1. Introduction

The UK Financial Conduct Authority (FCA) issued **this notice** [1]on its website on 24th September 2014 (See Appendix A). It warned all EEA Investors who were advised by UK Financial Advisors (FAs) to consider making a claim for mis-selling before a 3-year deadline expires, possibly from 1st December 2014. This WP reviews the situation on behalf of our members and provides appropriate information to help prepare and process a Claim should you choose to do so. The information might also be of interest to investors under other regulatory regimes who might be able to pursue similar claims for unsuitable advice.

These are the PROs for making a claim now :

a) If successful you will receive more cash and faster than waiting for redemption of your EEA shares
b) You will beat the time-barring deadline for referring a disputed claim to the UK Financial Ombudsman Service (FOS). You won't get a second chance.
c) Your FA will be in a position to recover any payments from his Professional Indemnity (PI) insurer if applicable and/or any other parties that he/ she relied on when giving you the advice to invest in EEA.
d) If your claim is approved by the Adjudicator / Ombudsman you and your FA will gain powerful evidence to support any additional actions, where appropriate.
e) You can withdraw your claim or reject any settlement offer at any time, at no risk or cost to you, subject to any conditions in your agreement with any legal services provider.

These are the CONs for making a claim now :

f) Your FA might no longer be insured for UCIS investments, and might go out of business without making any payment. You might also be less likely to receive "no-win-no-fee" legal support if there is no insurer available.
g) Your FA might refuse to provide (or be prevented from providing) any further information or advice about your EEA investment and/or other investments.
h) Once your claim is settled, you might not benefit from any future EEA redemption payments, and these might (in theory) be greater than your settlement.
i) If your EEA shares are held under certain pension, trustee or Insurance / Bond schemes then you might not be able or allowed to submit a claim and would depend on the provider, trustee or policy/bond provider to take any action.

Non-UK FAs

Most of this information won't apply if you did not receive advice from a UK registered FA (even if you were abroad at the time, or are now abroad), but some aspects might be of help in pursuing claims against overseas FA's or intermediaries or other people / companies that you relied on for information or advice when making your investment decision. There are separate considerations when using local FAs within the European Union on a "passport" basis from UK based firms.

2. Background

When advising a Client to make an investment, a UK regulated FA must carry out (and document) a "suitability assessment" to support his or her recommendation. Whether this is presented to the client for signature or information, or just kept in the FA's files has varied over the years, but the FA must document and keep records of the advice and the reasoning behind it. Failure to do so is a separate breach of the FSA/FCA regulations.

Note that the responsibility is normally carried by the FA's Firm (and its insurers) – not the individual FA who might move to a different Firm, or retire before any problems become visible.

Comment : Different considerations might apply when the Firm is owned by the FA (as a Director or Partner), or has since ceased trading. Sometimes, FAs must carry their clients / liabilities with them if they close a business and move to a different firm.

EEA Life Settlements are in a category called Unregulated [1] Collective Investment Schemes (UCIS) which the FCA considers (in general) to be unsuitable [2] for retail investors. FAs who recommend UCIS investments to retail investors must (now) be specifically authorised to do so and must follow additional rules to determine suitability for the client and circumstances concerned. From the client's perspective, such firms must also be specifically professionally insured to cover advice on UCIS investments, although in recent years, insurers have excluded UCIS claims from the matters that they will cover going forwards, regardless of when the advice was given.

The following requirements and guidelines apply to FAs giving UCIS advice :

- Only recommend investments which match the client's attitude to risk, needs and objectives, or overall personal circumstances, typically :
    - Low, medium or high risk assessments – See Working Paper 8B
    - Need for income versus capital growth (and time frames), taking into account client's age and other commitments / expectations (especially in relation to pension investments) and taxation.
    - Probability and consequences of the various risks materialising adversely or in potential combinations.
    - Consequences (for the client) if the investment fails completely.
    - Proportion of a client's relevant finances tied up in the investment.
- Don't over-estimate the knowledge and experience of a retail client
    - Being wealthy, or having previously invested in other investment classes might not be relevant to the particular investment (and risks) now being recommended.

Comment : If the client makes an apparently irrational investment decision, or rejects / ignores / over-rides the FA advice, the FA should ensure that this is specifically documented and acknowledged by the client, or recommend a second opinion on the advice and keep a record of this.

- Act in the client's best interests by taking all reasonable steps to ensure the UCIS (and underlying asset allocation) is suitable.

[1] This refers to the fact that the "Product" is not regulated by the FSA/FCA, even though it might be regulated under another jurisdiction, e.g. Guernsey in the case of the EEA Life Settlements Fund)
[2] See FCA Bulletin

- Undertake adequate due diligence to understand the recommended UCIS
    - Don't just rely on the marketing and promotional material provided by the Company or platforms concerned
    - Take account of the fees and commissions offered by the Company and platforms concerned and ensure that they don't bias or influence the UCIS recommendation. Tell the client about the anticipated fees and commissions.
    - Be aware of the general market environment and practices of the recommended investment sector and other particpants.
- Ensure that staff selling UCIS had attained adequate training and competence levels and had adequate compliance oversight of their UCIS activities
- Identify and address conflicts of interest, where they arise
    - Within the Fund Company, its Directors, Manager, Advisors and Valuers etc
    - Within the platforms, distributors and other intermediaries
    - Within the FA's Firm
- Take reasonable steps to identify, manage, monitor and report UCIS risks which the investment is exposed to (See also section 5).

