



21st September 2006

Niall Bohan
Head of Unit
DG MARKT G4
European Commission
B-1049 Brussels
Belgium

Dear Niall,

Report of the Expert Group on Investment Fund Market Efficiency

The Depositary and Trustee Association (DATA)¹ welcomes the opportunity to comment on the Expert Group report on Market Efficiency. We have particular interest in providing our detailed comments on Action5: "More freedoms for the Depositary" and we will provide more general thoughts, as a market participant, on the other areas that may affect our members.

We are broadly supportive of the drive for greater efficiency across the European marketplace. We believe there are clear benefits to be realised, for both the industry and ultimately the end investor.

If there are any points raised in our response that you would like to discuss further, or where you would like clarification, please do not hesitate to contact me.

Yours sincerely

David England
Chairman – Depositary and Trustee Association

¹ DATA represents all depositaries and trustees of UK-based authorised unit trusts and open-ended investment companies (OEICs). At the end of July 2006, the members of DATA were responsible for safeguarding £366.7 billion of funds under management

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DATA response to the Expert Group Report on Market Efficiency

Action 5: More freedoms for the Depositary

We are supportive of the initial conclusions made in section V2 "Where do we stand?" that the safe keeping/custody function undertaken by Depositaries is now largely harmonised across EU member states. We also acknowledge the crucial point that the control/trustee function differs wildly across the EU market place with many different responsibilities being assumed by depositaries in different member states.

In terms of translating these high level conclusions into the short and long term recommendations, detailed in V3, we believe that the short term goals contain realistic and achievable objectives that should contribute to the overall efficiency of the market. We indicated our support for alternative solutions to a true depositary passport in our response to the EU Asset Management Green Paper, our letter to you of 12 November 2005. The Group's conclusion that the delegation of custodial functions to licensed custodian else where in the EU and that branches of established EU banks may act as a depositary for locally domiciled funds are both welcomed.

However, DATA does not believe that there is currently any evidence of either an economic or regulatory need for further harmonisation of the obligations placed on depositaries or any need of a true depositary passport.

Again this was our view in our response to the Green Paper. We still support the conclusions reached in that response and believe the analysis undertaken by the Expert Group does not impact on its appropriateness. Specifically, we believe our view that the market for depositary services is functioning effectively and that through local establishment of offices competition already occurs on a cross border basis. We believe this is further evidenced by the relatively low fees charged for depositary/trustee services.

Whilst DATA believes that harmonisation of governance is a good thing in principle, in practice this would be virtually impossible to achieve in a satisfactory manner, specifically in the UK. The role of oversight for a UK depositary is, in a number of areas, super-equivalent to most if not all other EU jurisdictions, and a concern would be that any harmonisation would lead to weakened investor protection from a current UK perspective.

It is interesting to note that the findings of the joint review of the Governance Arrangements of United Kingdom Authorised Collective Investment Schemes, conducted with the UK's Investment Management Association (IMA), and the conclusions of the recently published IOSCO paper both accept that whilst different models of CIS governance may exist no conclusion as to the superiority of one model over another has been reached. The UK's position was further reinforced after consultation with IMA's members it was clear that there was a preference to maintain the UK's super equivalence as far as depositary oversight was concerned.

Action 1: Getting products to the market more quickly

The Expert Group report details a raft of proposed amendments to the UCITS Directive to effect a more streamlined and efficient notification process. In light of the work conducted by CESR earlier this year, and the general opinion in the UK that this didn't go far enough, it would seem appropriate for the Commission to act on the Expert Group's proposals.

DATA strongly supports these proposals. They should go some way to reducing the significant direct and indirect costs resulting from the current difficulties of the notification regime.

Action 2: Facilitating UCITS mergers

DATA strongly supports the Expert Groups reports that the hap hazard development of jurisdictions that will allow cross border mergers is contrary to the principle of free movement of capital. The consequence of CIS Managers having to run non-commercially viable funds, at the expense of the investor is unacceptable.

We would therefore encourage the Commission to take up the mantle for making the necessary minor changes to the UCITS Directive and implementing the separate Taxation of Fund mergers Directive to reduce the potential for taxation to be a barrier to cross border mergers.

Action 3: Allowing pooling techniques

DATA strongly supports the recommendation in the Expert Group Report for improving the efficiency of the single market by providing a framework for pooling. Implementation of the recommendations detailed in this section and above should assist CIS managers in achieving more cost effective basis for operating their schemes on a cross border.

Action 4: Making the Management Company Passport work

DATA supports the recommendations for action to bring about an effective Management Company Passport.

We have not given any indication of priority in relation to the recommendations that DATA supports. It is our view that to achieve fairness across the variety of business models that exist across the EU member states that the work proposed under Actions 1 to 4 is undertaken on an equal footing. Failure to do this may well give competitive advantage to one model/jurisdiction before others.