

CSDs: Euroclear UK & Ireland (UK)

Date: 16 Jul 2013

SMI Markets: UK

CMIRR Markets: UK

FCA Consultation Paper on Client Assets Regime

The Financial Conduct Authority (FCA) has launched a consultation on material changes to the rules relating to client money, custody assets and mandates. Consultation Paper CP13/5 includes a series of proposals aiming to address particular risks identified in firms that administer assets and/or hold client money, and clarify existing requirements. It mainly affects firms that are subject to the client assets sourcebook (CASS), but also concerns third party providers who provide back office functions that firms use for their client assets operations and market infrastructure firms, including central counterparties, exchanges and other intermediaries with whom firms may place client assets.

The main proposals are as follows:

Client money distribution regime

The FCA proposes changing the client money distribution regime in a way that enables an insolvency practitioner (IP) of a firm that has begun insolvency proceedings to distribute client money based on the firm's records (rather than agreed claims of clients) thus speeding up the distribution of client money. The speed proposal introduces a two-stage client money distribution process through the formation and distribution of an 'initial' client money pool (CMP1) and a 'residual' client money pool (CMP2). The IP would be required to pool all the money held in client bank accounts or client transaction accounts of the failed firm forming the initial client money pool (CMP1). The firm would then use those updated records to determine each client's entitlement to CMP1. The residual client money pool (CMP2) will include any client money not in client bank accounts or client transaction accounts and any surplus client money from CMP1.

Introducing multiple client money pools

The FCA is proposing the creation of 'sub-pools' of client money that belong to a defined subset of client beneficiaries. This would allow firms that are also clearing member firms that offer net omnibus client transaction accounts at EMIR authorised or recognised central counterparties (CCPs) to operate multiple client money pools in relation to these net omnibus client transaction accounts. In the event of firm failure, client money in such pools can be used to facilitate the porting of client positions.

A firm that chooses to utilise such sub-pools would be required to segregate the proportion of client money margin that it holds in relation to the omnibus client account from any other client money that it holds as well as its own money. The firm would also be required to carry out separate reconciliations and keep separate records in relation to this money. In addition, each client money sub-pool would be required to have its own client money bank accounts and client money belonging to one pool cannot be placed in client money bank accounts belonging to another client money pool.

Client money and custody rules

The FCA proposals affect a wide variety of client money management practices, including reconciliations, delivery versus payment (DVP) exclusions, buffers, unclaimed client money and assets and acknowledgment letters. The proposals aim to clarify and strengthen the client money and custody rules that must be followed by firms that receive or hold money or assets on behalf of clients and reaffirm that firms must assess whether they are providing appropriate protection for clients' money by complying with the mandate rules.

Aligning client money rules to the European Market Infrastructure Regulation (EMIR) Regulatory Technical Standards (RTS)

The RTS require that indirect clients should be included in the transfer of client positions and that clearing members should have in place a credible mechanism for transferring the positions and assets to an alternative client or clearing member as part of the management of the default of the client. The RTS also provide that the clearing member shall ensure that its procedures allow for the prompt liquidation of the assets and positions of indirect clients and the clearing member to pay all monies due to the indirect clients following the default of the client. The FCA proposals intend to accommodate both requirements.

The FCA is accepting comments by the following dates:

- 12 August 2013 – in relation to EMIR RTS proposals (Chapter 8)
- 11 October 2013 – in relation to all other proposals (Chapters 2 to 7, inclusive and 9)

Respondents should use the online response form on the FCA website or write to the address provided in the paper. The final rules are

expected to be published in September 2013, in relation to EMIR RTS proposals, and in the first half of 2014 for all other proposals.

All the information relating to CP13/5, along with the actual paper, can be accessed here: [CP13/5](#)

CSD Risk Impact

Euroclear UK & Ireland (UK)

CSD Rating: AA

CSD Flash Impact: Positive

Impacted Risk Type: Asset Safety Risk

Current Rating = AA

Flash Impact = Positive

The changes proposed by the FCA could result in the faster resolution of insolvency proceedings and the quicker distribution of money to claimants. It could also lead to safer practices in connection with the safekeeping of assets. Consequently, the impact on Asset Safety risk is 'Positive'.

Market Information Impact

UK

This information affects the data contained in the Safekeeping/Post Settlement sections of the Securities Market Information Service.

Infrastructure Risk Ratings Impact

UK

Market Rating: AA-

Market Flash Impact: Positive

The changes proposed by the FCA could result in the faster resolution of insolvency proceedings and the quicker distribution of money to claimants. It could also lead to safer practices in connection with the safekeeping of assets. These developments would have a positive impact from an asset safety perspective.

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