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Funds Investing in Inherently Illiquid Assets (‘FIIA')

Of particular interest to: managers of non-UCITS retail schemes investing in illiquid assets

Last October the FCA released Consultation Paper CP18/27 on illiquid assets and open-ended funds – see link below for the Alert we issued on this topic.

Some 12 months later the final rules have been published in Policy Statement PS19/24 – “Illiquid assets and open-ended funds and feedback to Consultation Paper CP18/27”. It may be recalled that the focus is on non-UCITS retail schemes (**NURS**) that invest in what the FCA terms ‘inherently illiquid assets’. The latter captures assets such as real estate, infrastructure projects and certain non-readily realisable investments although reference should be made to the revised Glossary in PS19/24 for the full definition of such assets, as well as for the definition of a **FIIA** – which includes a requirement that at least 50% be invested in (or where it is the fund’s aim to invest at least that amount in) such assets. Note that NURS that provide for the application of limited redemption arrangements are excluded from the definition of an FIIA.

The delay in publishing the final rules (originally due in Q2 2019) is attributed to the suspension of the **LF Woodford Equity Income Fund**. Although this is a UCITS fund, the issues that led to its suspension – namely the combination of daily dealing in a fund which held a degree of illiquid assets – caused the FCA to question whether the proposals in PS19/24 should be applied more widely than NURS and whether it should be exploring further remedies for UCITS. Although the FCA has now published these final rules for NURS, chapter 7 of PS19/24 confirms that the FCA is still considering the wider matter.

The rules focus on three broad areas:

- **Suspension** of dealings when there is a **material uncertainty** about the valuation of at least 20% of the scheme property (although dealing can continue where agreement is reached with the fund's depositary that to do so is in the best interests of investors)

- Requiring managers of an FIIA to produce **contingency plans** for dealing with **liquidity risks**, with depositaries having a duty of oversight of the processes used to manage the liquidity of the fund
- Increased **disclosure** by way of a standard risk warning in financial promotions to retail clients and enhanced information on liquidity risk management strategies in the fund's prospectus

The final rules largely reflect the proposals in CP18/27, although the following have **not** been carried forward:

- The need to add an 'identifier' in the fund's name ("a fund investing in inherently illiquid assets") in certain financial promotions
- Guidance relating to limiting the accumulation of large cash buffers

The new rules, which can be found in Appendix 1 of PS19/24, come into force on **30 September 2020**.

Useful Links

PS19/24

Alert - Illiquid Assets and Open-ended Funds

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Terminal House, 1st Floor, 52 Grosvenor Gardens, Belgravia, London SW1W 0AU