



THE CITY OF LONDON LAW SOCIETY

4 College Hill
London EC4R 2RB

Telephone 020 7329 2173
Facsimile 020 7329 2190
DX 98936 – Cheapside 2
mail@citysolicitors.org.uk
www.citysolicitors.org.uk

Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
Attention: Emad Aladhal

E-mail: cp10_15@fsa.gov.uk

6 September 2010

Dear Sirs,

Consultation Paper 10/15 – Chapter 8, Client Money and Assets

The CLLS represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients, including multinational companies, financial institutions and Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS Regulatory Committee. Members of the CLLS Regulatory Committee (the "**Committee**") advise a wide range of firms in the financial markets including banks, brokers, investment advisers, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

The Committee welcomes the opportunity to respond to Consultation Paper 10/15 (the "**CP**"). We have confined our responses to those questions relating to the proposed changes in Chapter 8 in respect of Title Transfer Collateral Arrangements ("**TTCA**").

Question 31: do you agree with our proposals to achieve proper protection of retail clients' money by limiting the application of TTCA to non-retail clients?

We are concerned that the inability to engage in TTCA with retail clients will in practice deny retail clients access to products in respect of which TTCA are an integral part (for example, stock lending and repos). Where such products are governed by industry standard terms which provide for TTCA, it is unlikely that firms will modify the products to remove TTCA. Accordingly, the result is likely to be that firms will withdraw these products from retail clients. FSA has not indicated that it has identified any problems with TTCA in respect of these products.

In respect of products which firms currently provide either with client money protections or by using TTCA (e.g. CFD trading), we understand that clients opting for TTCA often benefit from better pricing than those receiving client money protection. Accordingly, FSA needs to have a sound reason to remove this choice from clients. FSA do not appear to have given due consideration to requiring enhanced disclosure of the credit risk that TTCA entail as an alternative to the proposed outright prohibition.

Question 32: are you aware of any other businesses that make use of TTCA for retail clients that have not been considered above?

It is likely that some private banking businesses with retail clients make use of TTCA, for example, in respect of stock lending and repos.

Question 33: would these proposals have any unintended consequences not identified above?

It is not clear to us that FSA has given appropriate consideration to the consequences of applying the TTCA prohibition to CASS 6 as well as CASS 7. We have identified above the problem that the prohibition may cause in respect of stock lending and repos for retail clients. FSA should ensure that appropriate consideration is given to the use of title transfer in respect of assets, for example in the context of securities clearing and settlement.

Finally, we cannot see any basis in the Markets in Financial Instruments Directive ("**MiFID**") to support the proposed prohibition, given that MiFID (in particular, recital 27) does not provide for the availability of title transfer to be restricted in the way currently proposed.

We would be very happy to engage with FSA in respect of any of the above issues.

Yours faithfully,

M. I. Game

Margaret Chamberlain
Chair CLLS Regulatory Law Committee

Members of the Committee:

Chris Bates, Clifford Chance
David Berman, Macfarlanes
Peter Bevan, Linklaters
Patrick Buckingham, Herbert Smith
John Crosthwait
Richard Everett, Lawrence Graham, LLP
Robert Finney, Denton Wilde Sapte
Ben Kingsley, Slaughter and May
Jonathan Herbst, Norton Rose
Mark Kalderon, Freshfields Bruckhaus Deringer
Nicholas Kynoch, Mayer Brown International
Tamasin Little, S J Berwin
Simon Morris, CMS Cameron McKenna
Rob Moulton, Nabarro LLP
Bob Penn, Allen & Overy
James Perry, Ashurst
Richard Stones, Lovells