In 2009 the FSA (now FCA) carried out a thematic review of UCIS recommendations by a number of smaller FA Firms, and identified several shortcomings. The following links to the FCA website provide further information, which might be of help in understanding the issues more clearly and preparing a possible claim (if the links don't work then use the full URL in the End-Notes of this WP.

- **Summary of the FCA Thematic Review** [2]
- **Report of Findings of the FSA Thematic Review** [3]
- **FSA Good and Poor Practice Report** [4]

3. Claim Deadlines

Normal claims procedures through the civil courts are covered by the Statute of Limitations set out under the **Limitations Act 1980** [5] and run for six years. Where there has been fraud or concealment, or the action is for relief from the consequences of a mistake, time will not run until the fraud, concealment or mistake is discovered or could with reasonable diligence be discovered.
However, the Financial Ombudsman Service operates under separate rules contained in the FCA's Handbook under the **Redress Section – Dispute Resolution** [6] and specifically under the **Time Barring sub-section (DISP2.8)** [7]**:**

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service :

(1) more than six months after the date on which the respondent [FA] sent the complainant [Investor] its final response or redress determination; or

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant [Investor] became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant [Investor] referred the complaint to the respondent [FA] or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless:…[some exceptions]

In the case of complaints against an FA related to an investment in EEA, the advice (or other event / omission complained of) must have occurred within the past six years (from initial submission of the complaint – i.e. since 30th November 2008 for a cut-off date of 30th November 2014 as implied by the FCA Notice) or the Investor must (reasonably) have become aware of the cause for complaint within the past three years (if later). The FCA Notice implies that the Fund Suspension on 30th November 2011 was the trigger for this three-year deadline, but we disagree.

The EEA suspension on 30th November 2011 was clearly stated to be as a consequence of a surge (or anticipated surge) in redemption requests following the FSA announcement on 28th November 2011, and the need to protect the Fund's assets and liquidity. The Board stressed that premiums would continue to be paid and the Fund would resume trading as soon as the consequences of the FSA announcement and proposed consultation had been addressed. There was no indication of any cause for concern about the viability of the Fund for existing investors, and the Board continued to publish monthly "Provisional" Net Asset Value (NAVs) which apparently confirmed that the investments were performing as expected.

The first possible indication that something might be amiss was when the 2011 Accounts failed to appear on time in June 2012, but this information was not publicised to FAs or investors. The Company periodically issued letters to shareholders confirming that premiums were being paid, maturities were still occurring, they were dealing with questions from the auditor and regulator, and were preparing for an anticipated restructuring later in 2012.

Some FAs and investors started raising concerns and questions as 2012 rolled on into 2013, but the Board continued to issue reassuring valuations and shareholder letters, and no concerns were expressed publicly by any regulators. The first concrete evidence that "something was specifically wrong" was when the (heavily qualified) 2011 Accounts were released in June 2013, followed by the resignation of Ernst Young in August 2013 and then the ensuing restructuring proposals, EGM and AGMs in the second half of 2013 and the delisting of the shares early in 2014.

Our opinion is that June 2013 would be the firm date at which investors and their Advisors might reasonably know that the Fund was having problems, and start to question the advice or actions / omissions by the Company, Regulator(s) or Financial Advisors. This would mean that complaints to the Ombudsman must be submitted by June 2016 to be within the three year time limit. Only people who received advice after June 2010 would have a longer timeframe under the six year limit. Investors who received advice after 30th November 2008 would still have more time under the six year rule.

Any member who believes that they might be barred from making a claim under these rules should contact us (or a legal advisor) to get further information or guidance respectively.

Comment : , although the above analysis is rational, the FOs or a court might not necessarily agree. They might take a very strict view, and this view can sometimes seem *harsh and unfair. In any event, engaging in a limitation debate will add risk to an investor's claim, and will weaken the investor's position in negotiations, as well as increasing costs.*

Limitation is a very thorny issue, and falling foul of it essentially sounds the death knell for a claim (either court claim or claim to the FOS). Investors should not allow a defendant to even contemplate raising a limitation defence, and given the amount of money usually at stake, investors are advised to exercise caution and make their claim without delay.

4. Complaint (Claim) Procedure

Comment : you can only claim against an FA for bad or negligent professional advice, not for bad performance by the investment itself. Also, if you made your investment via some "execution only" platforms, an FA might be able to reject the Claim out-of-hand. You might need to discuss this with a legal advisor before making your claim.

You don't have to involve the Financial Ombudsman Service unless you choose to do so after you have made a complaint (claim) to your FA and received an unsatisfactory "Final Response" from them within eight weeks. Although the FCA and FOS talk about "complaints", in the first instance you are actually making a claim against your FA for which you are seeking compensation (or "redress") - usually to put you back into the same financial position that you would have been if the investment hadn't been made, or could have been redeemed on better terms at an appropriate time.

If your FA Firm is no longer trading, then you could normally send your complaint / claim directly to the **Financial Services Compensation Scheme (FSCS)** [8]. Your compensation (if agreed) will be limited to a maximum of £50,000 per client per Firm.

