

Authorised investment funds technical release

November 2009

Recent regulatory developments

In this brief alert we highlight two regulatory developments which have taken place over the summer affecting authorised funds. The FSA's July Quarterly CP has proposed various sundry amendments to COLL which are relevant to financial reporting. In addition, HM Treasury have indicated that they will be going ahead with their proposed protected cell regime for OEICs.

The proposed changes put forward in CP09/20 include the following:

1. Amendments are to be made to COLL to bring it into line with the 2008 SORP. This includes for example consequential amendments to the definition of income property and updates to reflect the introduction of condensed financial statements for half yearly reports.

2. The rules on accounting periods are to be relaxed to allow the manager to end the annual or half yearly accounting period up to 7 days before or after the normal date. This could be helpful where year ends fall during holiday periods. CIS previously allowed this but it was one of the rules which the FSA deleted when producing COLL and it is useful that the flexibility is being reinstated.

3. In the manager's report, as well as disclosing the investment objectives and policy, there will be a requirement to include a description of the strategy which the manager follows to achieve the objectives. The example which the FSA give in the CP is that of buying income to achieve yield. However, strategy will be wide ranging and fund specific according to the way the fund is being managed. This may be an area where some funds will have to check whether there is anything they need to add into their managers' reports. This proposed change will also affect the short report.

4. The rules which were previously in CIS (but omitted from COLL) regarding the formal sign off of the annual report by the ACD/manager are to be reinstated. The requirements are that the ACD or, in the case of a unit trust, two directors of the management company, should approve the report. This broadly confirms what has been ongoing current practice.

5. There is an amendment proposed to COLL 6.7.10 which states that transfers of income shortfalls to capital at the end of an annual accounting period are share class specific. This clarifies that one share class can pay a distribution when other share classes have a deficit of income - which has been a point of discussion over the years, partly due to COLL's silence on the subject. The drawback of the clarification however is that some funds may have to change their distribution policy.

Once the consultation has run its course the FSA intends that the amendments would be in force early in 2010.



Also over the summer, HM Treasury have indicated that they will be going ahead with their proposed protected cell regime for OEICs and have published a consultation containing the draft SI and draft COLL amendments

Key points of interest include:

1. It is proposed that it will be a compulsory regime - ie it will affect existing OEICs as well as new OEICs incorporated after the date of implementation of the legislation.

2. Existing OEICs will effectively have up to a year to change their Instruments of Incorporation and any other relevant legal documentation, although some concern has been expressed over the practicability of this time limit.

3. The current contagion disclosure in the manager's report and prospectus will be watered down, but not disappear. The reason given for this is that there are some doubts about whether the regime could be challenged by local creditors in foreign courts. This may raise some discussion and it is a perhaps little disappointing that the consultation does not also consider the ongoing role of aggregated accounts in the context of a PCC regime.

4. Sub funds will in future be permitted to invest in other sub funds of the same OEIC, subject to some safeguards (eg there must be no double charging of fees).

It is possible that the regime might be in place towards the end of the year or early in 2010.

Contact us

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