

Client money always contentious and JP Morgan fine shows well-resourced FSA.

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Client money will always be a contentious issue due to its preferential status in the event of liquidation and the huge JP Morgan Securities fine shows its importance to the Financial Services Authority, said a lawyer. Pierre Labuschagne, founder of PL International, told *Complinet* that the £33.2m fine levied on JPMSL was "clearly a very high fine and reflects the seriousness of the FSA's asset protection team on client money segregation." Labuschagne had no doubt that other firms would follow the JPMSL story closely. Labuschagne said the case showed that the FSA's asset protection team was becoming increasingly well resourced and it also showed how seriously the FSA was taking the protection of client assets. Although the level of the fine took everyone by surprise, Labuschagne said it was on reflection quite easy to see it coming. The FSA started off this year with a "Dear CEO" letter on client assets. There was then an FSA consultation paper on changes to the client assets sourcebook and an HM Treasury consultation paper on the same subject. One thing that did stand out, however, was that the FSA had been willing to reduce the fine due to JPMSL's cooperation. The firm had notified the FSA once it became aware of the issue, and the FSA had taken this into account when setting the fine. "The significant thing to me is the extent to which cooperation has reduced the fine. The FSA has extended a hand to say 'work with us'," Labuschagne said. Labuschagne said client money had hidden complexities. There were issues over systems and reporting and reconciliation and the alternative method of calculation. "If it were simple there wouldn't be all these rules around it or so much commentary on it," he said. One reason that client assets would always be controversial was that the regulations were designed to protect clients in the event of the insolvency of a broker. Since a client money customer would be deemed a "preferred" creditor, there would always be those wanting to get a larger share of that pot and other unsecured creditors stopping them from getting it. "Like clockwork there will be litigation on the remaining pot of client money in the event of a broker insolvency if client money was not properly segregated," Labuschagne said. He said unsecured creditors would always want to have a bigger share of the assets and protected clients would always want to protect their segregated money. client money," he added. "Each major client asset litigation, there is bound to be litigation around client money". The FSA has now made it abundantly clear that client assets are a major focus for it, and firms should take heed. Labuschagne said: "This is really indicative of the seriousness with which the FSA is taking it, but there has also been an olive branch extended for firms that cooperate."

Author Biography:

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