



Mark Glibbery  
Retail Policy Division  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5AF

6<sup>th</sup> January 2006

Dear Mark,

**Response to CP05/13: Bundled brokerage and soft commission  
arrangements for retail investment funds.**

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.

We welcome the opportunity to comment on the proposals outlined in CP05/13. Our responses to your specific questions focus on the areas directly affecting our members but we have provided additional comments where we believe inconsistencies in expectations may exist.

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,

David England  
Chairman of DATA

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**CP 05/13: Bundled brokerage and soft commission arrangements for retail investment funds.**

DATA's detailed response

Q1: Do you agree that compulsory provision of commission disclosures to all investors in retail products would not be beneficial? Would there be merit in any kind of wider availability of these disclosures?

DATA recommends the following model of disclosure, based on the IMA's Pension Fund Disclosure Code, be considered for retail investment funds.

Level One Disclosure

DATA recommends that full Level One disclosure is made available for review by the Investors' representative and any institutional investors who may be required to review this information. A brief summary of the policies and processes employed by the AFM should be made available through a cost effective medium and we suggest that it is included in the long report and prospectus of the scheme, indicating that investors may obtain the full disclosure on request. We agree that compulsory disclosure to all investors would be of little benefit but believe that this recommendation enables investors to obtain the information should they wish to.

Level Two Disclosure

DATA recommends similar treatment to Level One is also applicable to the detailed Level Two disclosure. We agree that Level Two disclosure should be provided to the investors' representative to allow them to ask appropriate questions of the AFM if necessary. As with Level One disclosure, we believe that the information should be made available to all investors through a cost effective medium and believe that inclusion in the long report and/or published on the AFM's website would provide reasonable accessibility.

DATA believe this recommendation is in keeping with FSA's desire to treat customers fairly. We accept that there may be significant numbers of retail investors who do not wish to receive this information or who may not understand the detail, but DATA firmly believes this does not mean that investors should be precluded from receiving information relating to charges made by the manager against the investors' funds. This disclosure combined with the role of the investors' representative is supportive of FSA's desire to deliver transparency and accountability within retail investments.

Q2: Do you agree that an investors' representative is, in principle, an appropriate model for considering the disclosures? Are there any other considerations regarding the representatives' qualifications and duties?

DATA agrees that the appointment of an investors' representative is, in principle, an appropriate model for reviewing the disclosures. DATA also supports the policy, detailed in paragraph 3.3, that the representative should not be "expected to act as an overseer or auditor of the investment manager." We note, however, that the suggested amendments to CIS are under the heading of "Oversight by the trustee of the manager". In this instance we believe the legal obligation is not consistent between depository and trustee or indeed with the other potential investor representatives.

DATA would like to highlight to FSA the potential difficulties that may be encountered when appointing independent directors, actuaries or PPFM committees as the investors' representative. Whilst some of these parties may well offer independence from the manager, their relevant industry knowledge and experience, identified as a requirement in paragraph 3.1, may vary widely.

Q3: Do you agree that the depository is the best person to act as the investors' representative for an authorised fund? Should we consider further the role that independent directors might play in the governance of an ICVC?

DATA supports the recommendation that the investors' representative for an authorised fund should be the depository/trustee and that this is in keeping with the recommendations of the IMA's Review of the Governance Arrangements of United Kingdom Authorised Collective Investment Schemes, February 2005.

We would ask FSA to consider further the point raised in paragraph 3.8. We accept the suggestion that over time we would be able to build up a market wide picture that may assist in the benchmarking of charges made to the funds and that this may be of benefit, but this requirement has not been extended to any other investor representatives identified by FSA. In practical terms, without the adoption of publication in the report and accounts of Level Two disclosure, depositaries with smaller client bases may find this hard to achieve.

DATA believes that, due to the limited number of independent directors, and the fact that those that exist may have only limited resources/relative experience to meet the requirements of the role of investor representative, there seems little merit in further considering their potential as investor representatives.

Q4: Do you agree that the independent directors of an investment trust are best placed to review disclosures of bundled brokerage arrangements? Do you think specific guidance on this subject in the listing rules is necessary to achieve our desired outcome?

Q5: Do you agree that the various parties we have identified as potential investors' representatives for policyholders would be suitable? Are there others we should consider?

Whilst DATA is primarily concerned with the roles and responsibilities attributable to its members we wish to reiterate our concern that the recommendations for independent directors of investment trusts and the various parties identified to represent policy holders of Life assurance companies are not consistent with those of the depositary.

**We would welcome further consideration by FSA to ensure a level playing field is created in terms of the roles and responsibilities of investor representatives. We also consider the issue of appropriate industry experience to allow them to discharge their responsibilities to be an important practical concern for FSA to consider.**

Q6: Do you agree that our expectations of AFMs and depositaries are adequately expressed? Could our expectations of depositaries be conveyed through guidance rather than rule?

DATA believes that the wording of the suggested amendments to COLL and CIS are in conflict with the policy stated by the FSA in paragraph 3.3. The policy states that the representative "*is not to act as* an overseer or auditor of the manager". We feel the use of "scrutinize" in the guidance is too prescriptive to be guidance and by definition is not consistent with the expectations of the policy in paragraph 3.3.

DATA proposes the following model of review of disclosures made to them by AFMs.

#### Level One Disclosure

Depositaries will review the production of Level One documentation but should not be required to approve the disclosure. This mirrors the role currently played by depositaries in agreeing an AFM's Risk Management Process (RMP). We believe the depositaries responsibility of oversight is appropriate as part of the Level One disclosure preparation.

## Level Two Disclosure

The detailed comparative information supplied by AFMs will be reviewed for reasonableness by the depositary. Any apparent inconsistencies or concerns arising from this review will lead to the depositary raising appropriate questions with the AFM.

We believe this suggested process is more in tune with FSA's policy intention and in keeping with the role of the depositary.

DATA also believes the inclusion in COLL and CIS of a reminder that the depositary, whilst acting in its capacity as depositary, must act solely in the interests of unit holders is entirely unnecessary.

**We would welcome FSA's comments on this proposal and would be happy to discuss in further detail if thought appropriate.**

In specific response to the proposed COLL and CIS amendments DATA believes the suggested wording should clarify that as the depositary has no right of access to the register that the onus is clearly placed on the AFM to determine the category of investors and whether disclosure is required or can just be made available on request. Further clarification could be applied to the specific wording of the requirements set out in COLL 6.6.3A G and COLL 6.6.4 R(5). We believe that the wording, although guidance only, could require the depositary to review disclosures for non retail customers if the AFM provides them with this information. DATA recommends that a distinction be drawn in the role of the depositary wording to confirm that for non retail customers no review is required.

**We would welcome FSA's further consideration of the proposed wording to be included in COLL and CIS.**

Q7: Are there any other matters on which rules or guidance are necessary or desirable to indicate the behaviour we expect of authorised persons? In particular, should investors' representatives have wider powers or duties to report their views to investors in the fund?

DATA believes, as detailed in our response to question 1, that a combination of appropriate disclosure to all parties and appointment of an investor representative is the preferred approach to achieving greater transparency in the retail investment fund arena.