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Financial Services Authority
25 The North Colonnade
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Attn: Jason Pope
Retail Investments Policy

Dear Sirs

We refer to your Guidance Consultation relating to Traded Life Policy Investments issued on 28 November 2011. This is our feedback.

Background to EEA

By way of background, EEA Fund Management Limited (“we”) is the non-exclusive marketing agent for the EEA Life Settlements Fund (the “Fund”). Under the terms of its marketing agreement with the manager of the Fund, EEA Fund Management (Guernsey) Limited (the “Manager”, which is licensed by the Guernsey Financial Services Commission), we are appointed to market the Fund and arrange investment in the cells of the Fund in any jurisdiction via professional investors, institutions and intermediaries that can be classified for regulatory purposes as professional clients or eligible counterparties.

In practice, we only market the Fund in the UK to:

- FSMA authorised persons (IFAs) to recommend the Fund to investors for whom they believe that an investment in the Fund is suitable or to purchase shares in the Fund on their client’s behalf as a discretionary manager; and
- regulated institutional investors to purchase shares in the Fund for their own account.

The Fund is also made available through a number of platforms through which only FSA authorised firms can place orders.

The Fund is marketed to retail investors only by persons who are authorised by the FSA (the “Authorised Firms”), and who are therefore required to have adequate systems and controls in place to ensure appropriate sales of products (including shares in the Fund).

Response to the Consultation Paper

Regarding the Guidance Consultation, we make the following two substantive points:

(i) *UK target investors*

The Guidance Consultation and accompanying press release appear to suggest two possible alternative and contradictory approaches to the marketing and selling of TLPs:

- TLPs should not be marketed or sold to mass market retail investors (see, for example, paragraphs 1.3 and 1.6 of the Guidance Consultation paper); or
- TLPs should not be marketed or sold to any retail investors at all (see, for example, the sections *Background to this consultation* and *Summary of the key issues* from the proposed guidance on traded life policy investments (http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_28.shtml), and paragraphs 1.2 and 1.5 etc of the Guidance Consultation paper).

As we have made clear to the FSA before as part of our on-going supervisory discussions, we agree with the FSA that TLPs are not generally suitable for the majority of retail investors. TLPs are relatively complex products and have risks that are specific to the asset class such that they are unlikely to be understood by or suitable for mass market retail investors.

However, we remain firmly of the opinion that TLPs are suitable for some retail clients (as defined in the FSA Rules) such as sophisticated individual investors and certain high net worth individuals, where such clients only make an investment after receiving appropriate personal advice from an Authorised Firm.

Although TLPs may be complex products and may be more risky than some products such as, for example, UCITS funds, this is also true of many other products (such as hedge funds, private equity funds, venture capital trusts and property funds) that may be marketed and sold to certain retail clients. These products often also share similar risks to TLPs, such as illiquid secondary markets for the sale of the underlying assets and the risk that assets may only realise value far later than originally envisaged and only after the fund has had to invest further capital to maintain value in the assets in the meantime. Some of the *Key risks associated with TLPs* set out in the Guidance Consultation paper are also common even in less risky products like UCITS funds, such as the risk of underlying assets being located offshore (which also applies, for example, to most non-UK equities funds and many UK listed companies that have significant overseas' earnings) and counterparty insolvency risk (which applies to any product).

Whilst TLPs have some specific risks that are not shared with all other asset classes, we do not agree that this means TLPs are unsuitable for any retail investor. Rather, we believe that:

- life policies are a valid and appropriate asset class for investment, providing fixed and known payouts from reputable, creditworthy life insurance companies established in a mature, regulated market where the rule of law is upheld. This is not necessarily the case with all other asset classes – for example, concerns have been raised publicly with respect to emerging markets' equities (price volatility, poor corporate governance and

accounting issues), commodities (price volatility, custodian and counterparty risk) and ETFs (counterparty risk, credit risk and opaque arrangements between sponsors and service providers);

- it is possible to design a TLPI product in order to take into account the specific risks relevant to TLPs in order to mitigate such risks, for example by spreading risk across a large number of policies where the underlying insureds have short, medically impaired life expectancies across a diverse range of illnesses to reduce longevity risk and only buying policies issued by reputable, creditworthy life insurance companies to reduce counterparty risk (noting with respect to the latter that some or all of the amount of the underlying life policy in many US states is covered by a state guaranty fund); and
- TLPs can be promoted in such a way that the ultimate investor can understand the risks and the materiality of those risks when making an investment. We and the Manager have been extensively involved in this for some time by preparing fact sheets, providing presentations to IFAs and commissioning third parties (including KPMG) to prepare guides for IFAs to ensure that they understand and promote the Fund properly.

