

FCA CONSULTS ON PERMITTING THE LONG-TERM ASSET FUND TO BE MARKETED TO RETAIL INVESTORS

On 1 August 2022, the UK's FCA issued a **consultation paper** (CP22/14) in which it consulted on potentially permitting the long-term asset fund (LTAF) to be marketed to retail investors. The LTAF is a recently-introduced type of UK authorised fund that is intended to enable investors to invest in long-term illiquid assets. This significant proposal could serve to broaden retail investors' access to a range of assets, including private equity, private debt, property and infrastructure.

Background

In November 2021, the FCA introduced a new type of UK authorised fund called the long-term asset fund (LTAF). The LTAF was created to reduce barriers to investment in long-term assets by allowing investors to invest in these assets via an open-ended, authorised fund.

LTAF: Key Features

- **Regulatory perspective:** Classified as an alternative investment fund (AIF) that must be managed by an alternative investment fund manager (AIFM).
- **Structural perspective:** Must be open-ended. Can take the form of an authorised unit trust (AUT), authorised contractual scheme (ACS) or investment company with variable capital (ICVC).
- **Investment strategy:** Must be to invest mainly in long-term illiquid assets. FCA guidance states that the FCA expects LTAFs to invest at least 50% of the value of the scheme property in unlisted securities and other long-term assets such as immovables or other funds that invest in those assets.
- **Regulatory requirements:** Include restrictions on the assets in which the LTAF may invest; investor information and reporting requirements; valuation, pricing, dealing and income requirements.
- **Redemptions:** Must be no more frequent than once a month; mandatory notice period of 90 days for redemptions to come into effect.

Key issues

- The FCA has issued a consultation paper proposing to permit LTAFs to be mass marketed to retail investors.
- The LTAF is a new type of UK authorised fund that is permitted to invest in long-term assets such as private equity, private debt, property and infrastructure.
- Currently the LTAF may only be marketed to certain limited categories of retail investors.
- The proposals may increase the popularity of the LTAF as a type of authorised fund vehicle and broaden retail investors' ability to invest in private equity, private debt, property and other types of long-term assets.
- Marketing of the LTAF to retail investors would need to satisfy certain conditions.

Marketing – the existing position

Under the November 2021 rules, the LTAF was treated as a 'non-mainstream pooled investment' (NMPI) for promotional purposes. This meant that it could only be promoted to professional clients and very limited categories of retail investors (in summary, certified high net worth investors, certified sophisticated investors and self-certified sophisticated investors).

Marketing – the FCA’s proposal

Overview

In its new consultation paper, CP22/14, the FCA is proposing to change the treatment of the LTAF for promotional purposes to a ‘Restricted Mass Market Investment’ (RMMI). This means that promotion of the LTAF would no longer be restricted to professional clients, certified high net worth investors, certified sophisticated investors and self-certified sophisticated investors. Mass marketing of the LTAF to retail investors would be permissible. This significant proposal could therefore allow ‘ordinary’ retail investors to access private equity, private debt, property and infrastructure assets via an authorised, open-ended fund vehicle.

Conditions that must be satisfied to market the LTAF to a retail client

If an LTAF were to be promoted to a retail client, the FCA proposes that the promotion would need to meet two key criteria:

- it must not contain any monetary or non-monetary incentive to invest (e.g. a bonus when investing for the first time or a bonus for referring another investor); and
- it must include specified risk warnings and a risk summary. The FCA has provided draft template wording for these.

If the investor is ‘advised’ (i.e. receives a personal recommendation to invest in the LTAF), the following rules will not apply. If the investor is not advised and will instead receive a ‘direct offer financial promotion’ (essentially, a financial promotion that contains an invitation to invest in the LTAF and that specifies the manner in which a response can be made), the following conditions would also apply:

- a personalised risk warning and a risk summary must be provided to the investor. The FCA has provided draft template wording for these.
- the investor must fall into one of the following categories:
 - restricted investor. To be a restricted investor, the investor must sign a declaration to say that they have not in the last 12 months, and will not in the next 12 months, invest more than 10% of their net assets in RMMIs;
 - certified high net worth investor;
 - certified sophisticated investor; and
 - self-certified sophisticated investor.
- the firm must conduct an appropriateness assessment of the potential investor.

Other amendments to the LTAF regime

CP22/14 also sets other proposed revisions to the LTAF regime, including:

- enabling a Non UCITS Retail Scheme (NURS), set up as a fund of alternative investment funds (FAIF), to invest up to 35% of its value into units of a single LTAF and up to a maximum of 50% of its value in LTAFs in total.

“We consider it appropriate to offer retail investors the choice to invest in the highly regulated and authorised LTAF in a controlled way.”

FCA, CP22/14

- broadening pension scheme coverage by extending the permissible distribution of LTAFs to members of defined contribution pension schemes and more widely.
- aligning some LTAF rules with investor protection rules that apply to other retail authorised funds, including: requirements for engagement with unitholders on proposed fundamental or significant changes to the funds; arrangements for the conduct of unitholder meetings; and restrictions on the payments and charges that can be taken from LTAF unit classes that are made available to retail investors.

Next steps

The FCA's consultation paper is open for comment until 10 October 2022. Firms that wish to comment on the proposals may do so using the **form on the FCA website**.

The FCA has stated that it will endeavour to publish a final policy statement and final rules early in 2023.

“Firms will benefit from the ability to reach a broader target market, simultaneously meeting consumer needs, whilst diversifying their investor base, increasing the probability of a successful launch, and consequently holding a more diversified range of assets within the fund.”

FCA, CP22/14

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