A low-angle photograph of a modern skyscraper with a glass facade, reflecting the sky and clouds. The building is positioned on the right side of the page, with a dark blue diagonal line running from the top left towards the bottom right, partially obscuring the building.

Guidance on Application of the FCA Consumer Duty to Securities Lending

**C L I F F O R D
C H A N C E**

MAY 2023

1. Purpose of this Guidance

- 1.1 This guidance document (“Guidance”) provides an overview of the scope of application of the FCA’s Consumer Duty rules and guidance, focusing on how these requirements apply in respect of typical agency securities lending scenarios as further described in this Guidance.
- 1.2 This Guidance is intended for use by ISLA members, when assessing whether the Consumer Duty applies to their agency securities lending activities. In particular, the Guidance sets out practical guidance of features and other indicators of the likely application (or non-application) of the Consumer Duty to a particular scenario.
- 1.3 However, ISLA members should note that the application of the FCA’s Consumer Duty rules and guidance is very fact specific and so firms will need to make their own assessments and determinations of whether or not the FCA’s Consumer Duty applies to their agency securities lending activities. This Guidance is not intended to provide legal advice on the application of the Consumer Duty to any specific ISLA member firm’s business, nor does it provide an exhaustive description of the FCA’s Consumer Duty rules and guidance.

2. FCA Consumer Duty Overview

2.1 The FCA Consumer Duty

- 2.1.1 In July 2022, the FCA published final rules and guidance implementing a new Consumer Duty that aims to set higher and clearer standards of consumer protection and improve outcomes for consumers across financial services. The Consumer Duty comprises:
 - (a) a new FCA Principle for Businesses, stating that “a firm must act to deliver good outcomes for retail customers” (the “Consumer Principle”);
 - (b) cross-cutting rules and supporting guidance requiring firms to act good faith toward retail customers, to avoid foreseeable harm to retail customers and to enable and support retail customers to pursue their financial objectives; and
 - (c) detailed rules and guidance relating to four “consumer outcomes”, relating to products and services, price and value, consumer understanding and, consumer support. In summary, these outcomes provide that consumers should get communications they can understand, products and services that meet their needs and offer fair value, and they get the customer support they need, when they need it.

- 2.1.2 The FCA Consumer Duty rules and guidance for firms are set out primarily in new Chapter 2A of the FCA’s Principles for Businesses Sourcebook (“PRIN”) of the FCA Handbook¹. The Consumer Duty rules and guidance are drafted in a product-agnostic way and overlay on top of existing sector-specific rules (such as conduct of business rules set out in the Conduct of Business Sourcebook of the FCA Handbook, COBS). The FCA has also published non-handbook Finalised Guidance on the Consumer Duty (“FG22/5”), providing further guidance for firms on the FCA’s expectations relating to firms’ implementation of the Consumer Duty.
- 2.1.3 The FCA Consumer Duty applies from 31 July 2023 to new products and services and those that remain on sale or open for renewal and applies to closed products from 31 July 2024, though the FCA set out interim deadlines for firms to have agreed and approved implementation plans at board or senior management level by the end of October 2022, and for product manufacturers to have shared relevant information about their implementation of the Consumer Duty with distributors by the end of April 2023.
- 2.1.4 Where firms identify in-scope activities or services, they will then need to focus on ensuring that both the high-level Consumer Duty and more detailed rules and guidance are implemented through systems, controls, policies, procedures and other documentation across all in-scope business and products. The FCA also expects impacted firms to have clear plans for delivering staff training, changing culture and reviewing rewards. In its FCA’s feedback on its review of firms’ implementation plans², the FCA highlighted the need for effective prioritisation of implementation in areas where risk of poor customer outcomes is highest, and the importance of understanding the mindset-shift required by the Consumer Duty to focus on substantive consumer outcomes rather than formulaic compliance.

