



Mr. Ashley Kovas  
CIS Policy and Regulation  
Financial Services Authority  
25 The North Colonnade  
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London E14 5HS

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Dear Ashley

### **Wider-range Retail Investment Products**

The Depository and Trustee Association (DATA) represents the depositaries and trustees of UK authorised unit trusts and investment companies with variable capital (ICVCs). At the end of August 2005, trustees and depositaries were responsible for the safeguarding of £311 billion of funds under management.

DATA is pleased to comment on your Discussion Paper on Wider-range Retail Investment Products. You will of course appreciate that as this paper is primarily focussed on regulation of product promotion, many of the areas of discussion are outside the bailiwick of DATA members. We are however directly involved on a day-to-day basis with, and consequently have a particular interest in, the risk management processes which management companies use to monitor and control the risks inherent in derivative instruments and strategies.

Question three in your Discussion Paper asks *"Do you agree that the risk that some fund managers operating UCITS III funds may not implement appropriate risk management systems and controls is a significant risk?"* Based on the experience gained from our ongoing involvement with management companies, we do not believe that there is a significant risk of Managers not implementing an appropriate risk management process ("RMP").

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DATA Members consider that any risk is mitigated by the following:

- The clear FSA authorised fund product regulations and guidance on the RMP, including the requirement to notify the FSA of the methods for estimating risks in derivative and forward transactions, and the types of derivatives and forwards to be used within the scheme together with their underlying risks and any relevant quantitative limits. In addition the requirement that a manager is expected to demonstrate more sophistication in its RMP for a scheme with a complex risk profile than for one with a simple risk profile.
- FSA regulations over the activities and conduct of the authorised fund manager, e.g. Senior Management Systems and Controls, Training & Competence etc
- FSA Principles, in particular Principles 2 and 3, "A firm must conduct its business with due skill, care and diligence" and "A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems".
- The joint Investment Management Association, DATA and Futures and Options Association Risk Management Process Guidelines for UCITS Managers, issued in July 2003 (and currently being updated) which were designed to assist Managers in developing appropriate mechanisms for managing the various risks generated by their use of derivatives.
- The Managers' own obligation under FSA regulations to undertake internal monitoring over its' regulated activities.
- The regulatory requirement for Depositary oversight and the experience of DATA Members whilst Managers have been implementing such control processes.

Taking account of the beneficial disciplines placed upon Managers by the regulatory requirement for an RMP, DATA recommends that the FSA seriously considers extending this requirement for a Risk Management Process to all retail products that make use of derivative instruments and/or strategies.

We would be very happy to discuss the points raised in our response if you would find this helpful.

Yours sincerely

David England - Chairman