Comment : WP8C is a template that you can use as a basis to prepare your claim letter to your FA . It's available from our website in both PDF and Word formats. You might also wish to use a specialist advisor (solicitor or paralegal) to help draft and submit your claim.

FAs are obliged by the terms of their FCA registration to have a complaint/ claim procedure in place, and to provide a "final response" to you, usually within eight weeks. You and the FA should try to "negotiate" a mutually acceptable resolution to the claim / complaint, but don't let the process drag on unnecessarily and be careful what you say in your communications with the FA in case you undermine or further complicate the claim. The FA will usually be represented by his Professional Indemnity (PI) Insurer and/or a lawyer.

Comment : Again, you might wish to engage professional legal or paralegal advice or assistance at this stage in the process.

If you are unable to agree a resolution with the FA then you can **make a complaint** [9] to the FOS, but this must be done within the time limits mentioned above, and within six months of receiving the "Final Response" letter from your FA. There is a form which can be downloaded from the FOS web site to accompany your claim documents. You can also discuss your complaint with the FOS by phone or via email.

5. Ombudsman and Adjudicator

Once the FOS has accepted and acknowledged your Complaint, an Ombudsman (or woman) will either rule on the matter directly, or more likely appoint an Adjudicator to investigate the complaint in conjunction with you and the FA. The Adjudicator will issue a report recommending to accept, reject or modify the claim and if appropriate suggest an appropriate basis for calculating the redress due, including any compensation element. The Adjudicator will also recommend whether claims for separate EEA investments should be considered as one claim or different claims.

The FA will then either agree to meet the claim as recommended by the Adjudicator, suggest an alternative compensation / redress basis to you and the Adjudicator, or (most likely) reject the Adjudicator's recommendation and appeal the claim to the Ombudsman, stating the reasons for rejection and appeal.

The Ombudsman will then consider the appeal by the FA and issue a decision. This is then final and binding on the FA, but not on the investor – who can decide to withdraw the claim and either abandon it or pursue it through the Courts, but using the Adjudicator and Ombudsman's reports etc as evidence to support their claim.

The Ombudsman can order a Firm to pay up to £150,000 in total per claim (hence the significance of the Adjudicator recommending whether multiple EEA investments should be considered as a single or multiple claims), and recommend (but not instruct) that it pays an additional amount if appropriate in the circumstances. A court would also note that the investor had decided not to accept the proposed settlement, and take this into account when deciding any resolution.

In certain circumstances, if the FA pays the maximum amount of £150,000 instructed by the Ombudsman based on an Adjudicator's report, but not any additional amount, then it might be possible to sue the FA in Court to recover the additional amount, using the Adjudicator and Ombudsman's reports as supporting evidence of the reasonableness of the claim and losses incurred.

WARNING : Many FAs are no longer insured to cover UCIS claims, and might be forced into liquidation by the claims, or might use the delay while the FOS considers the claim to wind up their firms and avoid the consequences of the claims. If you believe that this is likely then you should probably consult a solicitor or paralegal at the outset to determine the best strategy or tactics for submitting and processing your claim.

6. Acts of Omission

Compensation complaints or claims normally focus around the original "selling" advice and decision to make an investment. However, FAs also have a responsibility to take reasonable steps to identify, manage, monitor and report UCIS risks which the investment is exposed to over its lifetime. Although it's not clear how this duty applies in relation to any or every notice or piece of information issued by the Company, the Regulators or anyone else, it is nonetheless the FA's responsibility to decide which information is significant or relevant and advise their client accordingly.

The following is a list of events or information which FAs should reasonably have been aware of and had to decide whether to investigate further and/or inform their EEA investor clients of, with appropriate advice on whether to hold or redeem some or all of their EEA investment at the time. Additional information about some of these items is included in Working Paper 8B (Risks).

a) Until 2009, the EEA brochures and monthly Fact Sheets were using the term "A Low Risk, Uncorrelated Investment Solution" to describe the Investment, presumably with the approval of the Guernsey Regulator. In January 2010 this changed to "A Lower Risk, Historically Uncorrelated Investment Solution".

b) On 24th Feb 2010, Peter Smith (Head of Investments Policy, Conduct Policy Division at the FSA) **made a speech** [10] to the European Life Settlement Association in London, outlining the FSA's policy and views about the risks of Life Settlements investments. On 26th February 2010, EEA **issued a letter** [11] to FAs and Distributors addressing the concerns raised by Peter Smith, but stated in their email that "… for a number of reasons we thought it best not to send out a press release".

c) In April 2010, the EEA Marketing Brochure and Monthly Fact Sheets stopped using the term "Low Risk" and "Lower Risk" – it changed to "An Absolute Return, Historically Uncorrelated Investment Solution"

d) During 2010 and 2011 there was a significant increase in redemption requests, totalling $538m before the suspension in November 2011. (Total redemptions in the previous four years had only been $182m).This included withdrawals by clients who had been advised by AES, Charles Stanley and Fry Group to redeem their shares, which were reported in the financial media at the time and would have been known by other FAs.

