

27 June 2008

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By e-mail to: cp08-06@fsa.gov.uk

Dear Matthew

CP08/06: Review of the Client Assets sourcebook (CASS)

The Investment Management Association (IMA) is the trade body representing the UK asset management industry¹.

We welcome the opportunity to comment on the proposals made in the paper. Please find our detailed comments in the attached Paper.

I look forward to hearing from you if there is any clarification that you would find useful on the points we have raised.

Yours sincerely

Adrian Hood
Regulatory Adviser

¹ IMA members include independent fund managers, together with the asset management arms of banks, life insurers and investment banks, and occupational pension scheme managers. They are responsible for the management of over £3 trillion of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pension and life funds), private client accounts and a wide range of pooled investment vehicles. In particular our members manage 99% of UK-authorised investment funds (i.e. authorised unit trusts and open-ended investment companies).

CP 08/06: Review of the Client Assets sourcebook (CASS)

We provide below answers only to those questions from the consultation that fall within IMA's remit

Chapter 4 – Merging the custody rules

Q.1 – Do you agree with the relevant proposals? If not, why not?

Yes. We agree with the retention of the exemption for operators of regulated collective investment schemes.

It would be helpful if the FSA could, in writing, recognise the fact that fund operators are able to hold client assets and client money, under the aegis of the phrase 'in relation to activities carried on for the purpose of, or in connection with, the operation of the scheme'. This phrase first appeared in FSA '86 section 83. It was under this section that fund operators were able to act as PEP Managers, without any further permissions, thus making it clear that the phrase included the holding of client assets and client money.

Q.2 – Do you agree with the concept of retaining the concessionary regimes? If not, why not?

No comment

Q.3 – Do you agree with the manner with which we have updated the concessionary regimes? If not, why not?

No comment

Q.4 – Do you agree with our proposal? If not, why not?

Yes. This seems acceptable.

Q.5 – Do you agree with this proposal? If not, why not?

This seems acceptable. However, the CP states that the firm should provide the 'other person' with the risk disclosure, whereas the rule requires the firm to provide the client with the risk disclosure.

Q.6 – Do you agree with our proposals? If not, why not?

We recognise the desire to reduce duplication, but consider that it is important that sign-posts are left in relevant locations, so that someone reading the CASS sourcebook has the appropriate rules in COBS brought to their attention.

Will the FSA include a transitional for existing clients, akin to the COBS 6.1 transitional introduced for MiFID firms, so that firms do not need to make disclosures to existing clients?

We do not imagine that the FSA intends, and we would strongly oppose it if you did intend, any consequential extension of the scope of COBS 8.1 so that it applies to more than retail and MiFID scope professional clients.

Q.7 – Do you agree with our proposals? If not, why not?

Yes, the proposals will still require firms to be certain of the credentials of those with whom they would be entrusting the assets of their clients.

Q.8 – Do you agree with our proposal? If not, why not?

The proposals would require firms to gather express prior consent from all existing professional and eligible counterparty clients whose assets they use for themselves or another client. The FSA does not seem to have conducted a CBA to assess the cost of collecting numerous consents. It would also be helpful if the FSA could recognise that the collection of such consents can be a protracted exercise, and thus grant firms six months (at least) to comply with this new rule.

Q.9 – Do you agree with our proposal? If not, why not?

The proposals would require firms to gather *express prior* consent from all existing professional and eligible counterparty clients whose assets they use for securities

financing transactions. The FSA does not seem to have conducted a CBA to assess the cost of collecting numerous consents. It would also be helpful if the FSA could recognise that the collection of such consents can be a protracted exercise, and thus grant firms six months (at least) to comply with this new rule.

Q.10 – Do you agree with our proposal? If not, why not?

Yes. The FSA's move to allow firms more flexibility where they can demonstrate that they are performing the reconciliation as often as is reasonably required in all the circumstances is appropriate and welcome. However, we have concerns that a level of judgement is involved, and there is a possibility of divergent views on what may be considered 'adequate to enable compliance with the rules'. In particular we see the possibility of disagreement between the firm and their auditor over the necessary frequency of reconciliations. A firm may argue for infrequent reconciliations, while auditors would argue for more frequent reconciliations. Does the FSA consider that there is a maximum period between reconciliations that could be justified?

Q.11 – Do you agree with our proposal? If not, why not?

We do not see any difficulties with changing the requirement to keep records from three years to five years.

Q.12 – Do you agree with our proposal? If not, why not?

No comment, as none of our members issue depositary receipts.

Q.13 – Do you agree with our proposal? If not, why not?

We do not envisage that this change should be significant.

Chapter 6 – Merging the client money rules

Q.17 – Do you agree with our proposal? If not, why not?

We support the retention of the non-MIFID opt out. We see no need to remove it.

Q.18 – Does your firm make use of the opt-out? If so, could you please explain why you think it should be retained?

Many firms seek to avoid holding client money, but there may be particular circumstances where this is not be possible. In such cases the 'opt out' provides a means of delivering a service to clients at a reasonable cost without incurring the complications of adopting client money requirements in detail.

Q.19 – Do you foresee any difficulty in removing the opt-out provisions in CASS 4, and making available to all firms the full title transfer collateral arrangements contained in CASS 7?

If non-MiFID firms needed to adopt the title transfer collateral arrangements then not only would this be potentially more complicated, but it would also require additional time and effort in 'repapering' agreements. We are not convinced that there would be any benefits from requiring this process. If the non-MiFID opt out is to be removed, we would support some form of grandfathering for existing clients and the application of the title transfer collateral arrangement requirements only to new clients.

Q.20 – Do you agree with our proposal? If not, why not?

We do not see any difficulties with changing the requirement to keep records from three years to five years.

Q.21 – Do you consider there will be any difficulties in applying the MiFID standard to all firms?

The changes proposed will allow firms greater flexibility in their internal arrangements while still requiring them to safeguard and control client money. This seems to be a positive move.

Q.23 – Do you agree with our proposal? If not, why not?

We agree with the increased options for the holding of client money. We are not aware of any problems arising from the MiFID scope firms following the same standards since 1 November 2007.

Q.24 – Do you agree with our proposal? If not, why not?

The use of 'designated client bank accounts' and 'designated client fund accounts' is to control the pooling of losses should the bank fails. We note that the rules around the behaviour of these accounts on a pooling event occurring are now set out in CASS 7A.

The CASS 7 rules allow firms a lot more flexibility in how they set up the various types of client money account. I suspect that this will make little difference to firms in practice.

Q.25 – Do you agree with our proposals? If not, why not?

We agree with the proposal.

Q.26 – Do you use CASS 7.2.2 R to exempt any transactions other than DVP transactions?

No comment.

Q.28 – Do you agree with our proposals? If not, why not?

We see this as introducing a consistency of approach, and do not see that it should disadvantage firms.

Chapter 7 - SUP 3-10 Audit requirements

Q.29 – Do you agree with our proposals? If not, why not?

No comment

Drafting issues

One comment on the text, for your consideration:

- CASS 6.1.16DG twice refers to CASS 6.1.16DR, when it should cross refer to CASS 6.1.16CR