FSA Consultation Paper 135 – New Collective Investment Scheme products

This paper is particularly relevant for Collective Investment Scheme operators and depositaries.

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Executive Summary

This Consultation Paper proposes amendments to the Collective Investment Schemes (CIS) sourcebook in three related policy areas. We expect the proposals to lead to new CIS products being developed, increasing consumer choice and flexibility for the UK CIS industry.

Proposed changes to policy

Allowing authorised CIS schemes to take advantage of the UCITS Amending Directive on investment powers – (the ‘Product Directive’, as adopted on 21 January 2002). This directive widens the current investment powers of UCITS schemes. Currently such schemes may only invest in transferable securities (generally speaking shares and bonds). The Product Directive extends this to investment in money market instruments, derivatives, deposits, and in other CISs (giving the potential for funds of funds). Also, there are special rules for funds that replicate certain indices.

Allowing Limited Issue Funds (‘LIFs’) – currently, authorised funds have a continuing commitment to meet investors’ demands to buy and sell their units. The proposals are intended to create a framework within which CIS providers can more easily offer consumers products with some sort of downside protection, as is now possible given the investment flexibility provided by the Product Directive. This is difficult to achieve cost-effectively where the size of funds is unlimited. Enabling CIS providers to restrict the issue of units would also give investors improved access to markets where the underlying investments are less liquid.

Allowing and controlling the use of certain words in the name of the CIS – such as ‘guaranteed’ or ‘capital protected’. This will provide a UK framework for authorised guaranteed CISs.

These three policy proposals are linked. Implementing the Product Directive will provide more opportunities for UK-based product providers to use a wider range of financial instruments to support the sale of guaranteed products throughout the EEA.

Consumers and consumer groups will be particularly interested in the proposals in this paper to allow funds to use words in their names that point out that their capital is guaranteed or protected.

Next steps and transitional provisions

Transitional provisions

For the Product Directive, the new rules are expected to be in place well before the 13 August 2003 deadline for implementation. There are generous transitional provisions and we are proposing that most existing schemes, (both UCITS and non-UCITS) will be able to continue to operate under the existing rules until 13 February 2007. Once our board makes the new rules, the directive has the effect that until 13 February 2004, it is possible for new funds to be authorised under the existing rules.

However, such funds would not attract the extended transitional period and would need to comply with the new rules by 13 February 2004.

The European Commission chairs a Contact Committee to discuss the harmonised implementation of the two UCITS Amending Directives (the Management Directive is referred to below). At the last Contact Committee, the Commission had a preliminary legal view on implementing the two directives, which would not necessarily have to be implemented together. The Commission suggested that although the directives' provisions could be applied domestically immediately after national implementation, there would be no automatic right to passport under either of the directives until the final deadline for implementation (13 February 2004). We agree with this interpretation, although we believe that, during this period, firms may be able to operate within the EEA by relying on their Treaty rights or bilateral agreements particularly if other member states have implemented the directive early.

Our proposals for LIFs and guarantees are optional. Existing schemes will only be affected as far as they may wish to take advantage of the new opportunities. So transitional provisions are not necessary.

The Management Directive

A directive about management companies (the 'Management Directive'), also adopted on 21 January 2002, means other changes to the UCITS Directive. It will provide CIS management companies with a 'passport' to operate throughout the EEA, similar to the rights which investment firms have enjoyed under the Investment Services Directive ('ISD'). Implementation will require various changes to our Handbook. Also, the Treasury will need to amend relevant regulations made under the Act. At this stage, firm dates for the various consultations have not been decided. All the rules will, however, need to be in place by the 13 August 2003 implementation date.

CIS sourcebook review

The FSA Plan and Budget for 2002/03, published on 31 January 2002, explains that we are planning a more fundamental review of CIS product regulation. That work has begun and will consider the proposals contained in this Consultation Paper and the work on implementing the Management Directive. As part of the review, we will consider:

- whether there is a need to propose changes to the non-UCITS fund categories remaining after implementation of the Product Directive (for example property schemes and geared futures and options schemes); and
- whether we should introduce new categories of non-UCITS scheme.

Consultation process

The consultation period on the proposals set out in this paper ends on 31 July 2002. During the consultation period we plan to undertake a series of presentations and seminars to explain the proposed main changes. Once the consultation has ended and we have considered any responses, we will amend the draft proposals as necessary and finalise the rule changes. We hope to do this by early autumn.

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 31 July 2002.

You can send your response by electronic submission using the form on the FSA's website (at www.fsa.gov.uk/pubs/cp/cp135_response.html), by e-mail or in writing to the following:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

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