   These redemptions resulted in a significant reduction in the number of new policies purchased (89 in 2011 versus 160 – 280 in previous years), and a reduction in the cash balance of the Fund from around $200m in 2009 and 2010 to $56m at the end of 2011 – partly exacerbated by a payment of $94m of valuation based fees and other charges during 2010 and 2011). The last policy was purchased in September 2011 – two months before the FSA announcement and Fund suspension.

e) In April 2011 EEA re-issued the Fund's Offering Memorandum, increasing the number of Risk Warnings from ten to eighteen, mostly by adding the risk categories mentioned by Peter Smith in his FSA speech. This update appears not to have been announced publicly but was distributed to some FAs and Distributors. Existing investors would therefore not have been automatically aware of the increased risk warnings.

f) And then, of course, the FSA made its infamous announcement on 28th November 2011 and the EEA Fund was suspended on 30th November 2013 … but that's another story.

Comment : The questions here are to what extent FAs actually knew about any of these events and "trends", or should have done. Many of them claim to have had very close and regular discussions with EEA and enjoyed numerous "insights" on behalf of their clients. It is part of their function to question and understand what's going on behind the Company notices and marketing literature, not just to swallow it wholesale, and also not to be influenced by the trail commissions that they receive from the Fund Manager and platforms. Professional Advice includes when to sell an investment, and how to mitigate newly discovered risks, not just when to buy an investment.

7. Legal Support and Assistance

This is a specialist area of knowledge and expertise which you might not get from a run-of-the-mill solicitor or legal advice service (or the Citizens' Advice Bureau). There are a number of solicitors specialising in such claims against FAs (often referred to as "ambulance chasers") but the fact remains that if your claim doesn't have legal merit within the terms of the FCA regulations, then your claim won't succeed. The solicitors (who will often work on a no-win-no-fee basis provided that there is an insurer behind the FA) will not pursue a claim which has a low probability of success, and the more reputable ones will tell you up front not to waste your time or money making the claim, or engaging a solicitor.

We have identified four firms of solicitors who are willing to discuss your situation with you and advise you on how best to proceed. In alphabetical order :

- **Butters David Grey LLP** [12] (Hastings, sussuex)
  Contact Barry Collins, +44 (0) 1424 424949 **bcollins@bdgconvey.co.uk**

  Myerson Solicitors LLP, [13] (Altrincham, Cheshire)
  Contact Ben Wilson +44 (0) 161 941 4000 **Ben.Wilson@myerson.co.uk**
  See Letter from Myersons

  Neglect Assist (Wixted and Company) [14] (London)
  Contact Alex Bingham, +44 (0) 20 8877 8700 alex@wixtedandco.co.uk
  See Letter from Neglect Assist

  Regulatory Legal [15] (Birmingham and Manchester)
  Contact Tobias Haynes,+44 (0)1384 889906, tobias.haynes@regulatorylegal.co.uk
  See Letter from Regulatory Legal

Please mention the EEA Investors' Group (or my name) when you contact any of the above. We don't receive any fees or commissions.

8. Additional Information

Working Paper WP8B : EEA Investment Risks
Working Paper WP8C : Sample Claim Template (PDF or Word format)

From FCA Website [16] **24th September 2014** **APPENDIX A**

Investors in the EEA Life Settlements Fund should consider making a complaint now

If you invested in the EEA Life Settlements Fund you should consider making a complaint about the sale now.

We believe that some of you who invested in a fund called EEA Life Settlements are likely to have been mis-sold the product. As a result, you may wish to make a complaint to the firm which sold you the investment or make a claim against it.

However, there is only a limited time in which to do so and in some cases the deadline for making complaints or claims may start to expire from 1 December 2014 onwards.

The deadline will vary and will depend on the facts and circumstances of each case – particularly when the sale or advice occurred and when the investor realised there was a problem.

Those who wish to complain should do so before it may be too late.

Comment : See Section 2 for further information about deadlines.

What to do if you invested

If you were advised to invest in the EEA Life Settlements Fund and would like to make a complaint, you should contact the firm that arranged the investment on your behalf to raise your concerns and ask for the sale to be reviewed. Be clear that you are making a complaint.

Comment : The FCA talks about a complaint and a review of the situation by the Firm. At this stage you are actually making a claim against the FA for which you expect a properly considered and "final" response and offer of compensation and redress in order to consider referring any rejection to the Ombudsman or FSCS for resolution.

Under our rules, the firm should have a procedure to follow to resolve matters with you in a timely fashion.

Comment : Within eight weeks maximum, or an acknowledgement and a bona fide explanation as to why more time is needed.

If you are not satisfied with the firm's answer, or feel that your complaint has not been properly dealt with or are dissatisfied with the proposed resolution, you can take your complaint to the Financial Ombudsman Service. If the firm has gone out of business, the Financial Services Compensation Scheme (FSCS) might be able to help.

If you invested in the EEA Life Settlements Fund without receiving advice or you are considering bringing a claim through the courts, you may wish to seek independent advice on what your options may be.

Find out more about how to complain.

EEA Life Settlements

The EEA Life Settlements Fund is an unregulated collective investment scheme made up of traded life insurance policies [17] (TLPIs), based in Guernsey and previously listed on the Channel Islands Securities Exchange.

TLPIs are investments in life assurance policies, typically of US citizens. We believe TLPIs are complicated products that are generally unsuitable for the mass retail market.

