



tisa

Leading on Investments and Savings

**Response by TISA to
CP17/02 CASS 7A and SAR**

April 2017

About TISA

TISA is a unique, consumer focused membership organisation. Our aim is to improve the financial wellbeing of UK consumers by aligning the interests of people, the financial services industry and the UK economy. We achieve this by delivering innovative, evidence based proposals to government, policy makers and regulators.

TISA's growing membership comprises over 160 firms involved in the supply and distribution of savings and investment products and services. These members represent all sectors of the financial services industry, including asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, FinTech, consultants and advisers, software providers, financial advisers, pension providers, banks and stockbrokers.

Current themes of TISA policy work include:

- Brexit: developing proposals for government that will enable the savings and investments sector to prosper on a global scale
- Digitalisation: a digital identity for consumers of financial services, innovation, standards and data responsibilities
- ISA's: LISA, simplification of the regime
- Retirement saving: the Auto Enrolment review, self-employed and pension tax relief
- Housing: the use of property to supplement retirement income
- Guidance: developing a framework and services to make guidance more widely available
- Education: supporting the education of young people to make them aware of the impact of finance on their life.

TISA also provides support on a range of operational and technical issues targeted at improving infrastructure and processes, standards of good practice and the interpretation and implementation of new rules and regulations. TISA has a successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve industry effectiveness by reducing cost and risk and to enhance customer outcomes. This work currently includes: MiFID II, CASS, the UK Fund Settlement initiative and Payments Strategy Forum. TISA Exchange (TeX) is providing a model for transfers and re-registrations.

Q1: Do you agree with this proposal relating to the post-PPE transfer of client money? If not, please provide reasons.

Yes.

Q2: Do you agree with our proposal to create a new section containing post-failure custody rules for transfers and the treatment of unclaimed custody assets? If not, please provide reasons.

Yes.

Q3: Do you agree with our proposal regarding post-transfer communications with clients? If not, please provide reasons.

Yes.

Q4: Do you agree with this proposal to safeguard clients' proprietary rights? If not, please provide reasons.

In principle, yes. However, we are still concerned about the potential costs involved in 'reasonable steps'.

Would a one time mail to clients last address be acceptable, or what? We are concerned about the potential for costs incurred to be in excess of potential benefit to clients. Paragraph 2.26 refers to 'an evidential provision outlining the minimum client contact required, with fewer steps for professional clients.' This implies at least 3 steps for non professional clients (fewer steps for professional clients implies at least 2 which implies at least 3 for non professional clients).

Q5: Do you agree with our proposed treatment of allocated but unclaimed (or declined) and unallocated client monies? If not, please provide reasons.

No, we do not. In the event of an insolvency one of the reasons for unclaimed balances may simply be poor record keeping. In those circumstances it looks bad if a firm can claim money it can't allocate. We appreciate the reasons for the proposal but conclude that surplus client money arising in this way should be held in a manner consistent with the dormant assets regime.

Q6: Do you agree with our proposals regarding the treatment of clients with de minimis client money balances? If not, please provide reasons why.

No we don't. You appear to have ignored the responses to DP16/2 regarding de minimis, and have not provided guidance about the number of steps the FCA would consider reasonable to trace and contact clients with de minimis balances of client money before those balances can be treated as unclaimed client money. There is a risk that the potential costs required to contact the potentially affected clients would outweigh the values concerned, particularly with a de minimis of £25.

Q7: Do you agree with this proposal on the application of the Hindsight Principle? If not, please provide reasons.

Yes.

Q8: Do you agree with our proposed clarifications in CASS 7A relating to the post-administration reconciliation under the SAR? If not, please provide reasons.

Yes. We note that this will extend to firms using the normal approach (not just to those using the alternative approach).

Q9: Do you agree with this proposal on annotated client statements? If not, please provide reasons.

No, we do not.

The requirement for “annotation” implies the need for a presentational mark-up of the statement i.e. a picture. The requirement for “sample” suggests that the picture provided is unlikely to directly relate to the investor’s own statement. Taken together this could actually detract from the clarity of the statement.

Some statements already include a glossary of all terms used which can, in some circumstances, be the best way to achieve investor understanding. However, such a glossary is unlikely to meet the “annotation” requirement. There is no purpose served from providing “annotations” where the statement is already well presented and easily understood.

Overall, we believe that the rules should **not** contain a **requirement** for a “sample annotated statement” and that the existing rules around providing statements that are fair, clear and not misleading are the best way to achieve the FCA’s policy objective without unnecessary and potentially harmful prescription.

Notwithstanding the above if the FCA requires annotated statements, we support the proposal that these should **not** form part of the CASS RP. We note that the absence of a requirement does not preclude firms from providing statements where appropriate. We support the proposal that annotated statements could be provided in a durable medium other than paper, e.g. in a prominent place on a website.

You note (in paragraphs 2.46 and 2.47) that the majority of respondents to DP16/2 commented that:

- i. client statements are currently required to be clear, fair and not misleading and therefore sufficient information is provided to clients in statements, and
- ii. did not think that adding a detailed explanation of client statements to the CASS RP would be helpful.

We believe these responses were valid then and now. We do not understand why, in the face of these responses, the FCA imposes a requirement that risks confusion (and

evidence from customers is that they believe they receive too much paper and information and would like to receive less, not more).

We believe the FCA should reconsider these proposals.

Q10: Do you anticipate that this proposal will have significant cost implications? If so, please explain this further.

It is bound to do so. Firms will have to comply with the requirements, so there will be up front design and compliance costs, plus training for customer facing staff to deal with any queries arising from customers and advisers. As we do not consider that the FCA has made a case for their proposals all the costs incurred would be, in our view, unnecessary.

Q11: Do you agree with our proposal to enable the FCA to place a requirement over client money without triggering a PPE event? If not, please provide reasons.

Yes.

Q12: Do you agree with our proposal to remove the breach of duty to notify the FCA that it is unable to comply with its record keeping requirements following a secondary pooling event from triggering a PPE event? If not, please provide reasons.

Yes.

Q13: Do you agree with our proposal to allow client monies received post-PPE to be placed in an existing client bank account? If not, please provide reasons.

Yes.

Q14: Do you agree with our proposal to allow firms to retain costs properly attributable to the distribution of post- PPE client money? Should these deductions be allocated per individual rather than on a mutualised basis? If not, please provide reasons.

Yes.

Q15: Do you agree with our proposed approach to clarifying the treatment of client monies received post-PPE? If not, please provide reasons.

Yes.

Q16: Do you agree with the proposals to include CCPs in the scope of a secondary pooling event, and to exclude from secondary pooling amounts in certain client

transaction accounts, including where relating to sub-pools? If not, please provide reasons.

Yes.

Q17: Do you agree with our proposed application of the CASS and SUP going concern rules following failure or PPE? If not, please provide reasons.

Yes.

Q18: Do you agree with this proposed approach? If not, please provide reasons.

Yes.

Q19: Do you agree that our proposed changes will ensure that CASS is compatible with the draft EMIR and MiFIR RTS? If not, please provide reasons.

We have no comment on these proposed changes.