

# Guidance

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### Third party managed accounts

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Updated 25 November 2019 (Date first published: 6 December 2017)

#### *Status*

This guidance is to help you understand your obligations and how to comply with them. It also sets out how we might exercise our discretion to ask you for an accountants' report. We will have regard to it when exercising our regulatory functions.

#### *Who is this guidance for?*

This guidance is relevant to SRA-authorised firms that are considering using a third-party managed account (TPMA) as an alternative to the use of a client account. A TPMA can also be used alongside an existing client account.

#### *Purpose of this guidance*

This guidance explains:

- what steps you should take when you want to engage a TPMA provider
- the type of TPMA you can use
- what you should do to make sure your client understands how their money is being held
- what you should tell us as your regulator.

#### *Our expectations*

We expect all firms and individuals regulated by us to comply with our standards and regulations when using a TPMA.

Money held in a TPMA does not fall under the definition of client money in the SRA Accounts Rules [<https://www.sra.org.uk/solicitors/standards-regulations/accounts-rules/>] (the Accounts Rules) as it is not held or received by you. As such it does not have to be held in accordance with our rules relating to the holding of client money.

However, rule 11 of the Accounts Rules applies to you if you use a TPMA and you should take appropriate steps to comply with the requirements set

out.

Also, your conduct and how you engage with the client and TPMA provider are subject to other regulatory requirements. Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs

[<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>] and

Paragraph 5.2 of the SRA Code of Conduct for Firms

[<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/>] set out your obligation to protect client money and assets. These remain relevant to funds held in a TPMA. In order to meet these obligations, and Principle 7 - the obligation to act in the best interests of each client, you will need to make sure that the decision to use a TPMA, and the TPMA used, is appropriate in each individual case.

### *Checks you should do before engaging a TPMA provider*

We expect you to make sure that the TPMA provider is regulated by the Financial Conduct Authority (FCA). The TPMA provider must be:

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

You can check the authorisation status of a potential provider by searching the Financial Services Register. [<https://register.fca.org.uk/>]

The TPMA must be an account held at a bank or building society operated as an escrow payment service (the third party receives and disburses money on your and your client's behalf). The monies in the TPMA must be owned beneficially by the third party. You will need to make sure that the use of the TPMA does not result in you receiving or holding the client's money.

### *Engaging with the TPMA provider and client*

You should take appropriate steps to comply with rule 11.1 and 11.2 of the Accounts Rules and make sure that:

- you take reasonable steps, as set out below, to make sure that the client is informed of and understands their rights and obligations and what the use of the TPMA means in their case, including whether they are required to authorise payments, and any charges or fees they are liable to pay
- you obtain regular statements and ensure that these reflect the transactions on the account correctly, and make sure that the funds in the TPMA are only used for their designated purpose

- you maintain an overview of the transactions on the account and keep appropriate records to reflect this.

### *What you need to tell your clients*

To comply with your obligations, you need to make sure that you have taken reasonable steps to ensure that the client understands the arrangement, before the agreement is entered into. They should understand in particular:

- how their money will be held and how the transaction will work (paragraph 8.6 of the SRA Code of Conduct for Solicitors, RELs and RFLs)
- their right to terminate the agreement (rule 11.1(b)(ii) of the Accounts Rules)
- their right to dispute payment requests made by you
- who will be responsible for costs associated with the agreement (rule 11.1(b)(i) of the Accounts Rules)
- that the TPMA is regulated by the FCA and that complaints about the TPMA provider should be made to that provider in accordance with their complaints procedure, and
- that the regulatory protections that apply to TPMAs are different to those that apply to client money held in a firm's client account (paragraph 8.11 of the SRA Code of Conduct for Solicitors, RELs and RFLs).

### *Your systems and procedures*

Paragraph 2.1 of the SRA Code of Conduct for Firms requires you to have in place effective governance structures, arrangements, systems and controls to ensure your business and employees comply with our regulatory arrangements.

You must, therefore, have suitable arrangements in place for the use and monitoring of TPMAs in accordance with our regulatory arrangements. This includes having appropriate internal systems for monitoring the transactions on the account and keeping appropriate records.

### *What you need to tell us*

You do not need our permission to use a TPMA. However, we expect to be notified that you are using a TPMA. You can do this by filling out our TPMA form [[https://www.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/notify-tpma/#Collection\\_2](https://www.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/notify-tpma/#Collection_2)] and emailing it to us [<https://www.sra.org.uk/home/contact-us/>] .

The form asks you to provide the following information:

- the name and SRA number of your firm

- the name of the TPMA provider
- the TPMA provider's FCA authorisation number
- the date on which you plan to start using a TPMA as part of your business.

We will update our records to show that you are using a TPMA. If you use the same TPMA provider for several clients, and/or plan to continue using the same provider with future clients, you only need to inform us the first time you use that TPMA provider.

If you choose to engage more than one TPMA provider, we expect to be notified of all the providers with whom you enter into an arrangement.

If you switch between TPMA providers, or stop using the one you have engaged with, we expect you to inform us, so we can update our records.

### *Further help*

If you require further assistance, please contact the Professional Ethics helpline [<https://www.sra.org.uk/home/contact-us/>] .