In April 2012, our review of sales in the TLPI market revealed high levels of unsuitable advice. As a result, we recommended that these products should not reach ordinary retail investors in the UK.

In January 2014, we imposed rules banning the promotion of TLPIs to most retail investors.

APPENDIX B

REJECTION OF CLAIM

Following is a "sample" letter from solicitors, on behalf of an FA, rejecting an Adjudicator's Recommendation, and appealing to the Ombudsman. We have added comments, which the investor has also forwarded to the Ombudsman and Adjudicator for information.

==

BACKGROUND

We act for [FA] ("our client") in respect of the complaint against it by [Investor]

For the reasons set out below, our client does not agree with your adjudication(s) and asks that the matter be referred to an ombudsman for a final decision.

YOUR POSITION

It is accepted by all parties that [Investor] wanted to invest with "medium" level of risk".

You state that our client classified [Investor] firstly as a *"retail investor" and* subsequently as a *"professional client".*

You state that the EEA Life Settlements Fund ("the Fund") should not be considered low risk because it comprised only one asset type, which can be illiquid and for which there may not be a ready market.

You further suggest that our client did not perform sufficient due diligence into the recommended Fund, which is refuted.

You outline what appear to be standardised risk points in your findings concerning Life Settlement Funds in general, but not those associated, *per se,* with the which, in your view, exacerbate the risk levels of this asset class

You also maintain that the Fund was misrepresented by our client, which our client completely refutes.

3. OUR CLIENT'S POSITION

It is not accepted that your assessment of the Fund is correct. It is, in fact, the case that the Fund should be properly understood as a low risk fund and we deal with each of your points in turn.

Comment : The EEA Fund documents (prior to April 2011) spelled out the following risk warnings (see Table) . Many of these risks are individually quite complex, and added together they can't really be described as "Low Risk" overall, especially if they can occur in combination, as has actually happened.

It is also material that the risks marked * that have actually materialized since 2011 were not previously disclosed by EEA, and they did nothing to bring them to the attention of advisors or existing investors when published in April 2011. Most of the share purchases were made prior to April 2011. People who apply directly to EEA to buy shares have to sign (on the application form) that they have read / understood / accepted the information in the relevant Offering Memorandum and Supplements as a condition of purchasing the shares, although this often doesn't apply if shares are purchased through a broker, Platform or other nominee.

Prior to April 2011	**Additions from April 2011**
INVESTMENT RISK	VALUATION OVER-/UNDER-STATEMENT RISK *
AVAILABILITY RISK	INSURED FRAUD RISK *
LEVERAGE RISK	POLICY PRICING RISKS *
CUSTODY RISK	LIQUIDITY RISK *
BUSINESS RISK	MISSING INSUREDS RISK
HEDGING RISK *	COUNTERPARTY RISK
REDEMPTION CHARGES RISK	US FEDERAL AND STATE TAX RISKS
CURRENCY FLUCTUATION RISK *	**Additions from January 2014**
CELL RISKS	NEW FUND, FATCA, DELISTING RISKS
CONCENTRATION RISK	FORWARD LOOKING STATEMENTS RISK *

From the FA's perspective, he/she is expected to review all these risks with the client in respect of the client's risk attitude / profile, and the potential consequences if the risk materializes and/or the whole investment is lost. He / she is also obliged to document that the review has taken place and that the client was comfortable with the investment and both understood and accepted the associated risk(s).

In addition, he/she has to form his/her own opinion of the risks of the particular investment class / fund type, the Fund Manager and the Regulator or Compensation arrangements concerned. In this context the EEA Fund was a UCIS (i.e. unregulated investment under UK designations) and a Class B investment scheme under the Guernsey regulatory regime, with no ombudsman or compensation scheme available. The FA should therefore also have discussed these aspects of the risks with the investor and documented an agreement to accept these additional Management and Regulatory risks.

Many professionals view all UCIS investments as inherently "high risk" and also view offshore funds as having their own risks through light-touch or ineffective regulation (this includes the British Virgin Islands, Cayman Islands, Isle of Man, Gibraltart, Jersey and Guernsey) and the FA should have made the investor aware of these factors.

So far as the EEA Fund is concerned, it was not eligible to join the European Life Settlements Association (ELSA), primarily because it did not have an independent valuation process. This itself is a significant risk and due diligence issue which FAs should have spotted and advised their clients accordingly, as well as the conflicts of Interest declared in the Offering Memorandum.

Asset type

As per the Portfolio Statistics dated 31.03.2014 it is not the case that the Fund is undiversified. Although the underlying assets in the Fund are "life" insurance policies, there are a multitude of different types of policy that have been issued by dozens of separate Life Insurance Providers in the USA each of whom have an excellent Credit Rating of A or higher.

There are six different types of policy (flexible premium, group term, term, universal, variable universal and whole). None of the policies are endowment policies which suggests that you have not understood the diversification of the underlying assets.

The policies are split between a range of ages, insurance companies and, as below, cover a variety of terminal illnesses (the breakdown of assets held and the associated statistics relating to the Fund are reproduced in attached 1). The average age of the Lives Assured is ˉcurrently 85.79 years of age *(Source:* Via Source Consulting LLC).

Comment : All the above relate to means of addressing the "Concentration Risk" mentioned above. They don't alleviate any of the other risks mentioned.

