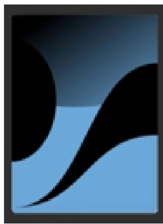

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A joint submission on behalf of Individual Investors from ShareSoc and UKSA

15 January 2021

To The FCA
Via email to GC20-05@fca.org.uk

Consultation on Guidance for insolvency practitioners on how to approach regulated firms

Preamble

Before responding to the specific questions raised in the consultation, we would like to set out our views and experience of the involvement of insolvency practitioners (IPs) in the resolution of FCA regulated firms.

We appreciate the guidance you are now proposing. It recognises that the Special Administration Regime (SAR) is not currently achieving its principal objective of a speedy and efficient return of custody assets, in the event of an insolvency of a custodian. We will therefore make proposals to HM Treasury for a more fundamental reform of the SAR, in line with global best practice, in due course.

Well-constructed guidance for IPs may improve the experience of clients suffering the insolvency of their asset custodian, until more fundamental reform can be undertaken. Hence we support the principle of such guidance.

Specific problems we have identified in the cases of Beaufort Asset Clearing Services, SVS Securities and Reyker Securities include:

- Slow return of assets to clients
- Highly expensive and inefficient administration process, placing a burden on the FSCS
- Unsatisfactory service from new custodians that assets were transferred to

These issues have caused considerable stress for the clients affected.

Response to consultation

Our responses relate solely to Annex 1, as Annex 2 (relating to payments and e-money institutions) falls outside our policy remit and expertise.

Q1 (Chapter 2): we are satisfied and agree with the guidance of chapter 2.

Q2 (Chapter 3):

Paragraph 34, We suggest that "Clients for whom the firm holds client assets should be considered…" be altered to "Clients for whom the firm holds client assets should be included…". It is essential that clients or their representatives are included in the creditors' committee, as the client estate will invariably be substantially larger than the general estate.

Paragraph 41, We suggest that the bullet point referring to "any intelligence or information arising from the insolvency or investigations into directors' conduct that could give rise to harm" should clarify that the FCA should be made aware of risks/harms, that could be prevented or ameliorated by FCA action.

In **paragraph 43**, suggest that the second bullet point should be elaborated, by adding "Options for clients to communicate their questions and concerns to the IP (such as an email address, online resources, telephone number(s) and a postal address) should be clearly highlighted."

Q3 (Chapter 4): The claims process, and its communication to clients, should avoid unnecessarily causing distress, especially for vulnerable clients. In particular, if most clients are unlikely to suffer losses (e.g. as a result of FSCS arrangements) this should be stated and circumstances under which losses may be suffered should be spelt out.

A custodian entering insolvency can be highly traumatic for clients and this trauma should be minimised.

Paragraph 62: We understand that certain subjects and information that may arise during creditors' committee meetings may need to be kept confidential, such as commercially sensitive information or personally identifiable data, but are concerned that too much secrecy can arise from blanket confidentiality restrictions. It would be preferable for specific data/information to be identified to committee members as confidential, rather than constraining their ability entirely to communicate to non-committee members about the administration process.

It is important that client representatives are able to communicate with the clients that they represent.

For example, there has been a great deal of dissatisfaction about the insolvency process in the case of SVS Securities but committee members, who would otherwise be happy to discuss the process (and lessons to be learnt), are prevented from doing so, due to blanket non-disclosure agreements they were required to sign.

Paragraph 73: whilst we agree that client expectations should be managed, asset values upon return may be more, as well as less than book value at the time the firm enters administration. Clients will be more concerned that the quantities of assets returned to them correspond to those they understand are in their accounts at the time the administration begins, rather than that their value will match. Most clients will understand that asset values will depend on market pricing. Suggesting solely that asset values may be less upon actual return will cause unnecessary distress.

Paragraph 81: where clients are likely to be able to claim FSCS compensation to cover shortfalls (especially shortfalls due to insolvency costs), this should be clearly communicated to clients at the time they are advised of such shortfalls, to minimise stress. In the cases identified in the preamble, unnecessary distress was caused, because it was not made clear to clients of the failed firms that most were unlikely to lose assets or money, with shortfalls being covered by the FSCS.

Paragraph 82: Surely the guidance to promptly return post-PPE client money is incompatible with maintaining the taxation status of ISA and SIPP accounts? Is separate guidance required for handling such accounts?

Paragraph 91: a crucial consideration is whether the transferee firm has adequate resources and capability to manage the transferred client accounts, not merely appropriate regulatory permissions. This was a major failing in the SVS Securities Special Administration, where the transferee has proved incapable of meeting reasonable client expectations.

Also if clients have options other than to accept a transfer of their assets to a nominated firm, IPs should make this very clear in their communications. An SVS client mentioned to us:

"I was not aware that I could have asked LC to make a 'reverse transfer' from ITI back to LC before a certain deadline, until the deadline passed and LC sent out an email saying that the deadline had passed and no more reverse transfer could be made. I then read back very carefully at the transfer document and saw that this deadline was buried in a small paragraph as '3 months after asset transfer to the nominated broker'. Also, it's unclear in the document how to then arrange to ask LC to return the assets following a reverse transfer." [LC was the IP in that case]

This issue was also raised to us by other SVS clients dissatisfied with the transfer arrangements.

Paragraph 105: we feel that this guidance should be strengthened and IPs required to take all reasonable steps to ensure that client rights in corporate actions can be exercised, whilst the relevant assets are under the IP's control. Inability to exercise those rights may cause serious detriment to clients.

Q4 (Chapter 5): No comments

Yours sincerely

Mark Bentley	Dean Buckner
Director	Director
ShareSoc	UKSA

Copy to

The Lord Lee of Trafford DL

Appendix

About ShareSoc and UKSA

We write on behalf of ShareSoc and UKSA, both of whom represent the views of individual investors. In addition to our own members, 6 million people own shares or have investment accounts with platforms in the UK. The Office for National Statistics estimates that at the end of 2018 UK-resident individuals held 13.5% of the UK stock market, up by 1.2% from 2016 and moving away from the historical lows of 10.2% in 2008. In 2020, the Financial Times estimated that 15% of the UK stock market is held by individual shareholders. In addition to this there are many more who have money invested in shares via funds,

pensions and savings products such as employee share ownership schemes.
See https://www.sharesoc.org/investor-academy/advanced-topics/uk-stock-market-statistics/

For more information see:

www.sharesoc.org
https://www.uksa.org.uk