

Ms Sue McHale  
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21<sup>st</sup> December 2001

Dear Sue

## **CONSULTATION PAPER – INTEGRATED PRUDENTIAL SOURCEBOOK**

The Depositary and Trustee Association (“DATA”) represents the interests of all unit trust trustees and depositaries of open-ended investment companies. DATA aims to provide an independent voice for trustees and depositaries in responding to the Government and regulatory authorities on the various issues facing the industry. At the end of October 2001, the members of DATA were responsible for the safeguarding of £223 billion of funds under management.

Generally when DATA responds to Consultation Papers we provide comments on the potential impact upon our investment fund clients, however, as regards our attached response to this CP, we are only addressing those questions with a potential direct impact upon our own businesses. We understand that AUTIF is submitting a comprehensive response in relation to the impact of CP97 on its investment fund company members.

Our initial review of likely capital requirements for depositaries and trustees indicates that the sum of credit risk, market risk and income based capital requirements is unlikely to exceed the £4 million base capital requirement, which effectively means that we are likely to continue with the previous IMRO capital requirement.

On this basis DATA Members have concluded that we are comfortable with the proposals, provided that subsequent changes to the rules do not result in a material increase in capital levels required from our members.

Yours sincerely

David England  
Chairman

# DEPOSITARY AND TRUSTEE ASSOCIATION

Response to FSA Consultation Paper 97

## Chapter 2: Introduction

**Q1: Is our proposed timetable for the implementation of the PSB a practical approach in view of the current wide-ranging discussions on international standards and the uncertainties of their timetables? Are we right to aim to implement on 1 January 2004?**

The implementation timetable set out in CP97 has been overtaken by events; specifically the revised Basel Capital Accord and its related European directive, which are now well behind their original schedule. The revised UCITS Directive, which was adopted on 4<sup>th</sup> December (and which will have to be implemented by the middle of 2003) will also need to be addressed both in the draft text and the implementation timetable, as will the European Commission's report on the regulation of depositaries according to Directive 85/611/EEC, which is targeted for publication within the next 12 months.

**Q2: Do you think the general layout of the PSB is appropriate, including the organisation of material within eight modules? Do you see a case for including all the systems and controls material in a single module?**

With the exception of the material on systems and controls, the general layout of the PSB is appropriate. On systems and controls, DATA believes that there is a strong case for including all the systems and controls material in a single module. This would eliminate a great deal of duplication and potential for confusion, and would reduce the apparent bulk of the PSB. Such a module would be the equivalent for systems and controls of the PRCA module for capital.

Indeed, it is possible to go further and ask whether there is any need for the PSB to contain systems and controls material at all. It might help clarity if all the material on systems and controls were contained in SYSC, creating a single source for systems and control requirements. This would allow the PSB to concentrate purely on financial resources – capital and liquidity.

**Q3: Does the draft PSB direct firms clearly to the material applicable to them?**

As far as the members of DATA are concerned the material is quite clear.

**Q 7 Have we achieved an appropriate balance between rules and guidance?**

The balance between rules and guidance appears to be driven in large part by the structure of EC directives. It will be important that the balance between rules and guidance keeps pace with developments in the structure of directives, to ensure that the UK implementation of directives does not become unintentionally super-equivalent. It is also important that as new directives are adopted, any changes in the PSB necessary for their implementation are made promptly.

## Chapter 4: Compatibility with the FSA's general duties under the Act

**Q20: Does the material in this chapter expand usefully on material in SYSC, by setting out the relevant systems and controls requirements in the prudential context?**

In general, DATA believes that the material in this chapter does usefully expand on the material in SYSC. However, as stated in the response to Question 2, we believe that the systems and control requirements would be easier to adopt if they were gathered together in a single module, with this chapter as the basis.

**Q21: Are the proposed requirements on record-keeping appropriate, particularly the requirement to retain records for a minimum of six years? Is it clear what records are subject to this requirement?**

DATA Members generally adopt a conservative attitude to record keeping. At this stage, we do not expect that the proposals in the draft PSB to cause any significant problems.

## Chapter 6: Capital

**Q23: Is it appropriate to maintain the wide range of base capital requirements as set out in the draft PSB, including a separate, relatively high requirement for trustees of authorised unit trusts?**

DATA is happy to support the implementation of minimum international standards in the PSB. It should be noted, however, that the European Commission is beginning a review of the position of depositaries, which may result in changes to the capital regime.

## Chapter 9: Operational Risk

**Q50: Does the proposed chapter on operational risk reflect the main prudential risks to firms in this area? Do the requirements add usefully to the general material on systems and controls in SYSC? Should the chapter be more detailed – as, for example, the chapters on credit risk and market risk systems and controls?**

DATA notes that, alongside its work on a capital charge for operational risk, the Basel Committee on Banking Supervision is expected to publish a paper on ‘Sound Practices for the Management of Operational Risk’. We expect much of the material in this paper to supplant the material currently in PROR chapter 1, and as result will not make detailed comments, other than reiterating our initial comment that it would be preferable to bring all the systems and controls material together in a single module.

**Q51: Does the proposed approach to outsourcing reflect the main prudential risks to firms in this area? Is it clear what we mean by a material outsourcing? Do the requirements add usefully to the general material on systems and controls in SYSC? Should the scope of the outsourcing chapter include Category 5 firms?**

Once again, DATA expects the Basel Committee’s work on operational risk to have a significant influence on the provisions on outsourcing in the final PSB.

We would like to note at this point that the CIS Sourcebook reflects the unit trust trustee’s current regulatory responsibility for the unit trust register, which we believe would fall into the definition of material outsourcing. It is DATA’s intention in the New Year, to propose to the FSA that responsibility for the unit trust register is brought into line with that for open-ended investment companies, so that this becomes a direct regulatory responsibility of the authorised fund manager in all cases.