In addition, the fact is that every one of the lives assured is suffering from a critical illness condition, thus, maturities are of relatively short-term duration (unlike other Life settlement Funds). This is borne out by the historical record of the maturities experienced, most coming significantly below their expected Life Expectancy (77% ' as demonstrated by attached 4). This also counters the risk of medical advances being made - as this particular Fund underwrites advanced aged lives assured, as demonstrated above, all of whom have severe medical conditions that will curtail longevity, which is reviewed monthly by Via Source Consulting LLC and 2 independent Medical Doctors (Specialists). The Fund then doubles-up the life expectancy for prudency reasons.

Comment : The above is the theory of how EEA claim that they manage the policies and portfolio, and might have been true in the early years, but in 2011/2012 the Auditor (Ernst & Young) heavily qualified the Accounts on the basis that the Directors had not been properly reviewing and updating the Life Expectancy (LE) estimates or certain other valuation factors, and subsequently resigned because they foresaw no prospect of being able to agree with the Directors for any future audit.

A subsequent portfolio review in mid-2013 increased the average LE for the portfolio from around 20 months to 47 months, and caused a 20% reduction in the overall valuation of the Fund. The portfolio is still not performing in accordance with the revised estimates and it seems that ViaSource (on behalf of EEA) might have purchased a number of high face value policies between 2009 – 2011 which did not conform to the characteristics described above, and are now costing much more in terms of premium payments, and an uncertain maturity performance.

This could not have necessarily been foreseen by an FA in 2009, but it does highlight the actual existence of the risks, especially those that were subsequently disclosed by EEA during 2011 without informing IFAs or shareholders or other investors.

It is therefore not the case that the Fund should be understood to have only one asset which often people mistakenly refer to as: 'traded endowments' or 'TLPI's'. In fact, as at 31.01.2010, the Fund owned 582 policies issued by 91 different US insurance companies making it one of the most diverse life settlements funds in the market - with more than 95% of the net asset value of life policies with life companies whose rating was A or higher *(Source:* A.M. Best Ratings Agency). USA Life Companies are used as the source of the assets of the Fund due to their wholly-protected status in Federal Law therefore the theoretical risk of being unable to meet potential claims falls away, which refutes one of the points in your standardised list of risk warnings

Prior to [these] investments, the Fund consistently performed (over several years) impressively versus cash, equities and government bonds since inception. Indeed, page 4 of the EEA Life Settlements Fund brochure (attached 2), sent to [investor], indicated the relative performance of three main asset classes of equities, bonds and deposit returns showing the Fund very favourably against these. This was especially marked given the febrile nature of all equity and Bond markets in the pre and post periods of the Global Financial Crisis, something of which [investor] was very well aware.

Consistent returns were achieved for several years, reflecting the well-structured nature of the assets of the Fund and the excellent management structure and governance of those assets.

Comment : The "consistent" growth and returns prior to 2013 were a fallacy – a consequence of the valuation failures highlighted by Ernst & Young in 2011/2012. These were well-known characteristics and weaknesses of Life Settlement Funds in general, and the "deterministic" valuation methods chosen by EEA in particular. They had the known effect of exaggerating the monthly dealing NAVs which in turn supported boosted valuation based performance fees, management charges, trail commissions, marketing bonuses and redemption payments. This resulted in a drain of almost $200m of cash from the Fund to date which is now penalizing the remaining investors as the outstanding policies fail to mature as expected.

Any professional due diligence into Life Settlements Funds should have spotted these obvious weaknesses – the lessons were there to be learned by 2006 and the FSA was expressing its concerns at industry forums in February 2010. In addition to the duty of care at the initial investment recommendation, FAs had a continuing duty of care to advise clients to reduce or sell their investments as the Fund performance deteriorated or the risks increased.

Liquidity

You also state that the Fund is, by its very nature, illiquid. This is incorrect.

It is of course the case that the Fund is not as liquid as cash deposits. However, the track record of the Fund over several years until [Investor] invested showed that at no point were redemptions unable to be met on demand, irrespective of how small or large they were or whether these were full or partial redemptions

Comment : These redemptions, plus the Fund's expenses, performance fees and other charges would have been met largely by the flow of incoming funds from the end of 2011. The income from maturities alone was insufficient to meet the total cash requirements, and is still insufficient four years later. The Fund purchased relatively few new policies in 2011, and none since September 2011. At the end of 2011 the cash balance in the Fund was $56m (6.5% of the valuation at the time). The Fund was supposed to hold a 15% cash reserve to cover redemption requests and a two year premium payments reserve (approximately $73m per year).

The Fund maintains a cash reserve of around 15% of the total fund value. As at 31 July 2014, the Fund currently has $142,334,397.20 in cash and net receivables from maturities, as per the latest EEA LSF Fund Fact-Sheet (attached 6). This level of cash easily provides a cash buffer (sufficient for more than 2 years) to maintain premiums so that the guaranteed sums assured are paid out on maturity. Thus one of your standardised risk warnings regarding running out of available funds fails away with the EEA LSF.

