



2 December 2008

Matthew Cherrill
Retail Policy and Themes
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Dear Matthew,

CP 08/16 – Equivalence of collective investment schemes and hedging of unit classes

This response covers only the rule clarification proposed in Chapter 6 of CP 08/16.

We welcome the proposals from FSA to introduce the ability for base currency hedging and for UK UCITS to invest in non-EEA collective investment schemes. We thank FSA for continuing to look at various issues where there is potential for regulatory arbitrage and the proposals within this consultation go some way to addressing this important issue.

Hedged Currency Classes

We fully support the proposals and draft rules and guidance to allow a class of units to be hedged against the base units where they are both denominated in the same currency.

Equivalence of Collective Investment Schemes

A number of responses, including ours, to the implementation of the Eligible Assets Directive earlier in the year asked for a UK UCITS to be able to invest in funds outside of the EEA, such as US Mutuals and Exchange Traded Funds. The rules and guidance as drafted do demonstrate your willingness for flexibility when investing in non-EEA CIS. COLL 5.2.14 G (3) (b) recognises that local law may not require a depository and appropriate, robust governance should be in place. However, this is not reflected in COLL 5.2.13 R (1) (e) (ii) which states that the OECD member (other than another EEA State) has to approve the depository. We therefore suggest that the guidance for where a depository is not required is incorporated into this specific rule to ensure that the rules and guidance are consistent.

Whilst there is additional flexibility, we do not believe that regulatory equivalence should only be applied to OECD countries [5.2.13 R (1) (e)]. The CESR Guidelines suggest that membership of the OECD may be a reason to qualify the regulator as equivalent but, in addition, so is a Memoranda of Understanding (both bilateral or multilateral) **or** membership of an international organization of regulators (such as IOSCO) **or** an exchange of letters between the authorities. We therefore recommend that the rule is either simplified to emphasise equivalence (with guidance providing examples of determination of that equivalence) or the rule is expanded to allow the full flexibility of the CESR Guidelines.

We also seek clarification on the 10% restriction where the second scheme cannot invest more than 10% of its assets in other CIS. We believe that this should follow the principles set out in the FAIFs proposals so that the restriction does not have to be disclosed in the prospectus or other documents but that satisfactory due diligence should determine that the second scheme will not invest more than 10% in other CISs. For example, the manager of the UCITS may be able to determine that this restriction applies to the second scheme from their investment objectives and policy. Finally, we would like clarification to whether side letters would be allowable at the level of the second scheme, providing that regular and satisfactory due diligence has been carried out by the AFM.

We look forward to hearing from you in due course.

Yours sincerely



Kevin Tomlin
DATA Chairman