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Dear David

Discussion Paper 9 – Examination Review.

The Depositary and Trustee Association (DATA), welcomes the opportunity to respond to the FSA's Discussion Paper 9 – Examination Review. DATA represents all depositaries and trustees of authorised unit trusts and open-ended investment companies (OEICs) and at the end of January 2002 were responsible for the safeguarding of £231 billion of funds under management.

Although DATA's members do not have direct contact with consumers they do have an important investor protection role to play in safeguarding scheme property and ensuring compliance with specific rules of the Collective Investment Scheme Sourcebook by the manager of such schemes.

DATA welcomes the FSA's Discussion Paper on examinations and as a whole supports the principles of this paper. DATA does however have a serious concern that firms will have to demonstrate that an employee's competency has been maintained by re-testing, which it is felt will be costly and inefficient. This issue is documented in full below.

Objectives and Issues

DATA concur with the FSA's finding on the current examination matrix being "confusing and inflexible", not only for employees but also as you note, for consumers. In order to increase the savings habits of individuals, DATA believes that there is a need to increase consumer confidence. An understandable, transparent and robust examination system would certainly be one way of increasing consumer confidence and perceived investor protection across the financial services industry.

The FSA's objectives documented in 2.11 of DP 9 would seem to be appropriate and beneficial to increasing confidence and flexibility whilst reducing confusion.

Vision: Single Examination Framework

DATA welcomes the FSA intention to unify the examination framework.

The “vision” to link examination standards to the risk to consumers and market confidence seems a sensible approach. The potential risks to consumers in relation to depositaries and trustees within the fund management industry is exceedingly small and therefore examination standards would not require stringent regulation and monitoring.

Ensuring that examinations are readily transferable and examination routes are clear would certainly streamline and add value to the training and competency regime.

DATA welcomes the FSA’s modular approach to the single examination framework and the use of generic core modules will certainly enable employees to gain a broad understanding of their specific activity. DATA also support the requirement for each core module to have a portion which is a regulatory module, which ideally should be compulsory. Presumably the regulatory portion will be adapted to the relevant activity, as different parts of the regulatory system are relevant to different activities. For this reason it is preferable the core modules include the regulatory content rather than this all being included in a separate regulatory module covering all four activities. This would ensure that for each activity employees would have a broad understanding of the regulatory regime but also have specific regulatory knowledge for their particular activity. After all, compliance is an aspect of day to day work, and not a separate task.

The use of specialist options and case studies would certainly be a beneficial training tool and would enable employees to gain experience in areas that are of most relevance for their role.

The question of using a bridging module to enable pre-employees or employees preparing themselves for the practitioner qualification is certainly an interesting one. As the paper mentions, it would add value to those employees whose role is external to the mandatory requirements.

The International Perspective

DATA acknowledges that the requirement to requalify when an employee either transfers to a new activity or moves between jurisdictions is inflexible and costly. The ability for core competencies to be transferable would be of benefit to the industry as a whole, especially as businesses globalise. DATA agree that as there are regional differences between financial markets and their regulation, it would be appropriate and sensible for non-core training of employees who transfer to a different jurisdiction.

The Process for Review

There are numerous providers of both examination and training services and these providers are of variable quality. DATA therefore concurs with the FSA's approach documented in Annex A to establish common standards. Linking the core specialist modules to the regulated activities order and the approved persons regime would certainly be a starting point for ensuring that the competencies match the role rather than the existing qualifications.

Maintaining Competence

DATA concurs that firms should ensure that employees continue to be competent. However, there is a general concern that examinations will be the only accepted way in which firms can demonstrate their employees' continuing competency.

DATA strongly believes that re-testing is not the most affective or efficient method of ensuring an employee's continuing competence and are concerned that this process could be costly. Re-testing may act as a de-motivator for competent employees who have already achieved the required standard. Also, the ability to pass exams does not necessarily mean that an employee is competent in their role and other criteria should also be considered.

Pre-N2, DATA's members were all authorised by IMRO, which in January 1997 introduced the concept of training and competency for administrative functions. Consequently DATA members already had substantive and robust training and competency models and procedures. Members have had to provide "evidence of continuing competence and updating of knowledge" which they have made available for review to monitoring/supervision teams of IMRO or the FSA and therefore, DATA considers it would be inappropriate for competent staff to be re-tested to "prove" their competence.

If you have any queries or comments on this response please do not hesitate to contact me.

Yours sincerely

David England
Chairman