2.2 Application of the Consumer Duty

- 2.2.1 The Consumer Duty applies to firms that are authorised under Part IV of the Financial Services and Markets Act 2000 (“FSMA”) as well as authorised and registered payment institutions under the Payment Services Regulations 2017 and authorised e-money issuers under the Electronic Money Regulations 2011 (together, “UK-regulated firms”), in relation to their “retail market business”.
- 2.2.2 The application of the Consumer Duty is deliberately broad, and it is intended to capture not only firms that have direct relationships with retail customers but also firms without such a direct relationship if those firms can determine or materially influence retail customer outcomes.

¹ Note that the Consumer Duty also introduces other FCA Handbook amendments, including in the FCA Glossary, other chapters of PRIN and the Code of Conduct sourcebook (“COCON”) of the FCA Handbook.

² Published on 25 January 2023 and available at <https://www.fca.org.uk/publications/multi-firm-reviews/consumer-duty-implementation-plans>.

2.3 Retail Market Business

- 2.3.1 The Consumer Duty applies in relation to a UK-regulated firm’s ‘retail market business’ only³. “Retail market business” refers to regulated activities, payment services and e-money issuing, as well as ancillary activities, of a firm in a distribution chain (including a manufacturer and a distributor) which involves a retail customer.
- 2.3.2 The definition of ‘retail customer’ aligns broadly with the scope of relevant existing regulations in each sector. For securities lending activities, this follows the definition of ‘retail client’ in Chapter 3 of the Conduct of Business sourcebook (‘COBS’) of the FCA Handbook⁴. Clients that have opted up to elective professional client status are not considered ‘retail clients’ for this purpose.
- 2.3.3 PRIN 2A.1.13G to PRIN 2A.1.15G make clear that the retail customer need not be a direct client of the firm for the Consumer Duty to apply. Therefore, even firms that do not have any direct retail clients need to assess whether or not they are carrying on retail market business by virtue of being in a ‘distribution chain’ involving retail customers.
- 2.3.4 PRIN 3.2.7 R indicates a key element of this assessment is whether the firm can determine or materially influence end retail customer outcomes. It provides that: “Where a firm’s retail market business involves operating in a distribution chain, Principle 12 and PRIN 2A apply only to the extent that the person is responsible in the course of that retail market business for determining or materially influencing retail customer outcomes.”
- 2.3.5 This is a factual test and will generally need to be considered on a case-by-case basis in light of the full factual matrix. However, the FCA does provide some guidance for firms when making this assessment, as discussed below.
- 2.3.6 In PRIN 2A.1.13G, the FCA explains that the purpose of this extended application of the Consumer Duty requirements is “to ensure the effectiveness of obligations under Principle 12 which may properly relate to activities which determine or materially influence retail customer outcomes carried out by a firm with whom the retail customer is not in a client relationship”. However, it acknowledges that merely being part of a distribution chain with a retail end customer is not in itself sufficient to trigger application of the Consumer Duty, as “a firm’s role in the distribution chain may mean it is unable to determine or materially influence retail customer outcomes in connection with the product”, in which case it may not be subject to any Consumer Duty obligations.

³ See PRIN 2A.1.3G and PRIN 3.2.6R.
⁴ See definition of “retail client” in the FCA Glossary.

- 2.3.7 In PS22/9, the FCA indicates that products or services that are not designed for retail customers are not in scope of the Consumer Duty where they are “only marketed and approved for distribution to non-retail customers” and are “not provided to another firm under an arrangement between them as part of a distribution chain for a retail product or service”. However, where products or services are provided to a firm who in turn provides products or services to retail customers (or otherwise as part of a distribution chain involving end retail customers), a more detailed assessment is needed.
- 2.3.8 In this context, at paragraph 2.18 FG22/5, the FCA confirms that the usual ‘agent as client’ rule does not apply when assessing application of the Consumer Duty. Accordingly, where a firm provides services to another firm acting as agent for a retail end customer, the firm does need to consider the ability it has to determine or materially influence outcomes for that ‘principal’ retail end customer.
- 2.3.9 The worked examples given in Chapter 2 of FG22/5 indicate that the starting point of this analysis is to focus on the product or service actually provided to retail end customers and work backwards to assess a firm’s role and whether or not it materially influences or determines end retail customer outcomes with respect to the product or service provided to them.
- 2.3.10 The FCA acknowledges there is a spectrum of potential scenarios, and that even where firms conclude the Consumer Duty does apply, the extent of a firm’s responsibilities under the Consumer Duty will depend on its role and the extent of its influence over retail customer outcomes. Here, the FCA indicates a focus on risk of consumer harm as being relevant to this assessment, as paragraph 2.20 FG22/5 states that “if a firm’s actions, or failure to act, carries a direct risk of consumer harm, the Duty would be relevant to more of their actions”. Additional considerations for ‘co-manufacturers’ of products are discussed in section 2.4 below.

