

Ric Wilding
Client Assets Policy, Prudential Banking and Investment Business Policy
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

30 June 2010

Dear Ric,

CP10/9 - Enhancing the Client Assets Sourcebook

On behalf of ILAG, I have pleasure in submitting the following comments on the above consultation.

ILAG is a trade body representing members from the Life Assurance and Wealth Management industries. ILAG members share and develop their practical experiences and expertise, applying this practitioner knowledge to the development of their businesses, both individually and collectively, for the benefit of members and their customers.

Our specific comments in relation to the questions for discussion in the paper are noted below.

If you would wish to discuss our response in more detail we would be happy to do so.

Yours sincerely

Mark Searle
Administration Team

Questions

Q1- Do you agree that existing CASS record-keeping requirements are sufficient? If not, please outline where you consider these could be enhanced.

Yes.

Q2- Do you agree with our proposed glossary definitions regarding prime brokerage as stated above?

Yes.

Q3-Do you agree that we should introduce a requirement that the re-hypothecation clauses be summarised in a separate annex to the PBA and/or other relevant contractual documentation which contains such provisions?

Yes.

Q4- Are there any other transparency and/or disclosure issues we should consider?

No.

Q5-Do you agree that we should introduce a requirement that prime brokers offer daily reporting to all clients?

This proposal seems to owe its origin to one case, the failure of Lehmans. Whilst we do not underestimate the seriousness and significance of Lehmans we think it important that there should not be over-reaction. There does not seem to be convincing evidence that clients have wanted these reports, would make much use of them if they chose to receive them or, that having them, would have significantly reduced the problems caused by Lehman's collapse.

Q6-Do you agree that we should require that the daily report contain at the least, the cash value of the following:

- cash loans and accrued interest;
- securities to be redelivered by the client under open short positions;
- current settlement amount to be paid under any futures contracts;
- collateral held by the firm in respect of securities transactions, including if the firm has exercised a right of use in respect of safe custody assets;
- short sale cash proceeds held by the firm in respect of the short positions;
- cash margin held by the firm in respect of open futures contracts;
- mark-to-market close-out exposure of any OTC transaction secured by safe custody assets or client money;
- total secured obligations;
- all other safe custody investments held for that client;

- **the location of all safe custody assets, including the sub-custodian where the assets are held; and**
- **a list of the institutions at which the firm holds or may hold client money including money held in client bank accounts and client transaction accounts.**

As discussed above, we are not convinced that a good case has been made for a daily report but, even if following consultation, FSA still concludes that a good case has been made the actual list seems very long. We feel that the reports will be costly and time-consuming to produce, and their length will limit their usefulness to their recipients.

Q7-Do you consider that the content of the report provides clients with enough information to manage their exposures?

As discussed above, we feel that the reports as envisaged would contain too much information.

Q8-Do you agree that this report should be made available to clients on a daily basis?

Presumably if there were an obligation to offer daily reports, clients responding affirmatively to the offer would receive daily reports.

Q9-Do you agree that we should impose a 20% maximum limit on intra-group client money deposits in client bank accounts and that we should change existing guidance into a rule? Do you have views on alternative limits?

Again, we feel that the case of Lehmans may have over-influenced FSA's thinking. FSA acknowledges that firms with whom they have already been in discussions forecast that such a limit would entail significant cost increases.

FSA also acknowledges the possibility that the need to find alternative deposit arrangements could involve increased credit risk. Nevertheless FSA put forward a worst-case scenario in which ever increasing deposits are made within a group to shore up rapidly deteriorating financial positions, leading to clients failing to receive the full value of their assets following eventual liquidation.

We wonder how likely this scenario really is. We suggest that such groups are likely to be under close supervision by FSA, and the kind of problems which might cause a group to adopt the course envisaged would have shown up on FSA's radar long before clients' were any kind of threat.

Q10-Will a 20% limit impact on your firm's liquidity. If so, how?

Not applicable to a Trade Body.

Q11- Do you consider it is appropriate to exclude client money held in client transaction accounts?

Yes.

Q12-We also invite your views on amending all the guidance currently contained within CASS 7.4.9G into a rule.

If, despite our recommendations, these proposals are put into effect, we feel that the guidance in CASS 7.4.9 would need to be a Rule otherwise there could be inconsistencies.

Q13-Do you agree that we should introduce a rule prohibiting the use of general liens in custodian agreements and amending existing guidance to clarify our requirements?

Although we feel that the circumstances outlined are unlikely to arise, we do see merit in this proposal.

Q14-Do you think that we should go further and prohibit all liens in custodian agreements?

No.

Q15- Do you foresee any unintended consequences in implementing this proposal?

No, but there could be some technical complications emerging when the details are known.

Q16-Do you agree that we should establish a client asset oversight controlled function?

Whilst there appears to be a trend to create more CFs to cover what should be senior management responsibilities we appreciate that FSA has set out its reasons for proposing a client asset oversight CF, based on its themed review, and has proposed a proportionate approach based on firm size. Within Compliance it should help to achieve more control.

Q17-Do you agree that one person within the firm holding the controlled function should have ultimate oversight and control?

Please see our answer to Q16.

Q18-Do you agree with our stratification of firms as small, medium and large with regard to client money and/or asset holdings? If not, please provide us with your thoughts as to an appropriate method of stratification.

Yes.

Q19-Do you consider an assessment based on the previous calendar year is appropriate? If not, why?

Yes, so long as there is some flexibility to reflect substantial changes from the previous year.

Q20-Do you agree with our proposal for the CMAR?

FSA and HM Treasury have set out their reasons for introducing the CMAR. FSA has estimated fairly low costs in the cost benefit analysis, and it seems a reasonable approach to help resolve the issues they have identified.

As a general point, we would not welcome any move towards a more bureaucratic style form of regulation.

Q21-Would you experience any difficulty in supplying the information requested in the CMAR? If so, please provide us with examples to illustrate

We would like to see some clarification of the information requested in the CMAR. For example, it is not immediately obvious what is meant by Client money which is '*Unallocated to individual clients and unidentified as client money*'.

Q22- Do you consider monthly reporting for large and medium firms and bi-annual reporting for small firms appropriate frequencies?

If CMARs were reintroduced, we think that monthly reporting for large firms would be too frequent; bi-annually for all firms would be more than sufficient and possibly annually might be considered for small firms.

Q23- What are your views on the benefits and costs of the proposed policy measures?

We see few benefits and considerable cost increases arising from the proposed changes.

Ends