



5 November 2019

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By email to: [cp19-27@fca.org.uk](mailto:cp19-27@fca.org.uk)

Dear Nick

**CP19/27 Quarterly Consultation No 25 – Chapter 3 Amendments to the Collective Investment Schemes Sourcebook**

The Depository and Trustee Association ("DATA") represents depositaries and trustees of UK based investment funds, including UK authorised UCITS, Non-UCITS Retail Schemes (NURS), Qualified Investor Schemes (QIS) and Alternative Investment Funds (AIFs).

DATA welcomes the opportunity to comment on the changes proposed in chapter 3 of this consultation, and has provided its responses in the attached annex. In particular, DATA observes that the proposed changes to COLL 6.6.12R and 8.5.4R would allow 'Other Assets' to be registered in the name of the fund or the manager on behalf of the fund. It welcomes this proposal and generally supports any changes that address inconsistency with European regulation.

DATA is willing to meet with the FCA to discuss its response if this would be helpful.

Yours sincerely

Craig Bowie  
DATA Chairman

## **Annex**

### **Q3.1: Do you have any comments on the proposed amendments to COLL 5.2.23R? If so, please elaborate.**

DATA is aware that the previous restrictions on eligible counterparties for UK UCITS entering into OTC derivatives contracts has restricted UK UCITS' access to US OTC derivatives markets, in particular cleared trades. It therefore welcomes the proposed change to COLL 5.2.23R that will result in CCPs in major markets being considered as eligible counterparties for OTC derivatives trades, enabling UK UCITS to enter into cleared OTC derivatives transactions in key markets.

While agreeing with the policy intention, DATA questions whether a more future proof reference could be used in place of the proposed provision in COLL 5.2.23R (1)(e), which references the summary report issued by the Financial Stability Board dated 25 June 2019. This report is likely to be supplanted by periodic issues of updated reports so is likely to become outdated fairly quickly.

DATA supports the request in the Investment Association (IA) response calling for additional changes to be made to both COLL 5.2.23R and COLL 5.4.4R to fully align these rules. OTC derivatives transactions and securities lending transactions with the same counterparty are typically aggregated for collateral purposes, therefore a consistent rule set will make monitoring compliance with the investment powers more straight forward.

### **Q3.2: Do you have any comments on the proposed amendments to COLL 6.2.23R and 8.5.12AR? If so, please elaborate.**

DATA is supportive of the proposed amendments to COLL 6.2.23R and 8.5.12AR to align the corporate ownership condition applicable to PAIFs with the underlying tax regulations (69K and 69L of the Authorised Investment Fund (Tax) Regulations 2006).

### **Q3.3: Do you agree with our proposal to add a direction in COLL. 9.3 requiring operators of s.272 recognised schemes to provide an annual certificate? If not, please elaborate.**

DATA has no comment on this proposal.

### **Q3.4: Do you have any comments on the proposed amendments to COLL 6.6.12R, 8.5.4R and 5.2.4R (2)? If so, please elaborate.**

DATA notes the changes proposed to COLL 6.6.12R and 8.5.4R limit the application of these rules to the extent that they are consistent with the AIFMD and UCITS delegated regulations. The EU legislation permits registration of assets not traditionally held in custody, such as real estate, in the name of the fund. The proposed change therefore appears to address the current limitation in the UK rules that requires these assets to be registered in the name of the depositary firm rather than the fund. In general, DATA welcomes any changes that promote consistency with European Regulations. In its response to DP17/1, the Discussion Paper on illiquid investments in open-ended investment funds (and reiterated in its response to consultation paper CP18/27 on the same subject), DATA asked for the FCA to amend COLL 6.6.12R and 8.5.4R in respect of 'Other Assets', to align with the safekeeping requirements in the AIFMD and UCITS V level 2 regulation, which permit them to be registered not only in the name of the depositary but also in the name of the fund or the manager on behalf of the fund.

DATA considers that this change will allow authorised funds that hold assets which are clearly classed as 'Other Assets' (e.g. real estate) to register such assets in the name of the fund or the manager on behalf of the fund, thus bringing the UK in line with other jurisdictions.