



7 September 2009

Victoria Connolly
Retail Policy and Themes
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Dear Victoria,

CP 09/20: Miscellaneous changes to the COLL sourcebook

The Depository and Trustee Association (DATA) represents all depositaries and trustees of UK-based authorised unit trusts and open-ended investment companies. At the end of May 2009, the members of DATA were responsible for safeguarding £391.3 billion of funds under management.

We welcome FSA's proposals and our responses to question 27 onwards is attached as we have reviewed and agreed with IMA's response to the other remainder of the questions in chapter 9.

If you have any questions, please do not hesitate to contact me.

Yours sincerely

Kevin Tomlin
DATA Chairman

Question 27: Do you agree with our proposal to include clarification in COLL 5.6.5AR on eligibility criteria for transferable securities, creating a single standard for investment by UCITS and NURS?

As stated in 9.50, we understand that the alignment of the definition would have little impact on the industry as a whole. However, where funds are impacted, we note that there is a contradiction between 9.50, stating that ineligible assets should be treated as an inadvertent breach and 9.25 which states that ineligible investments will be able to be closed out in the normal way. Potentially, some of the assets could have indefinite lives and a Manager undertaking a buy and hold strategy may not be contemplating selling or reducing the holding in the foreseeable future. However, we do not believe that investment in these newly classified ineligible assets should be treated as an inadvertent breach as the rules as currently written have been complied with, irrespective of the FSA's original intentions. Therefore, we suggest that, paragraph 9.25 is complied with (i.e. not being subject to a forced sale).

Question 28: Do you agree with our proposals to amend the wording of COLL 5.2.23 R (2)

No. We understand the significant difficulties Managers have been faced with when trying to enter into agreements with counterparties that comply with the current wording in COLL 5.2.23. Whilst we therefore welcome FSA's attempt to more closely align the wording with the Directive, we firmly believe that the wording should be aligned completely as the onus has, as drafted, been placed on the Depositary to ensure that each and every transactions complies with the rules. We have attached IMA's proposed wording for reference.

Question 29: Do you agree schemes should be permitted to transfer scheme property to OTC derivative counterparties under the ISDA CSA?

We agree with this proposal although we would welcome flexibility in the rules to refer to title transfer arrangements in general rather than specifically identify the 1995 version of ISDA English law CSA.

Question 30: Do you agree that 12 months from the date of launch is an appropriate amount of time to allow a NURS to establish a prudent spread of investments prior to the application of the spread rules?

We understand that the introduction of this rule will not impact most AFMs as it is common for the Depositary to expect a prudent spread of investment within a reasonable amount of time. However, in certain circumstances, funds to be launched before securities accounts in (emerging) markets in which the fund wishes to invest are opened are currently allowed to invest in UCITS, ETFs etc providing the desired market exposure. Although it should be possible to complete this within twelve months the current rule does provide flexibility. We therefore recommend that the rule should allow this flexibility.

Question 31: Do you agree with our proposal to apply a 24-month limit on the application of COLL 5.6.19R, with the exception that the requirement to hold no more than 50% in development, unoccupied and non-income producing properties will apply from launch?

In principle, we agree that a 24 month limit should be sufficient in most circumstances for a new NURS investing in immovables to comply with the investment limits specified in COLL 5.6.19R. However, for established property funds, there may be instances whereby adverse market conditions mean that it is not possible to comply with these investment limits without causing detriment to investors. In such circumstances, reliance is placed on COLL 5.6.3R(2). . Therefore, as in question 30, we recommend that the rule is reclassified as guidance so the Manager can take a more flexible approach, in agreement with the Depositary.

Question 32: Do you agree with our proposal to clarify COLL 5.6.5R (1)?

Question 33: In the same way as proposed for transferable securities, do you think it would be preferable to completely standardise the types of money market instruments that UCITS and NURS can invest in?

We are not aware of any adverse consequences to AFMs of aligning the eligibility rule with UCITS.

Question 34 A: Do you agree with our proposal to insert reference to the authorised fund manager thereby including managers of authorised unit trusts?

We agree with this proposal.

Appendix I - Attachment for Question 28

Proposed redraft of COLL 5.2.23

OTC transactions in derivatives

5.2.23 R A transaction in an *OTC derivative* under COLL 5.2.20 R (1) (b) must be:

- (1) with an approved counterparty; a counterparty to a transaction in *OTC derivatives* is approved only if the counterparty is:
 - (a) an *eligible institution* or an *approved bank*; or
 - (b) a *person* whose *permission* (including any *requirements* or *limitations*), as published in the FSA Register, or whose *Home State authorisation*, permits it to enter into the transaction as *principal off-exchange*;
- (2) subject to reliable and verifiable valuation on a daily basis by the ICVC or the *authorised fund manager* corresponding to its fair value (being the amount for which an asset could be exchanged or a liability settled between knowledgeable, willing parties in an arm's length transaction) which does not rely only on market quotations by the counterparty and which fulfils the following criteria:
 - i. the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;
 - ii. verification of the valuation is carried out by one of the following:
 - an appropriate third party which is independent from the counterparty of the *OTC derivative*, at an adequate frequency and in such a way that the *authorised fund manager* is able to check it; or
 - a unit within the *authorised fund manager* which is independent from the department in charge of managing the assets and which is adequately equipped for such a purpose.
- (3) an OTC derivative which can be sold, liquidated or closed by an offsetting transaction at any time at its fair value at the *authorised fund manager's* initiative.

[Note: articles 8(1)(b), 8(3) and 8(4) of the UCITS Eligible Assets Directive]