THIRD PARTY MANAGED ACCOUNTS GUIDANCE

Effective 30 September 2020

Third Party Managed Accounts Guidance

1. A CLC Practice which has had CLC approval may use a Third Party Managed Account (TPMA) managed by a named TPMA provider as an alternative to a Client Account.

Your responsibilities before entering into arrangements with a TPMA provider

2. As defined in the Glossary of Legal Terms, TPMA means an account

(a) held at a bank or building society in the name of a third party which is a. an authorised payment institution, or

b. a small payment institution that has adopted voluntary safeguarding arrangements to the same level as an authorised payment institution, or
c. an EEA authorised payment institution.

(as each is defined in the Payment Services Regulations) regulated by the Financial Conduct Authority,

(b) in which monies are owned beneficially by the third party, and

(c) which is operated upon terms agreed between the third party, the CLC Practice and the Client as an escrow payment service.

3. As a matter of good practice, the CLC Practice should undertake an assessment of the viability of the business of the TPMA and satisfy itself that there is minimum risk to Client Money and that the Client will be protected in the event that the TPMA closes.

The CLC must approve the use of the TPMA provider

4. An application under paragraph 7.1 of the Accounts Code should be sent to the CLC at monitoring@clc-uk.org with:

(a) the Practice name and licence number
(b) the name of the TPMA provider and its FCA authorisation number, and
c. the date on which it intends to start using the TPMA.

The CLC may request further information under paragraph 7.2 of the Accounts Code.

5. Once approval is granted the CLC Practice does not need further approval where the same TPMA provider is used for another matter or Client. Further approval is required to use another TPMA provider.

6. The CLC Practice should inform the CLC in writing within 14 days after ceasing to use a TPMA provider.

Status of money held in a TPMA

7. Money held in a TPMA is not Client Money as it is not held or received by a CLC Practice and is not subject to the Accounts Code.

8. Using a TPMA does not release the CLC Practice from the requirement to act in the best interests of its Clients, which includes protecting Client Money and assets (Overriding Principle 3, Code of Conduct). The CLC Practice should ensure that the decision to use a TPMA, and the TPMA provider used, is appropriate in the circumstances of each case and does not result in a greater risk to a Client's money. This will include satisfying itself that the TPMA provider has appropriate insurance in place, the terms and conditions of which are not materially prejudicial to Clients.

Client protection and information arrangements

9. In order to demonstrate compliance with paragraph 7.4 of the Accounts Code, before entering an arrangement with a TPMA provider, a CLC practice should take reasonable steps to ensure that the Client understands:

(a) the terms and contractual arrangements relating to the use of the TPMA

(b) their right to terminate the agreement

(c) their right to dispute payment requests made by the CLC Practice

(d) who will be responsible for costs associated with the arrangement

(e) that the TPMA is regulated by the FCA and complaints about the TPMA provider should be made to that provider in accordance with their complaints process, and

(f) that the regulatory protections applying to TPMAs are different to those applying to Client Money held in a Client Account.

10. The CLC Practice should obtain regular statements from the TPMA provider and ensure that these accurately reflect all transactions on the account.

11. Paragraphs 5.9 and 1.4 of the Accounts Code which require the CLC Practice to retain Accounting Records for no less than six (6) years and provide information requested to the CLC will also be deemed to apply to statements received from the TPMA provider.