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HM Treasury
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Dear Sarah

Close links regime review

The Depository and Trustee Association (DATA) promote the role of trustees and depositaries in providing consumer protection to investors in authorised collective investment schemes (unit trusts and OEICs) in the UK.

As has been identified by the Davidson Review, the application of the close links regime in the UK is wider than that required in accordance with the Post BCCI Directive 95/26/EC. Although we have no direct experience of applying the Close Links Regime, we are aware that the asset management sector is affected. In light of this, we fully support IMA's position on this matter.

The obligations placed on an operator of a collective investment scheme (CIS) by the close links regime are equal, irrespective of the underlying scheme being managed. As such, our comments have been prepared following consideration of this matter across the asset management sector, and not therefore specifically to the operators of non-UCITS CISs or unregulated CISs.

How burdensome if the current close links regime and why?

The close links regime requires an operator of a CIS to notify the FSA when it becomes or ceases to be closely linked with any person. In order to comply with this requirement, the firm must thoroughly understand the nature of the relationship it has with other entities, including those which are entered into on behalf of clients as well as those conducted for own account. For an operator of a CIS, this will require the firm to analyse all transactions entered into in order to determine whether a close link has been established or removed.

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For an operator of a CIS, this can prove particularly burdensome given the volume of transactions entered into. Compliance checks must be undertaken on all transactions – both purchases and sales – to monitor the level of control held and the nature of the entity the operator of a CIS is investing in.

These additional processes prove burdensome to operators of CIS without adding any benefit to end investors in the CIS. The transactions entered into are not for beneficial ownership, but for that of the clients. The requirement to monitor the firm's close links could have an impact on the overall investment process. Requiring the operator of a CIS to obtain prior approval for certain transactions limits its ability to react to market circumstances in a timely manner and to the benefit of the client.

How much is this costing firms and consumers?

The costs applicable to the industry of the close links regime are difficult to ascertain. There is a need to allocate resources to the monitoring of existing holdings and future transactions and associated notification costs. From a very limited sample, initial estimates suggest that the process requires between 20 – 35 man-days per annum.

The costs to consumers are more difficult to determine. There may be some opportunity costs associated with those situations in which an investment is not made due to the opportunity being lost whilst the operator awaits prior FSA approval for changes in control. However, we have no quantitative data on such costs.

Given these requirements are imposed on some firms which are not subject to the Directive, we are strongly of the opinion that this superequivalence should be removed forthwith.

Yours sincerely

Kevin Tomlin
Deputy Chairman of DATA