We also believe that TLPs can offer sophisticated investors the means to diversify risk within their portfolio. In this respect, we note that investors in the Fund have benefitted from positive performance at a time when they could have suffered losses in many other asset classes, including UK equity funds and property funds. If the FSA were to ban the marketing and sale of TLPs to all retail investors, it would deny those sophisticated retail investors of the opportunity to diversify risk where this is suitable, which could then lead to them being advised by an Authorised Firm to make a less suitable investment.

In relation to the Fund itself, we therefore do not believe there is any sound basis for the FSA to decide to treat it any differently from any other unregulated collective investment scheme and, in effect, prohibit the marketing and sale of it or similar funds to certain retail (non-mass market) clients.

Finally, if the FSA's concern is to ensure that IFAs are not recommending TLPs to mass market retail investors, we believe there are alternatives that the FSA could consider (separately or together) which would be less prejudicial than a complete ban. These alternatives might include:

- (a) a prohibition on any investment in a TLPI below a specified minimum investment threshold (for example, the Fund has a minimum investment of £25,000, but the FSA could stipulate a higher minimum investment level if it thought this appropriate in light of its concerns about misselling);
- (b) a requirement for investors to certify when making an investment in a TLPI that TLPs make up no more than a certain permitted percentage (stipulated by the FSA) of their investment portfolio (our view is that TLPs should generally make up no more than 10-15% of an investor's portfolio); and
- (c) limiting the level of fees that can be paid to Authorised Firms and/or platforms for the sale of TLPs so that they are not being rewarded more highly for the sale of TLPs than they are for the sale of other products, such as equity funds or corporate bond funds.

Conclusion:

- (1) We would recommend that the FSA makes it clear that TLPI funds are not suitable for the retail mass market, but that they may be suitable for knowledgeable investors in the same manner as other unregulated collective investment schemes. The points raised by the FSA in the paper may be guidance on the issues that IFAs etc should consider in deciding whether to recommend TLPI funds, but there should be no explicit (paragraph 1.3 of the Guidance Consultation paper) or implicit (paragraph 1.9) ban on their marketing or sale to sophisticated and knowledgeable investors in the UK.**
- (2) The FSA may also wish to consider alternative methods of ensuring that mass market retail investors do not invest in TLPIs if this is its main concern, along the lines we have suggested above.**

(ii) The use of the terms "toxic" and "Ponzi" in the consultation

Given the above, it should be clear that the FSA's use of the term "toxic" in the context of TLPIs as an asset class in general is without merit and reckless. The use of this term implies that all TLPIs are harmful to the investor, whether retail or otherwise. We do not agree with this at all. This should not be the case with a well run and structured TLPI, where the investor understands the risks associated with an investment in the TLPI. Similarly, the FSA's reference to "Ponzi" is irresponsible. A "Ponzi scheme" is commonly understood as being fraudulent, and the FSA must realise that any suggestion that a TLPI fund is in any way fraudulent is highly damaging, will undermine market confidence and potentially lead to consumer detriment by increasing substantially the likelihood that there is a run on redemption requests such that investors find their money locked into a TLPI for longer than expected whilst the TLPI goes through an orderly wind-down.

Conclusion: We request that, as a matter of urgency and before the end of the consultation exercise, the FSA specifically retracts its references to TLPIs in general as being "toxic" and clarifies that its reference to "Ponzi" schemes applies to specific funds and names those funds.

We believe it is in the interests of all parties involved with or invested in TLPIs for the FSA to conclude the consultation exercise as swiftly as possible, so that there is certainty in the market which will allow product providers to plan the way forward for existing TLPIs which have been impacted by the FSA's statements during consultation. We would also urge the FSA to provide Authorised Firms with guidance in its final document not only on marketing and selling TLPIs but also on what they should be doing with respect to their clients who have already invested in TLPIs. This is advisable in order to ensure that Authorised Firms do not misadvise their clients by mistakenly feeling compelled by the FSA's statements and guidance to advise all clients to redeem their investments in TLPIs when this may not be in the best interests of, or suitable for, particular clients.

Yours faithfully
EEA Fund Management Limited

Simon Shaw
Chairman

Hiren Patel
Compliance Officer