



leading on investments and savings

**FCA Consultation on Client Money held in Individual Savings
Accounts**

June 2014

Introduction

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

TISA's membership comprises over 145 member firms involved in the supply and distribution of savings and investment products and services. 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 its membership covers the entire industry, incorporating cross sector policy, industry and technical expertise. Whilst we maintain a solid partnership with government, the regulators and wider industry, we remain independent and develop neutral views and opinions. This impartiality is reflected in our ability to drive development projects, which improves industry performance and puts us in the unique position of being able to constantly challenge the status quo to bring about material improvement. At the forefront in all of our recommendations and actions is to consider national and consumer outcomes.

Summary of response

TISA welcomes the FCA's proposals.

We are pleased that the FCA has responded so quickly to the Government's changes to ISAs and to our request that the FCA urgently review its rules.

Thank you.

TISA believe that the proposed new rules will enable firms to take advantage of the new market opportunities opened up by the Budget changes to ISAs, which will likely lead to better deals for customers and simplify firms' administrative processes.

We recommend that the ability to opt into the Client Money rules for ISAs be extended to non-ISA investment business. This would simplify procedures for businesses.

We welcome the proposals, in principle, around unbreakable deposits.

We are seeking clarification in our detailed response on the detail of the proposals in respect of unbreakable deposits and compensation limits – the latter for explanation to customers.

RESPONSE TO QUESTIONS

Q1: Do you agree with our proposal to require all money held within stocks and shares ISAs managed by investment firms to be held as client money? If not, please provide reasons?

We support this proposal. It will simplify procedures and thus enable firms to offer a better deal for customers, without diminishing any protections offered to them.

Q2: Do you agree with our proposal to allow money held within cash ISAs managed by investment firms to be held as client money? If not, please provide reasons?

We support this proposal, because it will enable firms to opt in to Client Money, and for many of them this will simplify administrative processes, because their current business models operate around Client Money.

We note that this will now have to be disclosed to clients, as under the current rules this would be deemed outside of Client Money.

Under the current rules, banks and deposit takers have to notify customers in regard to interest rate changes. What rules will apply going forward for non-banks or licensed deposit takers where cash ISA money is being treated as Client Money? We can envisage circumstances where clients are invested through money market funds. Would firms be expected to report whenever the yield on the fund changed, which might conceivably be daily?

Consider non-ISA products where the investment firm has a relationship with a deposit taker for a product offering and the ISA manager / investment firm acts in a bare trust capacity. This is normally pre and post investment or upon a redemption from the client where money for clients is held in bare trusts. Currently this money is not client money under the CASS regime. The proposals would permit the ISA monies to be held as client money. Typically an investment firm would offer this type of product in both a wrapped (held in the ISA) and unwrapped capacity. However, the money would not be permissible to be held as client money for the unwrapped product. Not being able to apply the rules consistently would limit the benefit of the ability to opt into the CASS regime.

Therefore, we recommend that the rules be amended to permit non-ISA cash to be treated in the same way as ISA money.

We should like clarity regarding compensation amounts under Client Money, as we are concerned that customers may not be as well protected as at present. This also raises questions in relation to TCF. We have identified 5 scenarios with differing levels of protection. These are:

- For cash held for investment purposes if the ISA manager fails, the limit is £50k

- For cash held in a stocks and shares ISA in a client money bank account with a deposit taker – where the deposit taker fails, the limit is £85K
- For cash held in a stocks and shares ISA not intended for investment – there is no protection by FSCS if ISA manager fails
- For cash held in a cash ISA with a deposit taker, the limit is £85K
- For cash managed by an ISA manager without deposit taking permissions or who has not opted into the client money rules – no protection from FSCS

The consultation paper (1.17) indicates that Cash ISA money not opted in will gain no FSCS protection upon the failure of the ISA manager (assuming they are not a deposit taker). What is the situation with Cash ISA money, which is opted in to be held as client money? Would it be protected by FSCS for up to £50,000 on failure of the Asset Manager? It is important that the expected FSCS coverage for the different scenarios is completely clear so that firms can notify clients accordingly.

