



tisa

Leading on Investments and Savings

**CP16/19: MiFID II
Implementation
Consultation Paper II**

4th November 2016

About TISA

TISA is a not-for-profit membership association operating within the financial services industry. The focus of our recommendations and actions is improved outcomes for consumers and UK plc with this approach leading to a stronger UK financial services industry.

TISA's growing membership comprises over 150 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 asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers, pension providers, banks and stockbrokers.

TISA has a successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve the performance of the industry and the outcomes for the public. Effective policy and regulation and the creation of efficient industry infrastructure continues to be the major focus for our members. TISA is unique in that it represents the entire financial services 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 improve industry performance and consumer outcomes, putting us in the unique position of being able to constantly challenge the status quo to bring about material improvement.

We are pleased to lay out our response to this Consultation Paper.

Our response is focused on the Client Assets sourcebook (CASS).

TISA Response

The TISA Client Assets Technical Committee represents firms from across the financial services, and includes banks, asset managers, platforms, wealth managers, custodians, trustees, law firms, accountancy firms, transfer agents and third party administrators. This enables TISA to give a considered view of the impact of proposals on the whole of retail financial services, not just one sector.

We have responded to the specific questions (17 and 18) raised as set out below, but wish to raise some concerns about specific proposed rule changes. In particular, we are concerned that some of the proposed new rules change or amend existing rules in significant ways, such that they should have been raised and discussed in the discussion part of the CP rather than having to be discovered by a close reading of the proposed new rules.

1. **CF10a restrictions.** The restrictions on CF10a's responsibilities will be a significant burden for smaller firms, which do not have the resource to employ a full time 'CASS Officer'. It also restricts a CF10's ability to take on additional roles as may be required as firms grow and develop. **This should have been drawn to firms' attention in the discussion part of the CP.**
2. **Depositing assets with a third party.** The new rules 6.3.4(4)R and 6.3.4A-2G state firms must be able to ensure that assets held by a 'chain' of sub-custodians are compliant with 6.3.4R. We believe the FCA would like firms to have robust contractual relationships with the sub-custodians they appoint e.g. directly appointed, rather than each entity in a sub-custodians network. We would therefore suggest the requirements in the chain, referred to in new rule 6.3.4A-2 G, is clearly restricted to 'directly appointed sub-custodian(s)' which is current industry practice.
3. **Liens.** The new rules require firms to disclose in client contracts 'all the terms under which liens/ right of set off may be granted' (new rule 6.3.6CG and CASS 7.11.60G). When referring to 'all the terms' we believe the FCA means including in client contracts 'the terms under which a lien or right of set off is allowed under CASS 6.3.6(A-C)R and CASS 7.11.59R' and we welcome clarity on this. Firms will have multiple sub-custodians who all have different terms so failure to clarify this could result the industry moving to lengthy disclosures in client agreements and the benefits to retail clients who do not understand custodial arrangements is unclear.
4. **CASS 6.4.1C.** We believe that firms with an appointed global sub-custodian will struggle to meet this new requirement, especially where contractual settlement is offered on pooled assets. We feel the new rules are pushing the industry to pre-fund trading which is not through their own nominee. This will be a significant burden for all firms. **This should have been drawn to firms' attention in the discussion part of the CP.**
5. **CASS 6.4.1C(2)** We would therefore welcome clarification around 'close monitor' of settlement, as this will vary depending on the jurisdiction the assets are being traded in and the information available from the sub-custodians appointed. We also recommend that CASS 6.4.1C(2)R is amended to make it explicitly clear that the requirement to take remedial measures is when non-delivery is identified not on a firm's ability to close monitor.

Q17: Do you agree with our proposal to implement MiFID II requirements for MiFID and non-MiFID business maintaining a single rulebook? If not, please give reasons.

In principle, yes.

Q18: Do you agree with our proposals to implement MiFID II safeguarding of client assets provisions? If not, please give reasons.

Yes, in principle, but in both cases we share the concerns expressed to you by the Institutional Money Markets Funds Association in their response to you, dated 28th October 2016.

If you have any questions, or should like to meet to discuss, please let me know.

Jeffrey Mushens, Technical Policy Director, TISA