Yujin Baskett and Philippe Marie
Markets Division
Financial Conduct Authority
25 The North Colonnade
LONDON E14 5HS

6th April, 2015

Dear Yujin and Philippe

Quarterly Consultation No.8
March 2015

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.

Having a legacy of focusing predominantly within the tax incentivised products area, TISA has in recent years moved into the broader savings and investment world, extending our status of 'trusted advisor' to the authorities over a much greater remit. This has been welcomed by our members and the authorities as a natural progression.
TISA has a highly successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve the performance of the industry and the outcomes for consumers. Policy and regulation continues to be the major focus for our members with regard to corporate responsibility.

TISA and its members' remit is evolving into a clearer focus on pro-active consultation in the regulatory world in order to influence policy and associated regulation before its creation, rather than reacting to issue policy directives. This will help to ensure a more considered policy creation from the authorities.

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What makes TISA unique is that we cover 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.

This response is addressed to proposed changes to CASS and CONC.

Responses to Consultation Questions

Q2.1: Do you agree with this proposal to allow CASS 6 firms to perform external custody reconciliations against certain third parties' system records relating to Irish, Jersey, Guernsey and Isle of Man securities?

We agree.

We feel however that the third parties systems referred to e.g. CREST, can and do operate for a far wider variety of securities and instruments such as Collective Investment Schemes - including ETFs traded on exchanges, as well as say units in OEICs transacted with the AFM. Collective Investment Schemes can in some circumstances fall under Uncertificated Securities Regulation's 2001 (USR 2001), when using CREST as an operator for settlement and registration. This means title is not maintained in CREST and only an equitable interest is recorded, but CREST generates instructions to the Register who is contractually bound to update within a limited timeframe. By allowing firms to also use third party systems records to be extended for Collective Investment Schemes to that similarly for Irish, Jersey, Guernsey and Isle of Man securities who operate a separate Register, they will provide a potentially enhanced service for firms to utilise functionality for reconciling and the opportunity for automation e.g. daily reconciliations - which are recommended in PS14/9 for systems such as CREST and of significant client benefit. We therefore recommend that the FCA consider incorporating Collective Investment Schemes that utilise CREST or similar third party systems as well under this rule change where they meet USR requirements. This could be achieved by amending the glossary to a *relevant USRs* and include the UK version of USR - The Uncertificated Securities Regulations 2001 (no 3755) alongside the proposed list.

Q2.2: Do you agree with our proposal relating to registration and recording of legal title to client assets?

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We agree.

We feel CASS 6.3.4B in implementing CASS 6.3.4A makes it clear that the firm does not need to itself implement CASS 6.2.3 when using a third party but are responsible for ensuring the third party suitably segregates assets and has appropriate contractual terms and records on how the third party records legal title.

Q2.3: Do you agree with our proposals regarding client money segregation for certain regulated clearing arrangements?

We agree.

Q2.4: Do you agree with our proposal relating to the DvP rules for regulated collective investment schemes?

We agree with the FCA's proposal in relation to DvP rules for regulated collective investment schemes.

The rules as drafted clarify, subject to the conditions contained therein, and for AFMs using the DvP window that transfers of client money can be made to the corporate account before the money is transferred to a third party. This permits firms to:

1. Transfer (non-cheque) redemption proceeds that have been segregated into the client money account to the corporate account for onward payment to the investor; and
2. Transfer early subscription receipts that had been segregated into the client money account to the corporate account for the onward creation payment to the trustee

Both of these are welcome since they reduce the intra-day funding requirements for Authorised Fund Managers ("AFM") using the DvP Window.

A similar issue, albeit for different reasons, arises for those AFMs who have chosen to adopt the full client money model and not to use the DvP window. For these AFMs the creation payment (reflecting the payment of the manager's trade with the fund when dealing as a principal) might be made from the corporate account but, in this model, all the subscriptions received from investors will be contained in the client money account. In these circumstances, where the AFM has chosen not to operate the DvP window and where the AFM is required to fund any shortfall due to uncleared or late subscription receipts, we would ask that the transfer back from the client money account to the corporate account could likewise be made prior to the payment to the trustee.

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AFMs operating a "full client money model" have elected to do so to reduce the period of time that clients' money is held outside of the client money account; however, they operate the same business model as firms that do adopt the exemption. They should therefore not be penalised for seeking to increase client protection.

If the new rule was restricted to firms using the DvP exemption, managers operating the full client money model might prefer to settle the creation payment from the client money account (to reduce the intraday funding requirement that would be created by making the same entire payment from the corporate account). However where one or more investors had not settled their trade with the manager, the manager would be required to make a payment to the client money account to facilitate a single payment being made to the trustee (and avoid an intra-day deficit in the client money account). This payment could impact the effectiveness of the trust if it was argued that the firm was acting as principal to the trade (as the money would be firm money paid into the client money account to settle the firm's obligation).

If the FCA could extend the clarification of the rules, this would permit the release of cash from the client money account to the corporate account in the circumstances of 2) above (irrespective of whether the AFM has chosen to operate the DvP window). It would also assist all AFMs to achieve their obligations to the fund by reducing the intra-day funding requirements and assist all AFMs to fulfil their COLL obligations not just those operating the DvP window.

The final rules use the word "immediate". The PS makes it clear that the transfer from the client money account can be made before payment to the third party. This different terminology will lead to wide ranging discussions and different interpretations by firms and auditors as to what the definition of "immediate" is and greater clarity is sought in this regard. We are aware that some firms are interpreting the rules such that would permit the transfer back on the same day as the payment to the third party. We are also aware that some firms are interpreting the rules in a way that would require the transfer instruction to the third party(ies) to have been sent to the bank for clearance that day prior to the release from client money (but without waiting for clearance).

Q2.5: Do you agree that the proposed wording has the intended legal effect regarding the constitution of the general client money pool?

We agree.

Q 2.6: Do you agree with our proposals to ensure that CASS applies as stated in PS14/4?

We agree.

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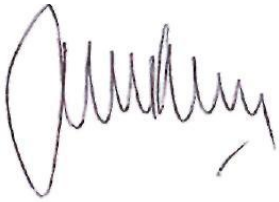
If you have any questions, please let me know.

Yours sincerely



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