Comment : Absolutely Untrue. The Fund currently has outgoings of $73m pa for premium payments and $16m pa for other expenses and charges, and therefore needs approx $145-180m cash on hand or in prospect to maintain a two year reserve. Annual maturities are currently running at the rate of approx $130m pa (against an EEA forecast of $227m for 2014). In addition the Fund has an "expectation" to repay more than $800m of investors' capital through periodic redemptions of Run-off and Continuing shares. With the current historical rate of annual maturities / cash, the Fund will run out of cash long before all the remaining policies have matured, and investors are likely to face a 20-50% loss on their original investments, without any "growth" returns at all. Meanwhile the (conflicted) Directors have extracted more than $150m of valuation based fees and charges over the years, based on (exaggerated) valuations which they controlled.

3.11 The cash component forms part of the current total net asset value of the Fund amounting to $858,383,068.58. The total net death benefits yet to be paid out amount to $1,184,984,520.00 and, if further cash was required, the Fund could easily sell underlying policies on the open market as the quality of assets the Fund acquired were of short-duration and fully-underwritten as to longevity by a highly-respected player in this marketplace, ViaSource LLC.

Comment : Again – untrue. The valuation of $858m is open to question, based on the actual maturity performance to date. We have estimated it to be worth $200-400m depending on the assumptions used (this reflects the "valuation risk"). The $1.185m of NDB cash to come is the maximum available. Selling off any policies would reduce the total potential cash. If the whole portfolio was sold it would raise less than $615m based on EEA's current valuation (February 2015), since the purchasers would have to take over the future premium flow until the policies eventually matured.

Any concerns you hold concerning the ability of the Fund to sell policies on the open market are addressed by the attached (3) article. This confirms that Ernst & Young had verified the policies could be sold to meet redemptions at their current valuations (which is part of the due diligence [FA] undertook)

Comment : I assume that this refers to the Article by Christopher Daly in 2009. This might have been true then but if it was still true then the bulk of the portfolio would now have matured in the four years since suspension. But there are still more than 400 of the original 926 policies remaining, and $1,185m (64%) of the total $1.866m NDB yet to mature. Something has changed significantly within the portfolio since the 2009 article, and we are raising appropriate questions with EEA and the Regulator.

As further demonstrated by the attached (4) schedule dealing with the period from November 2005 to the present date, the Fund is a 'self-liquidating' fund, i.e. it will turn all assets into cash gradually (again, part of the due diligence [FA] undertook)

Comment : Yes, but too much of the cash was and will be needed to pay the premiums and other expenses / charges of the Fund. The Net Income of the Fund over the period from 2005 until all the policies mature is estimated to be less than 20% over 15-20 years using EEA estimates and a loss of 9% over 20-25 years using other estimates. This confirms that the key risks disclosed by EEA in the Offering Memoranda were (and are) real, and turned out not to be "low".

You appear to suggest that the fact the Fund suspended redemptions evidences illiquidity. This is, of course, incorrect. The Fund was suspended to prevent a 'run' following an announcement by the FSA (as it was then). No financial institution can survive a 'run' (including banks, for example Northern Rock) and a demand for the redemption of all investments and such a suspension is not indicative in any way of illiquidity.

Comment : All investments in fixed assets are inherently "illiquid" and this was the reason stated by EEA for the suspension. They would need time to "liquidate" the assets in order to meet the anticipated redemption requests following the FSA announcement. According to the media articles and other statements by the Directors Daly, Winders and Shaw at various times from 2008 – 2013, policies could be liquidated at full value within 23-29 months, at any time, or maturities would occur to return all cash (and 8% pa growth returns) to investors within 5-6 years of the 2013 /2014 restructuring. This has now been shown to be untrue.

Any suggestion that the Fund is *per se* illiquid is therefore clearly wrong.

Ability to promote

You state that you consider that [Investor] was not a "professional client"

Even if you are right, that does not mean that our client could not promote the Fund to [Investor] if it had taken reasonable steps to ensure that the investment was suitable under COBS 4.12. These steps are set out in our client's initial response to [Investor's] complaint as set out in our clients' FRL to [Investor], the rationale for using the EEA LSF in detail, was explained and clearly demonstrate that it did take such steps.

In short, even if [Investor] was not, a "professional client" it does not automatically follow that our client was not entitled to sell the Fund to [Investor].

As such, the underlying investment risk was low, notwithstanding the fact that the Fund is a UCIS and therefore our client considered that the Fund was a suitable investment and so was entitled under COBS 4.12 to recommend an investment in the Fund.

Finally, we attach (5) a release by Asset Risk Consultants (ARC) which clearly demonstrates that an independent third party considered that the risk-profile of the Fund was low (this also formed part of our clients' due diligence).

This was clearly not just (in your view) the misguided opinion of our client. In fact, the Fund in the manner it had been structured was low risk. It is only because of the actions of the FSA (set out in detail below) that the Fund was suspended.

Comment : Although the FSA announcement undoubtedly triggered the EEA suspension, it served to also reveal the underlying performance issues of the portfolio, which had previously been masked by the flow of new investment (cash) into the Fund. The Fund is now seen to have been mismanaged and misrepresented since inception.[3]

The fact of the matter is that the EEA Fund Management literature and promotional material regarded the Fund as low risk. Our client did not 'blindly' accept this - they undertook detailed due diligence and corroborated this risk assessment in their own minds before being able to confidently recommend this particular investment to [Investor]. The following well-respected and highly-regarded Firms also corroborated this low risk view:

KPMG
Via Source Consulting LLC
Arc Risk consultants
Ernst & Young
A.M. Best Ratings Agency

4. REASON FOR THE FUND SUSPENSION

It is noteworthy, specifically with regards to the level of risk involved in the Fund, that the only reason that the Fund was suspended was because of a pronouncement by the FSA (as it was then) on 28.11.2011 about the risk (as it saw it) of these types of investment which resulted in a 'run' on the Fund.

