Application of client money standards to TCSPs

This document sets regulatory practices desirable for the protection of client money in TCSPs, in support of the Standard established by the Group of International Finance Centre Supervisors (“GIFCS”).

Key Objective

The key objective of the Standard in respect of client money is to protect customers against loss. This includes protection against claims of creditors of the TCSP in the event of insolvency or any type of failure more generally. Regulation should “ring-fence” client money so as to:

- Prohibit firms from using client money to finance their business;
- Prohibit the use of one customer’s funds to finance another customer; and
- Prevent the application of client money to any debt of the TCSP.

These goals are addressed by requirements for client money to be segregated from the TCSP’s money and for client money to be fully accounted for.

Principal themes of client money regulation

The principal themes of client money regulation can be grouped under the headings of protection provisions and controls and fraud prevention.

- ***Protection provisions – “ring-fencing”:*** Regulations should secure the ring fencing of client money. Regulations should provide that:-
    - Client money is defined;
    - Client money is held in bank accounts which are segregated from the TCSP’s own bank accounts;
    - Client money accounts are clearly labelled as such;
    - Banks which hold client money accounts acknowledge in writing to the TCSP that client money is not an asset of the TCSP and is not subject to claims in the event of insolvency of the TCSP;
    - Where money due to different clients is in the same client money account (a “pooled account”), money due to one customer is not used to finance another customer;
    - Client money accounts do not to become overdrawn[1].

- ***Controls and fraud prevention:*** Regulations should address TCSPs’ controls and monitoring of client money. Regulations should provide that:-
    - Dual signatures / dual control is applied to client money accounts;

[1] This might involve permitting small amounts of non-client money to be held to meet bank charges

- Proper records are kept to show accurately the position of all client money held;
- Client money is accounted for promptly, typically on the day of receipt or the next working day;
- Reconciliation is carried out between the bank balance and the TCSP's records at a specified frequency; and
- Where client money is pooled, the reconciliation must identify how much money stands to the credit of each customer.
- A TCSP has processes in place to ensure openness and transparency relating to the withdrawal of monies from a client money account for or towards payment of fees payable to the TCSP. Terms and conditions between a customer and TCSP should include the basis of calculating the fees or charges payable to the TCSP. Also, client money should not be withdrawn from a client money account unless the precise amount has been agreed with the customer, or a customer has been notified in writing and the customer has not disagreed and an appropriate amount of time has elapsed since the date of delivery of the notification.

Other considerations and safeguards

In addition to the principal themes of client money regulation above, other safeguards include provisions in the event of bank failure and consumer awareness:

- ***Bank failure:*** Regulators should consider:-
  - Whether to restrict the opening of client accounts only to specified banks or types of bank;
  - Provisions governing pooled client money accounts when a bank fails, particularly where a TCSP uses more than one bank for pooled accounts[2]; and
  - Provisions differentiating pooled and un-pooled client money accounts when a bank fails.
- ***Consumer awareness:*** Regulators should consider:-
  - Whether to require TCSPs to inform customers in writing about the regulations governing client money, including, where the client money account earns interest, arrangements in place for the allocation of such interest.

[2] For example regulations might specify that funds in pooled accounts at different banks are treated as a single pool if either bank fails.