2.4 Retail Customer Outcomes

- 2.4.1 The four Consumer Duty retail customer outcomes specified in PRIN 2A.3-6 are:
- (a) **Products and services:** Firms must develop products and services fit for a retail customer’s purpose.
 - (b) **Price and value:** Retail customers must receive products and services of ‘fair value’, reasonably priced compared to the overall benefits received from that product or service.
 - (c) **Consumer understanding:** Firms must provide retail customers information that is clearly presented at the right time so that they can make informed decisions about products or services.
 - (d) **Consumer support:** Firms are expected to provide support to retail customers so that they can benefit from products and services, pursue their financial goals and act in their own interests.

2.5 Manufacturers & Distributors

- 2.5.1 The concept of operating within a ‘distribution chain’ is connected with the definitions of ‘manufacturer’ and ‘distributor’ that apply in the context of the Consumer Duty rules and guidance. In particular:
- (a) a manufacturer is a firm that “creates, develops, designs, issues, manages, operates, carries out, or (for insurance or credit purposes only) underwrites a product”; and
 - (b) a distributor is a firm that “offers, sells, recommends, advises on, arranges, deals, proposes or provides a product”.
- 2.5.2 In PS22/9 and FG22/5, the FCA explains that multiple firms may be involved in the manufacture of a single product, in which case the firms are ‘co-manufacturers’. FG22/5 paragraph 6.10 provides that “A firm would be considered a co-manufacturer where they can determine or materially influence the manufacture of a product or service. This would include a firm that can determine the essential features and main elements of a product or service, including its target market.”

- 2.5.3 The FCA gives the example that “intermediaries may be co manufacturers, for example if they set the parameters of a product and commission other firms to build it”. Similarly, guidance at paragraph 2.13 of FG22/5 indicates that the Consumer Duty will apply to firms that “influence material aspects of or determine the design or operation of retail products or services, including their price and value”. As noted above, the product or service referred to here is that being provided to the end retail customer (though the fact that a firm may design or determine design of only part of the product or service provided to the end retail customer does not preclude application of the Consumer Duty).
- 2.5.4 Specific Consumer Duty rules and guidance apply to firms that are ‘manufacturers’ or ‘distributors’, including requirements on co-manufacturers to enter into a co-manufacturing agreement setting out their respective roles and responsibilities in the product approval process specified in PRIN 2A.3⁵. Manufacturers must also select distribution channels that are appropriate for the target market and provide adequate information to distributors to enable them to understand the product or service and the target market⁶.
- 2.5.5 Where the Consumer Duty does apply to a firm in a distribution chain, the FCA also indicates that “obligations on firms must be interpreted proportionately, in a manner that reflects the firm’s role in the distribution chain and its ability to influence retail customer outcomes.”⁷ Therefore, should any firms conclude they are involved as a co-manufacturer of products or services as part of a distribution chain with the ability to determine or materially influence customer outcomes, they would need to agree with co-manufacturers their respective roles and responsibilities and assess how other Consumer Duty requirements apply proportionately given their particular role and ability to influence retail customer outcomes.

