

## **Advice on collective investment schemes under the Designated Professional Body arrangements**

### **What is a collective investment scheme?**

A collective investment scheme is defined in section 235 of the Financial Services and Markets Act 2000 (the Act). Article 81 of the Regulated Activities Order specifies that units in a collective investment scheme are regulated investments under the Act. Units are defined in section 237 of the Act as ‘the rights or interests (however described) of the participants in a collective investment scheme’.

The Non-exempt Activities Order (SI 2001/1227) sets out various activities that a DPB licensed firm cannot do. Under article 4(d) of this Order, a DPB licensed firm cannot establish, operate or wind up a collective investment scheme nor act as trustee to an authorised unit trust scheme.

### **Arrangements which are not treated as collective investment schemes.**

Under the Collective Investment Schemes Order 2001 (SI 2001/1062), the Treasury has designated certain arrangements as not constituting collective investment schemes.

The arrangements which are covered by this Order are:

- individual investment management arrangements
- enterprise initiative schemes
- pure deposit based schemes (this would include cash deposit ISAs)
- schemes not operated by way of business
- certain debt issues, such as debentures, bonds and loan stock
- amounts held by participators in common accounts
- certain funds relating to leasehold property
- certain employee share schemes
- schemes entered into for commercial purposes related to existing business
- group schemes, where each participant is a body corporate in the same group as the operator
- franchise arrangements
- trading schemes (basically those which reward participants for introducing new members to the scheme, which is managed by the scheme operator)
- timeshare schemes
- other schemes relating to the use or enjoyment of property
- schemes involving the use of certificates representing certain securities (see article 80 of the Regulated Activities Order)
- provision of clearing services
- contracts of insurance
- funeral plan contracts
- individual pension accounts
- occupational and personal pension schemes
- certain bodies corporate (mainly building societies, industrial and provident societies, registered friendly societies and other bodies corporate except open-ended investment companies).

The Order should be referred to for more detail on the precise definitions of these schemes.

## **What can a DPB licensed firm do?**

Where the legislation provides that schemes are not collective investment schemes, firms which are unauthorised or have a DPB licence, may be able to establish, operate or wind up such a scheme. However, other parts of the legislation stop an unauthorised or DPB licensed firm from acting in respect of some of these arrangements, such as contracts of insurance, funeral plan contracts and pension schemes.

## **What advice can be given on acquisitions by DPB licensed firms?**

When considering whether a DPB firm can advise on the purchase of units in a collective investment scheme, it is irrelevant whether the scheme is constituted as a collective investment scheme or is included within the Statutory Instrument referred to above. The legislation does not use this terminology when preventing DPB licensed firms from giving advice on the purchase of investments.

The Non-exempt Activities Order (NEAO) prohibits DPB licensed firms from advising individuals to buy or subscribe for a security, such as a share or contractually based investment and the transaction to which the advice relates would be made-

- i) with a person whose business is buying, selling, subscribing for or underwriting the relevant investment, whether as principal or agent;
- ii) on an investment exchange or any other market to which that investment is admitted for dealing; or
- iii) in response to an invitation to subscribe for a relevant investment which is, or is to be, admitted for dealing on an investment exchange or any other market.

The NEAO does not prohibit DPB firms from advising on selling, except in relation to personal pensions.

Advice on acquiring units in collective investment schemes involving investments that are publicly tradable will be caught within ii) or iii) above. Therefore a firm wishing to advise, for example, on the purchase of units in a quoted unit trust will need FSA authorisation.

Where the units are not publicly tradable, a DPB firm may also be prevented under i) above from advising an individual on the acquisition of units in a scheme. This is because advice is not permitted where the deal to which the advice relates is made with a person whose business is buying, selling, subscribing for or underwriting the investment, whether as principal or agent. Where there is an operator of a scheme in place, then it is likely that a DPB firm would be prevented from advising on the purchase of units in the scheme.

A DPB firm must always bear in mind that the regulated activity which is to be carried on must be incidental to the firm's other professional services and be complementary to or arise out of other services provided to the particular client.