

Summary of FOA meeting with NCAs re segregation & portability – 24th September 2013

The NCA attendees were as follows:

Helen Boyd - FCA
Barry King - FCA
Heather Pilley - FCA
Emad Aladhal – FCA (CASS team)
Andrea Ferguson – FCA (CASS team)
Ben Mitchell - BoE
Anna Pliquet – Bundesbank (invited by FCA)
Christian Weiss – BaFin (invited by FCA)
Carole Uzan – AMF (invited by FCA)
Pierre Subiger – AMF (invited by FCA)

The main discussion points were as follows:

1. Proposed Implementation Timeline (slide 3)

In response to our proposals, FCA asked for assurance that separation of House and Client positions (primarily moving affiliate business into Client) would take place on a phased basis subject to the dependency that the CCPs offer the necessary account structures (multiple omnibus accounts to support TTCA and CASS client business) to facilitate such separation.

They also asked for more granularity around the technology build timeline thru end 2014 to get a better idea of how the industry envisages interim milestones falling etc.. We also highlighted the challenge of migrating clients from omnibus to ISA across multiple CCPs – as this will inevitably create a need to prioritise certain CMs and clients – we asked how should this be managed?

FCA said that they believe that clients would welcome a staggered receipt of disclosure documentation. So they expect CMs to send out disclosures as and when the CCP is authorised as opposed to sending out 'one info pack'.

Overall, the non-compliance with EMIR is a significant problem for FCA as there's no equivalent to the CFTC no-action letter process but there is clearly an understanding that the industry cannot condense what is 18+ months of IT build into 6 months. They said that they would have to think further about our timeline proposals and discuss with other NCAs.

2. Excess management within an ISA (slide 5)

FCA said that they do not read the ESMA Q&A as limiting excess to only the difference between IM called by the CCP and the IM called by the CM. They would also view a VM credit or option premium receipt as also being 'excess'.

Where a client posts collateral to the CM to cover future IM liabilities, they said that there may be circumstances where this may not be as excess but they clearly hadn't fully considered these scenarios and felt it necessary to review internally. For example, if a client clears thru 5 CCPs and he has three omnibus accounts and two ISAs, the FCA was suggesting that any collateral lodged with the CM should be appropriately 'allocated' according to terms agreed with the client. Some of that 'allocation' would be in respect of the ISA

accounts and so should be viewed as excess.

Re missing CCP cut off times for substitution, the FCA just said that it would be “helpful if the client agreement addresses what happens and sets out the CCP cut-off times”.

3. **Segregation Obligations (slide 5)**

Conflicts with US regulations – FCA said that they would explore this problem further internally but would welcome any feedback from firms who are seeking their own advice on this matter. FIA US are considering whether they should instruct counsel on this issue – to this end, FOA will be speaking to FCA next week on EMIR Disclosures and will raise this with them again.

Position management pre-allocation – FCA said that trades executed on behalf of, for example, a fund manager should be held in an ‘client’ pending or ‘default’ account as opposed to a ‘house’ pending or ‘default’ account before allocation to the end client account. We explained that such trades are the CM’s liability until allocation is complete and that’s why they currently are held in a ‘house’ pending or default account. They agreed to consider this further.

Re opening an ISA in the name of a fund manager with sub-accounts, they said that this would be possible but it would be an omnibus account and could not be an ISA.

4. **Client Disclosures (slide 6)**

Article 39.7 - We explained that FOA, in association with ISDA, is currently working on the development of a standard industry disclosure document for clients around segregation and protections offered - FCA agreed to provide some feedback, where possible, to the FOA on its draft disclosure.

5. **CCP Application Process (slide 6)**

The message back was v clear – do not expect to see any level of transparency from NCAs and /or ESMA around the CCP application process.

6. **Impact of EMIR on CASS/Client Money (slide 7)**

We made limited progress on the CASS/Client Money issues which primarily focused on TTCA and CASS ISAs and how the associated flows should map to the House and Client Money bank accounts. We agreed to hold a separate meeting with the CASS team to discuss these issues in depth. (This was held on 4th October).

7. **ISA Take-Up Assumptions (slide 8)**

At the 5th Sept meeting, the FCA had asked for a more granular picture of ISA take-up assumptions across client types. We explained that, for the reasons outlined on the slide, it was impossible to give the FCA any further colour on the factors underpinning our assumptions included in the 5th Sept presentation.

8. **Information Flow from CCPs**

The FCA made it clear that they and the Bank are putting pressure on the CCPs to provide CMs with all the necessary information they need to meet their obligations under Article 39. They said that other EU NCAs would be doing likewise.