



Mark Glibbery
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Financial Services Authority
25 The North Colonnade
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Dear Mark,

Response to CP05/14: Quarterly consultation (No 6)

Appendix 7: Proposed amendments to the Collective Investment Schemes sourcebook and the New Collective Investment Schemes sourcebook

We welcome the opportunity to comment upon the proposals outlined in CP05/14 and enclose our comments specifically relating to Appendix 7.

The Depository and Trustee Association (DATA) represents all depositaries and trustees of UK-based authorised unit trusts and open-ended investment companies (OEICs). At the end of September 2005, the members of DATA were responsible for safeguarding £324.4 billion of funds under management.

I would specifically like to draw your attention to the proposed changes to the prospectus disclosure. In support of the review of CIS governance requirements issued by IMA in February 2005 we would have preferred this change to take the form of a rule, rather than guidance as this would ensure that AFMs disclose their box policy to investors.

We also have concerns relating to the mortgaging and borrowing limits for non-UCITS retail scheme (NURS) that invest in immovables. We believe that, if introduced, the proposed rewording may cause unintentional operational difficulties for AFMs, specifically those funds with a significant exposure to property, which will limit their ability to borrow for liquidity purposes. We have made alternative recommendations and would welcome your thoughts on this issue.

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We would welcome further consultation on these points and would be happy to discuss with you, in further detail, any comments we have made.

Yours sincerely,

Simon Woolnough
Chairman DATA Technical Committee

CP 05/14: Proposed amendments to CIS and COLL, Chapter 7.

DATA's detailed response

Q13: Do you agree with our proposals to implement the amending Regulations?

DATA supports these changes to the COLL and CIS Sourcebooks.

Q14: Do you agree that these items of information should be disclosed in a fund's prospectus?

DATA supports these changes but, given the fact that the IMA's review of the Governance Arrangements of UK Authorised Collective Investment Schemes, published in February 2005, recommended that the disclosure of the AFM's box policy should be a requirement, **DATA would, along with IMA, prefer this change to take the form of a rule, rather than guidance.**

Q15: Do you agree with our proposals to modify procedures relating to unitholder meetings?

DATA supports these changes to the COLL and CIS Sourcebooks.

Q16: Do you agree with our proposals for long reports for umbrella sub-fund?

DATA supports these changes to the COLL and CIS Sourcebooks.

Q17: Do you agree that the revised wordings express the intention of these rules clearly?

DATA supports the changes relating to the requirements of investing in a second scheme and the removal of the rules referring to ICVC set-up cost amortisation from COLL and CIS.

However, we believe that the rewording of the borrowing/mortgaging limits for non-UCITS retail schemes (NURS) does not clearly express the intention of the suitable limits. For example, based on the proposals, schemes fully invested in immovables, say 95%, would be able to borrow only up to 10% of the remaining scheme property (i.e. 0.5%). This would restrict the manager's ability to borrow for liquidity purposes or to meet redemptions. In this instance, mortgaging is not a viable alternative to meet these requirements. **DATA members have suggested two alternatives to the proposed amendments. Firstly, the suggestion that the borrowing limit**

of 10% remains applicable to all funds and where a scheme invests in immovables that the combined borrowing and mortgaging is limited to 20% of the scheme value. Secondly, the suggestion detailed in Appendix A. DATA would welcome further discussion with FSA on this issue.

Q18: Do you agree with our proposals relating to the prospectus and the reports and accounts of a QIS?

DATA supports the proposals relating to the prospectus and reports and accounts requirements for QISs.

Q19: Do you agree that an equivalent rule to the for retail schemes is appropriate? Are there any kinds of scheme property of a QIS other than OTC derivatives to which it should apply?

DATA supports the proposal relating to the valuation of OTC derivatives that are not readily priced on the open market. We do not believe this requirement needs to be applied to any other types of scheme property.

Q20: Do you consider that there is a need for transitional reliefs for any other proposed changes?

We have not identified a need for transitional reliefs for any other of the proposed changes.

Appendix A

In considering the amount available for general borrowing limits [COLL 5.5.5R (1), (2) & (4)], the amount borrowed by of mortgage should first be deducted from the gross or total fund value.

	Fund	% of TFV	Permitted Borrowing
A Immovables	£6,000,000	60%	D £1,200,000 20% of A
B Other assets	£4,000,000	40%	
C Total fund value (TFV)		£10,000,000	
D Less Borrowing Immovables		£1,200,000	
E Adjusted Fund value		£8,800,000	F £880,000 10% of E
G Total Borrowing 21%		£2,080,000	

In the example above the fund is valued at £10,000,000 [**C**], of which 60% or £6,000,000 consists of immovables [**A**], so the maximum that can be mortgaged is £1,200,000 (or 20% of TFV) [**D**]. The amount that may be borrowed under the "10% rules" is calculated by adjusting the total fund value by the amount borrowed by way of mortgage [**D** - **E**]. So the maximum that can be borrowed under COLL 5.5 and 5.6 is £880,000 (10% of **E**).

In this example maximum total borrowing is £2,080,000 or 21% of TFV.

N.B. If there is no mortgage borrowing in the fund the maximum that could be borrowed under COLL 5.5.5R would be £1,000,000, i.e. 10% of £10m.