Q3: Do you agree with our proposal to dis-apply the rules around unbreakable term deposits to money held within ISAs? If not, please provide reasons?

We support this proposal.

We should like clarification as to whether this disapplication of the rule in respect of ISAs relates to the pooled client money held by a firm. For example platforms may have pools of client money related to many clients and various product types, such as general investment accounts, Stocks and Shares ISA and SIPPs. Could they now move an element of this pooled cash, which relates to ISA into an unbreakable term deposit from 1st July?

Assuming that this is allowed, we should like the FCA to confirm that they will not require this to be agreed on an individual basis. We consider that any rule requiring every client to provide signed instruction detailing the amount and term for their funds to be placed in an unbreakable term deposits to be practically unworkable. Rather, we believe that it should be made clear in the client agreement that the ISA Manager is authorised to place the Cash ISA funds held within a pool on unbreakable term deposit on their own terms, subject to treating customers fairly. In summary firms should be able to place Cash ISA funds on unbreakable term deposit without obtaining individual client instruction.

Where a firm's terms and conditions permit the firm to invest pooled money, held in general client bank accounts, in unbreakable term deposits at their discretion, or we envisage treating customers fairly considerations could look like using unbreakable deposits with shortish maturity dates and having controls around how much money could be placed in such deposits and the spread of maturity dates.

Turning to the treatment of clients transferring their ISA to another provider - given the CRD IV / Basel III rules have not been finalised, it is worthwhile considering the current regulation. Under ILAS, essentially Retail Call and Retail Term through say a branch network receive the same or very similar liquidity value/outflow risk. Under Basel III this is likely to continue. So when it comes to Intermediaries (ISA Manager)

it is likely that there will be a difference in treatments and therefore liquidity value for retail funds being placed on unbreakable term deposits for greater than 30 days and a term deposit that can be broken irrespective of the period. Therefore Cash ISA deposits placed on term with a Bank, on an individual basis, will NOT be breakable save in the event of death, hence the requirement for clear client communication as highlighted above.

The current rules for transfers require that the client should have access to their money within 15 days for cash ISAs and within 30 days for Stocks and Shares ISAs. This contradicts the proposed change. Banks currently operate a penalty clause (e.g. 120 days interest) to accommodate the rules. Unbreakable deposits with a term greater than 30 days will not comply and so we shall be writing to HMRC requesting that their rules are amended to accommodate this change.

The FSA previously indicated in their 'Dear CF10a' letter of 30th November 2012 that firms operating Unbreakable Term Deposits where the client was not involved directly in the decision-making would place clients at unacceptable risk and may be in contravention of conduct of business rules. This message was re-enforced in the recent PS14/9 CASS policy statement along with the concern that the use of UTDs could delay the distribution of client money in a primary pooling event. Within CP14/9 it is unclear how these points are being addressed. We have concerns that the use of the UTDs in an ISA product could delay the distribution of other client money pools where their use was not permitted. We therefore suggest that a carve-out should exist in the distribution rules for ISA money in a similar way to Trustees for those firms, which wish to go down this route

Finally, there are a number of firms who are ISA managers, SIPP providers and also the provider of platform services. Typically these firms offer both an ISA and a SIPP on their platform, along with a general investment account (GIA), which holds similar investments, but not in a tax wrapper. These firms are now in the position where they can offer unbreakable term deposits of more than 30 days for both ISAs and SIPPs, but not for their GIA. Since the GIA client money will be held in the same pooled money general client bank accounts as the ISA and SIPP money, the GIA clients will also be impacted by delays in moving monies to an alternative counterparty / delays in distributing client money, if a deposit taker gets into difficulties. Could the dis-application of the ban be extended to GIA products? We should welcome the opportunity to discuss this with you.

Q4: What are your views on the benefits and costs of these proposals? Please provide explanations and qualitative evidence to support your response where appropriate.

Firms have indicated that the benefits to customers and firms from the proposals significantly outweigh the costs.

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