



18 March 2010

Alex White
Investment Banking Resolution
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Dear Mr White,

RE: Establishing resolution arrangements for investment banks

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 opportunity to comment on the abovementioned HMT consultation paper.

We had initially thought that the proposals applied only to investment banks. However, the paper regularly refers not just to investment banks but also to 'investment firms' which is defined (on page 160 of the consultation paper) extremely widely. It would appear to cover any legal entity regulated by the FSA as all entities providing investment services require FSA authorisation.

We believe that the scope of the proposals needs to be reviewed and defined with greater specificity in order that regulated entities know, with certainty, whether the proposals will cover them.

We do not believe that depositaries and trustees (collectively 'depositaries') of authorised unit trusts and open-ended investment companies should fall within the scope of such proposals. Depositaries act in a fiduciary capacity and, when acting in that capacity, do not carry out any proprietary trading.

A large proportion of the funds for which depositaries are appointed are UCITS schemes and the regulation of depositary activities flows from the UCITS Directive. This Directive requires depositaries, inter alia, to safe-keep the assets of the UCITS.

65 KINGSWAY LONDON WC2B 6TD TEL: +44 (0)20 7831 5873
WEBSITE: www.datasoc.co.uk

Company limited by guarantee. Registered in England and Wales No. 3822966.

As fiduciaries, depositaries are required to keep fund assets separate from their own assets.

In addition for all authorised funds, there exist detailed FSA rules regarding the duties of depositaries in relation to fund assets. These duties are set out in the FSA's Collective Investment Schemes Sourcebook (COLL 6.6).

That Sourcebook also includes provisions which allow an authorised fund manager to appoint another person eligible to be a depositary in its place should a depositary cease to be authorised (COLL 6.5).


Where depositaries use the services of custodians, they will be clients of such custodians.

We should also like to draw your attention to two EU developments. You may be aware of the proposed EU Alternative Investment Fund Managers Directive. This contains detailed depositary provisions, including segregation requirements. In addition to this, the EU Commission has consulted upon the UCITS depositary function and we anticipate that the Commission will undertake further detailed work on depositary tasks, including the safekeeping of fund assets. It is vital that these European developments are taken into account in developing any UK depositary-related proposals. As we mention above, we believe that the resolution proposals should not apply to depositaries.

We hope that you find this input helpful. If you would like to discuss our response, or would find it helpful to meet with us to learn more about our activities and the regulation thereof, we should be more than happy to do so.

If you have any questions, please do not hesitate to contact me or our Company Secretary, Karen Bowie.

Yours sincerely



Kevin Tomlin
DATA Chairman