We note that the FSA subsequently admitted that its guidance *"may have prompted a number of investors to request redemption from funds".*

We further note that an action group has been set up which states that:

Harm was done to investors whose interests the FSA had a statutory duty to protect.
The FSA was guilty of unprofessional behaviour and a lack of care by making an announcement before the conclusion of their consultation period.
The consultation failed to seek the views of the largest fund in the sector they claimed to be investigating
Inadequate complaints procedures were in place to oversee the FSA which was supposed to be a standard bearer of best practice.
The Human Rights Act 1998 Section 6(1) states that "it is unlawful for a public authority to act in a way which is incompatible with a Convention right". Under Article 1 of the First Protocol: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions."

[3] See EEA Investors' Group Working Paper WP7A

> *In making the announcement that TLPIs were 'high risk, toxic products' without reference to the leading fund that had demonstrated the contrary beyond reasonable doubt over a sustained period, and without completing their own consultation period, the FSA acted unprofessionally and failed in its duty of care to investors.*

Comment : We agree that the way in which the FSA went about their consultation announcement deserves all the criticism that Peter Lihou's Life Settlements Action Group throws at it, and we fully support his Class Action against the UK FCA. However, it doesn't detract from the fact that the suspension revealed underlying problems of mismanagement and misrepresentation by EEA (and ViaSource) of the EEA Fund and the separate EEA Investors' Group is determined to bring these failings into the open in order to secure better and faster outcomes for the remaining (and long suffering) EEA Investors.

In circumstances where the Fund provided consistent returns for its investors for five years prior to the FSA's announcement and that that announcement caused the run on the fund and this complaint, it appears to us to be grossly unfair and unreasonable now to expect [FA] to compensate investors for alleged losses incurred as a result of the FSA's actions.

Comment : The five years of "consistent returns" were illusory, and to the detriment of the remaining investors. The current and future losses are due to the mismanagement and misrepresentation of the Fund by the EEA Fund Manager and Directors, and only became visible because the FSA announcement stopped the flow of new investors' cash into the Fund. The Fund was destined to implode eventually because of the factors identified by Ernst Young in 2011/2012.

In fact, the Fund is undertaking an orderly restructuring to ensure that all investors receive their funds back. It was premature of the FSA to make the initial announcement and it is premature (and wrong) now to order our client to reimburse [Investor] for his investment(s) before that restructure has been completed, and for damage caused solely by the FSA itself.

Comment : The restructure has actually made things worse for the remaining investors, but was necessary because the Directors knew that they couldn't fulfil the "liquidation at full value within the 23-39 months" promises that they made in the past. It is unlikely that current investors will receive all their money back (but EEA repeatedly refuse to publish any meaningful run-off profiles or estimates), and they will certainly never see any return on their investment.

If you have any queries, please do not hesitate to contact us.

Medley Systems Ltd is the Coordinator of the EEA Investors' Group.
Documentation to support and explain the comments above is available from the Coordinator
Email : EEAInvestors@gmail.com   Web : www.EEAInvestors.com
Tel : +44 (0) 7802 538315

The following links relate to the various items highlighted in the main text of the document. If they don't work automatically then you can copy and paste them into your browser address bar.

---

[1] http://www.fca.org.uk/news/investors-in-eea-life-settlements-fund-should-consider-making-a-complaint-now

[2] http://www.fca.org.uk/firms/financial-services-products/investments/ucis/ucis-key-concerns

[3] http://www.fca.org.uk/your-fca/documents/fsa-ucis-project-findings

[4] http://www.fca.org.uk/your-fca/documents/fsa-unregulated-collective-investment-schemes-good-and-poor-practice-report

[5] http://en.wikipedia.org/wiki/Limitation_Act_1980

[6] http://fshandbook.info/FS/html/handbook/D29

[7] http://fshandbook.info/FS/html/handbook/DISP/2/8

[8] http://www.fscs.org.uk/your-claim/

[9] http://www.financial-ombudsman.org.uk/consumer/complaints.htm

[10] http://eeainvestors.com/wp-content/uploads/20100224-FSA-sets-out-concerns-about-Traded-Life-Policy-Investments.pdf

[11] http://eeainvestors.com/wp-content/uploads/EEA-Letter-26th-February-2010.pdf

[12] http://www.buttersdavidgrey.co.uk/index.php

[13] http://www.myerson.co.uk/business-services/professional-negligence/ifa-stockbroker-negligence/

[14] http://www.neglectassist.com/

[15] http://www.regulatorylegal.co.uk/

[16] http://www.fca.org.uk/news/investors-in-eea-life-settlements-fund-should-consider-making-a-complaint-now

[17] http://www.fca.org.uk/consumers/financial-services-products/investments/types-of-investment/traded-life-policy-investments