leading on investments and savings

Andrea Ferguson
The Client Assets Policy and Risk Team
Client Assets Unit – Markets Division
Financial Conduct Authority
25 The North Colonnade
LONDON
E14 5HS

11th October, 2013

Dear Andrea

FCA CP13/5 - Review of the client assets regime for investment business

I am pleased to attach TISA's response to this Consultation Paper.

About TISA
TISA is a not-for-profit membership association operating within the financial services industry.

TISA's membership comprises over 130 member firms involved in the supply and distribution of savings and investment products. These members represent many different sectors of the financial services industry, including banks, stockbrokers, asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers and pension providers.

What makes TISA unique is that we cover the entire industry, incorporating cross sector policy, industry and technical expertise.

This response has the benefit of detailed consideration of the proposals by the TISA Client Assets Technical Committee and Best Practice Working Group.

We have already sent the FCA a note of specific concerns about the proposals, following which we held a Q&A session with FCA, which was very helpful, and held two seminars (one in London and one in Edinburgh – total attendance was around 120), and a meeting specifically to discuss our concerns and the main issues.

The Committee includes representatives from clearing banks, trustee companies, major fund managers, Transfer Agents, third party administrators, platforms, wealth managers, auditors and lawyers. This has enabled us to respond on behalf of the industry as a whole, rather than

TISA, DAKOTA HOUSE, 25 FALCON COURT, PRESTON FARM BUSINESS PARK, STOCKTON-ON-TEES TS18 3TX
technical queries: 01642 666999 email: enquiries@tisa.uk.com web: www.tisa.uk.com administration: 01642 666982 fax: 01642 666990

just one section. In addition, it has enabled the response to view the proposals in the round, as they affect all parties, rather than one particular market segment.

We have found the FCA to be very helpful in their initial response to the issues we raise in this response, for which we are grateful, and we look forward to working with you and your colleagues to ensure the rules, as written, are implemented in a practicable and efficient manner.

We have significant concerns around a number of issues, namely:

1. Withdrawal of the fund manager exemption,
2. Ban on unbreakable deposits for client money,
3. Proposals on reconciliations,
4. Acknowledgement letters.
5. Timetable

We discuss the proposals in more detail in our response, but wished to draw your attention to these issues in particular.

Fund manager exemption

We recommend that the proposal for the withdrawal of the fund manager exemption, together with associated rules, should be withdrawn, and separately consulted upon.

This is because the costs associated with implementation of the proposals are very significant – one TPA quoted a figure of £10m in system and associated costs. In addition, the funding costs for the industry are likely to be very high. We understand that the industry makes BACS payments in respect of redemption proceeds in the order of £5bn a month. This would require financing if managers could get the credit and would increase their financing costs. We believe the proposals would drive many fund managers to act as agent, rather than principal as at present, to avoid the significant increased funding requirements. This latter move would have adverse impacts on customers together with unknown but significant financing strains on funds themselves. Such a significant change to market practice will create other risks and should not be contemplated without considering the broader impact on the market and investors.

We discuss these concerns in more detail in our response.

We recommend that the FCA set up a working group with relevant affected parties to discuss FCA concerns and develop appropriate, proportional and practicable arrangements. TISA would be pleased to facilitate this as a matter of urgency.

Unbreakable deposits

As far as the ban on unbreakable deposits is concerned, we support the underlying principle – that customers, where firms are in default, should not have to wait too long to see their money returned. But the proposals, as cast, would act to the detriment of customers and firms, without adding any real protection to customers. For example, there is some £100bn in client money deposits in the UK. An additional return of 10bps would be worth £100m a year to firms and their customers. Mandating that all client money be held, effectively, on call will reduce the attractiveness of such deposits to banks, and ensure permanently lower returns in the future. In addition, this will place non banks at a competitive disadvantage to banks in the Cash ISA market. This will be bad for competition, and thus likely to be bad for customers.

The banks that are members of our Committee have made a number of practical suggestions in this area, which we discuss in more detail in our response, and we therefore recommend that the FCA recast the proposals to address the competition issues, and the concerns around client liquidity. We believe we can meet your concerns without damaging the market, and without insisting on unbreakable deposits.

Reconciliations

Prompt, accurate and reliable reconciliations are important in ensuring that client money is properly and securely identified. However, we believe that the proposals on the negative add-back are unnecessary and would come at a very high price. If the FCA identifies specific issues with this and alternative methods, we should be pleased to propose workable rules.

Method 2 permits the client money requirement/reconciliation to be performed with respect to each bank account and was, as the Consultation Paper states, introduced into the FSA rules in 2002 to accommodate firms whose internal ledger systems and business practices were arranged on a bank account by bank account basis rather than on a client by client basis. Most fund managers systems are organised on a bank account by bank account basis and change would be at a significant cost. It would also have some competition impact since it would restrict the ability of firms to operate across different systems.

Acknowledgement letters

Our members universally welcomed the principle behind the proposals. We recommend, however, that banks should issue the letters, not the firms.

Our members suggested the FCA take this opportunity to look at ways to modernize such acknowledgements. Rather than more paper, would a secure electronic register be a better way to achieve the FCA's objectives? We would welcome the opportunity to discuss our ideas with you in more detail.

We have concerns around re-papering the back book, the authentication of authorizing officials, and whether overseas banks could recognise trusts in an acceptable way. If they

TISA, DAKOTA HOUSE, 25 FALCON COURT, PRESTON FARM BUSINESS PARK, STOCKTON-ON-TEES TS18 3TX
technical queries: 01642 666999 email: enquiries@tisa.uk.com web: www.tisa.uk.com administration: 01642 666982 fax: 01642 666990
Tax Incentivised Savings Association Limited. A Company Limited by Guarantee. Registered in England and Wales No: 3548792

could not, and it was a requirement to use banks that did recognise trusts, then we believe the European Commission would regard the proposals as discriminating against non UK based banks.

In many ways we like the proposals and approve of their underlying objectives and as we said when we met yesterday we are keen to develop a solution that doesn't simplify a different paper based authentication system.

Timetable

The proposals, taken as a whole, will involve significant change, most of which is likely to involve changes to systems and processes. The major impact is in the area of the DvP/intraday and reconciliations area. The FCA has undertaken, in the context of the platforms papers, to give the industry a year from announcement of final rules, to implementation. We recommend the FCA adopt a similar timetable in respect of the final rules. That is, if the FCA makes policy in January 2014, the rules come into effect from February 2015.

If the FCA were to make the major changes proposed around the fund manager exemption/intraday settlement and reconciliations then the impact would fall into the category of major change for the main suppliers to the industry.

If you have any questions, or would like to discuss our recommendations in more detail, please let me know.

With best wishes

Jeffrey Mushens
Technical Director

TISA, DAKOTA HOUSE, 25 FALCON COURT, PRESTON FARM BUSINESS PARK, STOCKTON-ON-TEES TS18 3TX
technical queries: 01642 666999 email: enquiries@tisa.uk.com web: www.tisa.uk.com administration: 01642 666982 fax: 01642 666990
Tax Incentivised Savings Association Limited. A Company Limited by Guarantee. Registered in England and Wales No: 3548792