

18 February 2004

Alison Pape
Consumer Division
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Dear Alison

**Consultation Paper 208: Consultation on the funding the
Financial Ombudsman Service 2004/2005**

The Depositary and Trustee Association (DATA) represents the depositaries and trustees of authorised unit trusts and investment companies with variable capital (ICVCs). At the end of December 2003, trustees and depositaries were responsible for the safeguarding of £240 billion of funds under management.

We are pleased to respond to FSA's consultation on the funding the Financial Ombudsman Service for the financial year 2004/2005 and below are our comments on the questions posed in the CP.

Q1 Do you agree with the levy proposals in paragraph 3.3 to 3.5?

DATA is content with the proposed proportionate split between general levy and case fees changing from a 36%/64% split to 31%/69%.

Q2 Please comment on the proposed tariff rates by 19 February 2004

DATA has serious concerns over the significant increase for the fees for Block 6, i.e. Operators, Trustees and Depositaries of collective investment schemes. The proposed total payable by the fee block is increasing by 886% from £28,875 to £284,716. The proposals set out the changes to the tariff basis from £75 per firm to 0.193 per £1000 relevant annual gross income. Only if a firm were to have £388,000 or less gross relevant income would the actual tariff rate remain the same. For firms with significant gross relevant income the general levy for the firm could increase by a large percentage.

DATA is not only concerned about the actual increase but also the justification for this increase. Paragraph 3.13 of CP 208 notes "there has been a steep increase during the year in complaints against firms in this block, mainly relating to split capital investment trusts". We would first like to clarify that an investment trust is not a collective

investment scheme as defined in section 235 of the Financial Services and Markets Act. An investment trust is a company that is listed in the United Kingdom, which is approved by the Revenue under the relevant section of the Income and Corporation Taxes Act or is domiciled in another EU member state, which qualifies for such approval.

None of the firms in block 6 can operate or market split capital investment trusts because of the rules that govern operators of CIS. The trustee's and depositary's role, as defined in the Financial Services and Markets Act, the OEIC Regulations 2001 and the FSA CIS sourcebook, is to safeguard the assets of the fund and ensure the manager complies with the majority of the rules in the CIS Sourcebook including the pricing and valuation of the fund. The trustee and depositary are however, not responsible for the operation, investment strategy and marketing of funds. This is the direct responsibility of the manager of a unit trust or the ACD of an OEIC.

DATA therefore find it untenable that not only should such a increase be targeted to this fee block but also that 8 of the firms in these fee block have no responsibility either legally or ethically for the problems arising from split capital investment trusts.

We appreciate that there is no obligation for a cost benefit analysis to be completed when consulting on amendments to the funding of FOS, but these increases seem to be out of the ordinary and are inappropriately allocated.

On the assumption that our understanding above is correct, we believe that increasing the general levy for this fee block goes against FOS's policy of "the user pays". We therefore recommend that FSA and FOS reconsider the position for the funding of fee block 6.

Q3 Do you have any comments on the proposed amendment to DISP 5.8.1R?

DATA is content with the proposal for FSA to invoice firms on an annual basis for the FOS general levy rather than FOS themselves, especially if this brings about efficiencies and cost savings. We note that as a direct consequence of this proposal firms will no longer be able to pay the general levy by quarterly direct debit. We are unaware that this would be a problem for our members.

Yours sincerely

Peter Craft
Chairman of DATA