

Ms Sandra Potter
Collective Investment Schemes and Product Regulation Department
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

20th December 2001

Dear Sandra

DISCUSSION PAPER – SINGLE PRICING OF COLLECTIVE INVESTMENT SCHEMES

As you are aware, the Depositary and Trustee Association (DATA) represents all depositaries and trustees of authorised unit trusts and open-ended investment companies (OEICs). At the end of October 2001, the members of DATA were responsible for the safeguarding of £223 billion of funds under management.

DATA responded to the AUTIF paper on single pricing on 22nd May 2001. We believe that a copy of that letter was made available to the FSA and no doubt this was taken into consideration when the FSA was drafting this Discussion Paper.

We would like to take the opportunity to confirm the views expressed by DATA in our 22nd May 2001 letter, as supplemented by an Email to Sandra Potter from Tom Pool, Chairman of our Technical Committee on 23rd July 2001 offering clarification of certain aspects.

Nevertheless, the questions posed in the Discussion Paper are more specific and we would therefore offer the following responses.

Q1. Do you agree with our assessment that in practice, dilution levies are not generally being applied to small investors? On what have you based your assessment?

Whilst this is, perhaps, best answered by managers / ACDs, as they define the policy for the application of a dilution levy and apply that policy to transactions in units on a daily basis, the experience of DATA members would support FSA's assessment of the position. This conclusion is based on

information received by members when a dilution levy is applied plus that obtained on site visits.

Q2. *Do you agree with our summary of the impact and effectiveness of the single pricing regime to date? On what have you based your assessment?*

DATA agrees with this conclusion. This view is based on discussions with managers / ACDs, (i) when they have been defining their policy for the application of a dilution levy, having regard their investor profiles (institutional, retail, associates) and (ii) when reviewing the application of this policy.

Q3. *Do you agree that the four objectives (simplicity, transparency, fairness, and competitiveness) remain relevant? If not, what do you consider the right objectives to be?*

We agree with the four objectives.

Q4. *In the context of experience to date with single pricing, what relevant weight would you attach to the four objectives?*

In view of DATA's role we must conclude that fairness is paramount. However, to be seen to be fair the approach must also be simple for investors to understand and transparency will help in this regard. In practice therefore, DATA concludes that simplicity, and transparency are also important. Nevertheless, competitiveness cannot be ignored, particularly when the UK collective investment scheme industry seeks to compete against funds from other EC countries that may not view these matters in the same light.

Q5. *Do you have any other comments on the discussion above?*

None, other than previously stated in our letter to AUTIF dated 22nd May 2001, a copy of which is attached for ease of reference.

Q6. *Do you agree that options 1 to 5 are the central ones that we should address?*

Yes

Q7. *Which of options 1 to 5 is, in your view, most likely to change outcomes for firms and consumers in a helpful direction?*

DATA has concluded that option 5 is the most likely to achieve a fair and equitable outcome for each of new, continuing and exiting investors. It is fair that new investors should incur the cost of investing their monies in a fund and that exiting investors should incur costs relating to the realisation of securities. Of course, when units are recycled through the manager's box only the excess sales or repurchases will be translated into a creation or cancellation with the consequential effect on securities transactions in the fund. The concept of a swinging price does allow for an adjustment to the single price to reflect more accurately actual dealing costs incurred. It is important however, that controls

are built into the regulations to ensure that it is not possible for managers, or informed outsiders, to gain an advantage from inside knowledge of the likely direction of any price-swing.

Q8. *Do you consider rules or guidance limiting the boundaries of any adjustments to the mid market price, together with understandable disclosure to consumers about how this is done, would enhance or weaken the case for Option 5?*

Yes. Adequate and appropriate disclosure of any adjustment to the calculated price of units / shares would enhance Option 5 to enable it to achieve the FSA's objectives of simplicity, transparency and fairness. Additionally, there must be a full audit trail evidencing the manner in which an adjustment is applied relative to the disclosure made to investors. However, DATA has concluded that the precise benefit to consumers will depend on the disclosure made to them relating to the methodology for both its calculation and application.

Q9. *Do you consider that it is necessary to ban or restrict box holdings or (if box holdings are allowed) to impose additional price parameters, to promote investor confidence in dealing with firms who operate the swinging price system?*

As noted under Q7 above, it could in theory be possible for a manager / ACD to abuse its position by enhancing its profit or reducing its loss on box holdings when making a decision on the application of a swinging price within the permitted range that reflects its own interests and not those of the fund. DATA is clear that the regulations need to be expanded to specifically address this point, and enable DATA members to determine instances of abuse. DATA believes that robust regulatory provisions on the determination and frequency of the direction of any price swing, would be more effective than limitations on box management, as deals are frequently amended (for example, as a consequence of a reduction in the preliminary charge by an IFA) and if no box is permitted there is a consequential risk of a negative box. If necessary, DATA would advocate limiting the number of units that a manager / ACD may hold in the box in preference to an outright ban. If such problems appear to be intractable, then DATA members would propose the alternative of a compulsory move to single mid pricing, with no options for price swinging or for dilution levies.

Q10. *What are your views about the continuation of the historic pricing option?*

This is essentially a matter for managers / ACDs. However, DATA has no objection to the continuation of historic pricing for so long as there is a demand for this option from the investment fund industry.

Yours sincerely

Tom Pool
Chairman, DATA Technical Committee