



5 March 2010

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

Dear Victoria,

CP10/1 - Proposed COLL changes on winding up/termination

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 December 2009, the members of DATA were responsible for safeguarding £480.8 billion of funds under management.

DATA welcomes the clarifications contained within the consultation paper, thereby providing greater certainty and consistency over the process for winding up AUTs and ICVCs. We also welcome the addition to COLL 7.4.4R (6).

However, we would like to take the opportunity to request clarification on some further points in relation to scheme terminations:

1. It is sometimes unclear as to exactly when notification of the completion of the winding up should be submitted to the FSA. This is because the definition of 'completion of a termination' is not specified in COLL. The clarification sought is therefore whether a termination is deemed complete once the final audited accounts are produced and the final distribution has been paid, or potentially much later when all income accruals have been received (i.e. withholding tax reclaims) and all accrued creditors extinguished (i.e. final tax liability paid when due, and bank overdraft paid off). Only at the happening of these later events can all bank accounts relating to the scheme be closed.
2. COLL 7.3.7R (10) deals with the requirement to pay any residual monies into Court after the termination of an ICVC.

Occasionally, small and unexpected amounts can be received into a fund after the fund has been wound up and after the final distribution has already been made to investors. It is neither practical nor cost efficient to distribute such small sums or, even pay such sums

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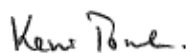
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into court, even if there was a clear defined process for doing so, which currently does not seem to exist. DATA's view is that the regulations should be altered to allow such small sums to be paid to a recognised charity, as nominated by the authorised fund manager, by the depositary.

3. Further, should such a mechanism for payments to charity be adopted, it may be advisable for this mechanism to be extended to any residual monies, perhaps subject to a materiality threshold, arising from situations other than that of fund terminations i.e. any unclaimed distribution monies that cannot be applied to a fund after 6 years because that fund has been wound up and no successor fund exists.
4. The position of unclaimed proceeds, further to a sub-fund termination, appears unduly complex. At present, it seems that such monies need to be held in an unclaimed money account pending dissolution of the umbrella, which in effect could be a very long time. It would seem preferable to treat terminations of sub-funds in the same manner as standalone funds and we suggest COLL is amended to provide clarity on this.
5. As regards solvency statements in respect of fund mergers, it would seem that, technically, these are required in respect of the termination of the fund merging into the new fund. However, this seems unnecessary, and we therefore request clarity within COLL to state that a solvency statement is not required in the circumstances of a fund merger.

If you would like to discuss any of the points raised above in more detail, please do not hesitate to contact me.

Yours sincerely



Kevin Tomlin
DATA Chairman