

FSA Implements Eligible Assets Directive

The UK Financial Services Authority (“FSA”) has set out its proposals to implement the EU Eligible Assets Directive (“EAD”) and the related Committee of European Securities Regulators (“CESR”) guidelines for operators of Undertakings for Collective Investments in Transferable Securities (“UCITS”) schemes. The EAD helps with the definition of which assets are eligible for UCITS schemes to invest in.

The UCITS Directive provides for an EU-wide regime for the regulation and production of collective investment schemes (in the UK, authorised unit trusts and open-ended investment companies). The Directive defines what assets UCITS schemes are allowed to invest in. Schemes recognised nationally as UCITS-compliant are marketable across borders in the EU without any re-authorisation by local regulators.

The FSA’s proposals are set out in its Consultation Paper (“CP”) 07/18 Quarterly Consultation Paper (No. 14) by way of changes to the FSA’s Collective Investment Schemes Source Book (“COLL”). Comments on the proposals are sought by 5 December 2007. The proposals will come into effect on 23 July 2008.

The key areas covered by the CP concern the eligibility of, and criteria to be met by, certain financial instruments for investment by a UCITS scheme, including:

- closed end funds, which must be subject to appropriate corporate governance mechanisms and, where applicable, be managed by a person subject to national regulation for the purposes of investor protection;
- transferable securities (*e.g.*, shares) linked to other assets (*i.e.*, structured products);
- money market instruments, which must be normally dealt with on the money market, be liquid and have a value that can be accurately determined at any time;
- financial indices, which must be sufficiently diversified, represent an adequate benchmark for the market to which they refer and be published in an appropriate manner; and
- OTC derivatives.

Commodity derivatives, real property and hedge funds are not eligible assets, although an index based on derivatives on commodities, property or hedge funds may be eligible, subject to fulfilling the criteria listed above for a financial index. CESR has also issued guidelines for hedge fund indices at www.cesr-eu.org.

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