2.6 Territorial Scope

- 2.6.1 In general, the Consumer Duty applies with respect to activities carried on with retail clients located in the UK, unless applicable conduct of business rules (i.e. relevant sections of COBS and the onshored Securities Financing Transactions Regulation) have a broader territorial scope⁸. Therefore, the territorial scope of the FCA Consumer Duty will follow the application of existing UK conduct of business rules to a firm’s securities lending activities.

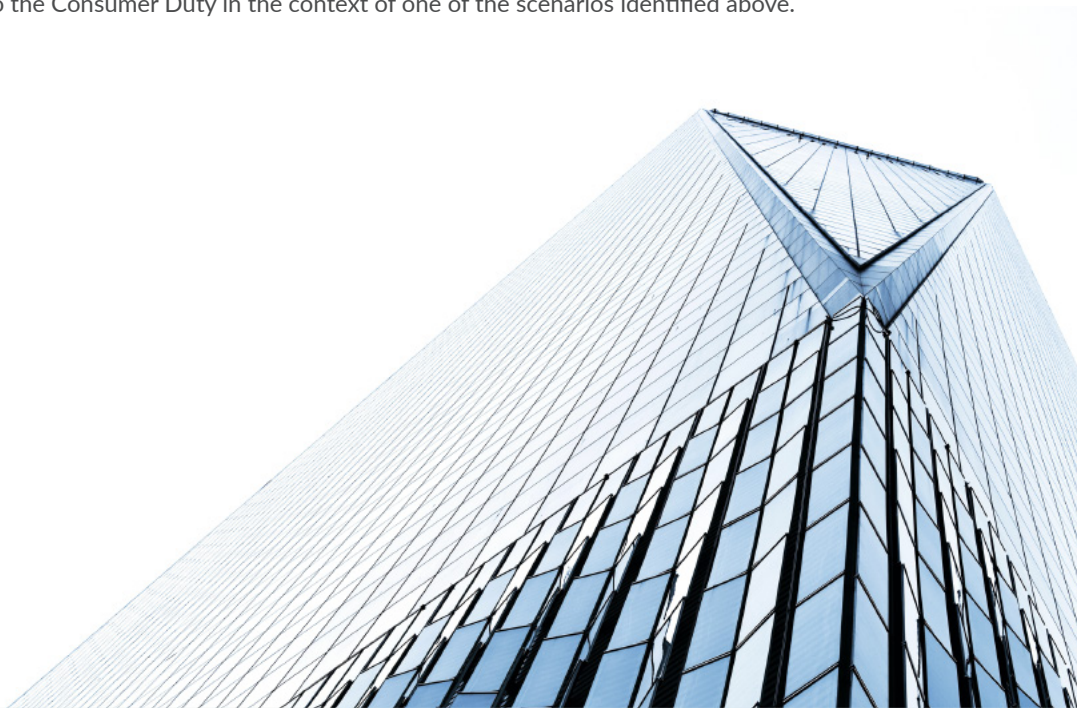
⁵ PRIN 2A.3.11 R
⁶ PRIN 2A.3.12 R
⁷ PRIN 2A.1.14 G
⁸ PRIN 3.3.1 R

3. Practical guidance on application of Consumer Duty

- 3.1 Following discussions with members, this Guidance identifies two broad scenarios where agent lenders may provide agency securities lending and related services in a distribution chain involving end retail customers. These are:
- **Scenario 1:** Client is a fund (or its manager acting on behalf of the fund); and
 - **Scenario 2:** Client is a platform or other regulated entity providing services to underlying retail customers.
- 3.2 Within these two broad scenarios, this Guidance contemplates a variety of structures, including where the agent lender also acts as custodian (or uses a third party custodian). However, this Guidance does not consider the scenario where an agent lender provides services directly to a retail client.
- 3.3 In the context of the scenarios set out above, the key question for UK-regulated firms in assessing the potential application of the Consumer Duty is whether they can “determine or materially influence” retail customer outcomes. This will require a fact-specific analysis and determination by the relevant firm. This section of the Guidance is intended to assist firms in making these determinations by setting out practical guidance of features and other indicators of the likely application (or non-application) of the Consumer Duty on a general basis and in the two scenarios identified above.

