



Daniel Rider
Client Assets Policy and Strategy
Financial Services Authority
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28 September 2012

Dear Mr Rider

Consultation Paper 12/15 Client Assets Firm Classification, Oversight, Reporting and the Mandate Rules (the “Consultation”) – Consultation Response

We welcome the opportunity to respond to the above Consultation, and support the FSA’s efforts to provide further guidance on the matters raised in the Consultation, particularly in the area of mandates. Whilst we have considered all of the questions raised in the Consultation, our comments are confined solely to the matters raised in chapter 4 of the Consultation – ‘**Clarifying the scope of the mandate rules**’. With this submission, we highlight certain areas of concern with the proposed mandate rules, where we feel the interests of regulators and industry participants will be assisted by further clarity.

1. Definition of Mandate

In relation to the proposed definition of mandate in CASS 8.2, it is our understanding that a firm’s ‘**ability to control a client’s assets or liabilities**’ would have to meet *all* the conditions in CASS 8.2.1 R (1) to (5) to be deemed a mandate. If the intended meaning of mandate is to encompass all of these conditions, we recommend that the wording of CASS 8.2.1R is amended to clarify this.

With regards to the requirement in CASS 8.2.1 R (2) – **that mandates ‘are obtained by the firm from the client, and with the clients consent’** – we recommend providing further clarity on whether such instructions should be sought from the client directly, or whether a mandate may still exist where instructions are, for example, obtained by a firm from an agent of or custodian for a client.

In relation to CASS 8.2.1R(3), we believe that a better approach would be to describe mandates in relation to the timeframe for which the relevant authority is granted, rather than basing it on how long the firm is required to retain the document evidencing the mandate. For example, CASS 8.2.1R(3) **might read “they authorise the firm to carry out the client’s instructions from time to time or at some future date, rather than authorising the firm to act immediately on specific instructions of the client”**. Otherwise, if record retention requirements are used, we believe this could result in some confusion **between requirements under the mandate rules and firms’ requirements to retain records under Chapter 9 of the FSA’s SYSC handbook**.

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2. Interaction of the Mandate Rules with Exemptions under the CASS Rules

We note that aside from regulated collective investment schemes, the proposed mandate rules do not address other instances where client assets are taken out of the scope of the CASS rules as a result of the firm relying on an exemption.

For example, the current CASS 8.1 rules suggest that, when a deposit taker holds a client's money as a deposit and then relies upon the banking exemption at CASS 7.1.8R to conduct designated investment business for that client, it will ordinarily be relying on mandates in order to control the client's money (in most instances, the mandate will form part of the firm's terms of business in respect of that investment activity). The proposed definition of a mandate at CASS 8.2.1R (4) clarifies that a mandate has to meet the condition that instructions are given 'to another person'. We consider that this will have the effect of taking deposit takers who also carry out designated investment business for clients outside the scope of both the CASS 7 and of CASS 8 rules. If this is indeed the intended outcome, then we suggest that the FSA include guidance to clarify this point. Alternatively, if deposit takers are to continue to be subject to the CASS 8 rules in respect of controlling client's own money that they hold as deposits, then the wording at CASS 8.2.1R (4) will require review.

Other situations where client assets are taken outside the scope of the CASS rules and where we would recommend further clarification include:

- delivery versus payment transactions in CASS 6.1.12 R and 7.2.8 R,
- the temporary handling of safe custody assets under CASS 6.1.15 G and
- title transfer collateral arrangements under CASS 7.2.3 R (1).

3. Third-party Liens

The proposed guidance in CASS 8.2.4 G (1), suggests that a mandate may exist even where the authority granted by the client is subject to restrictions. We recommend that the FSA provide greater clarity in respect of such situations. In particular, we would find it helpful to have clarification on whether or not the mandate rules extend to cover liens over custody assets held by a third party that can only be exercised in the event of a client default.

4. Guidance on Immediate Transactions

The proposed guidance in CASS 8.2.3 G (1) suggests that where a firm receives instructions to effect a transaction immediately, the instruction would only amount to a mandate if the firm retains that information. If the concept of immediacy is retained as part of the definition of a mandate, we recommend **greater clarity on the meaning of what 'immediate' means in this context. We also refer to** our comment in the third paragraph of section 1 above, that we do not believe the length of the record retention requirement is a sound basis for distinguishing whether or not a particular construction from a client constitutes a mandate.



5. Firm-specific Guidance

We are aware that some firms rely on the terms of their agreements with their clients to open accounts and/or place deposits on behalf of their clients and consider this activity to fall within the scope of the CASS 8 rules. Furthermore, it is also our understanding that the FSA has given some firms specific conditions on how these accounts should be operated. We understand that such conditions include:

- the way the account is named;
- the confirmations received from the deposit taker (which falls outside the scope of CASS 7.8.1 notification and acknowledgement of trust); and
- the manner in which the placing of the deposit is communicated to the client.

If such **individual guidance is indicative of the FSA's expectations in regard to an industry**-wide best practice approach to standardising the placement of deposits under CASS 8, we recommend that additional guidance is included within CASS 8 to make clear what is expected of firms operating in this way. It would be helpful to include further guidance on how a mandate in this scenario is distinguished from an authority to take decisions in the course of managing investments.

In conclusion, we are very supportive of the direction taken by the proposed rules and guidance on mandate rules because it represents an important step towards achieving a greater degree of consistency and understanding among firms and their auditors. We have outlined above a number of areas which we suggest the FSA consider which we believe will have significant impact on the extent to **which firms and their auditors understand firms' obligations under the mandate rules.**

We would be pleased to discuss our comments with you. If you would like to do so, please contact Anne Simpson on 0207 804 2093 or Laura Cox on 020 7212 1579.

Yours sincerely

PricewaterhouseCoopers LLP