3.4 General Considerations & Guidance when Assessing the Scenarios

- 3.4.1 The following general considerations and principles will apply where firms are assessing whether or not they may be subject to the Consumer Duty in the context of one of the scenarios identified above.



3.4.2 **Does the agent lender have decision-making powers or discretions impacting one or more of the four retail customer outcomes?**

As noted above, the starting point is to consider the product or service being provided to end retail customers and whether or not the agent lender has the ability to determine or materially influence those end retail customer outcomes. Turning this round, agent lenders should consider whether their actions, or failure to act, carry a direct risk of consumer harm. This is a practical test based on the firm's actual role and influence in practice, not just what is set out contractually.

FCA guidance indicates that an agent lender would have this sort of decision-making power or discretion bringing it within scope of the Consumer Duty if it had the ability to determine or materially influence:

- the terms of the design or operation of retail products or services, including their price and value, or
- the way in which products are distributed to retail customers.

For example, this could be the case in practice if an agent lender had the power to dictate certain terms of the agreement with end retail customers or pricing offered to end retail customers, if they set the target market for the product and/or if they appointed distributors or platforms to offer agent lending products to retail customers.

Similarly, the FCA indicates that firms would be subject to the Consumer Duty if they prepared or approved communications about the product to be sent to retail customers or engaged in customer support for retail customers.⁹

Where more than one firm may be involved in determining or influencing retail customer outcomes, the FCA indicates that it would generally expect firms with a decision-making role for the relevant outcome to have greatest responsibility.

⁹ See paragraph 2.13 FG22/5



3.4.3 Is the agent lender operating within a mandate determined by another firm in the chain?

Conversely, FCA guidance indicates that a firm would not have ‘material influence’ over retail customer outcomes where they are operating within a mandate determined by another (non-retail) firm in the chain. In FG22/5, the FCA gives the example of a portfolio manager whose role is limited to managing assets under a mandate determined by a professional client (who is an independent third party).

Similarly, if an agent lender provides agent lending or other services to a professional client in accordance with a mandate determined by that professional client, this would tend to show that the agent lender does not have a material influence over end retail customer outcomes. As indicated by the example given in FG22/5 of a portfolio manager carrying out activities under a mandate determined by its professional client, such ‘mandate’ may still grant the agent lender elements of discretion in how it acts in accordance with the parameters and terms of the mandate.

For example, the ‘mandate’ may comprise the authority and instruction given by a professional client to the agent lender to carry out securities lending activities as its agent within the parameters agreed in the relevant securities lending agreement. Typically, these parameters specify the accounts that the agent lender can lend from, the markets and asset types of collateral that can be accepted and the approved counterparties that securities can be lent to. Similarly, a professional client may specify that any cash collateral received as part of a securities lending transaction can be reinvested by the agent lender within the scope of certain parameters set by the client (e.g. the types and credit ratings of the investments that are permitted).

In both of these examples, the agent lender has limited discretion to act within well-defined parameters set by the mandate, similar to the FCA’s example of a portfolio manager acting under a mandate from a professional client given in FG22/5. As such where these parameters are determined or specified by the professional client, this would support a conclusion that the agent lender does not have a material influence over end retail customer outcomes.

However, if the agent lender collaborates with a professional client to design a product that is then provided by the professional client to end retail customers (e.g. if a professional client were to ask the agent lender to assist or advise them in setting appropriate parameters for a specific lending product taking into account the use case for end retail customers), this is less likely to be considered a mandate “determined by” the professional client, as discussed further in the scenarios considered below.

3.5 Scenario 1: Client is a fund (or its manager acting on behalf of the fund)

3.5.1 Scenario 1(a): Retail fund

Under this scenario, the agent lender's client is a fund (or manager acting on behalf of the fund) where the fund's investor base includes UK retail investors. The agent lender acts upon the instructions of the fund or its manager, to employ an agency lending strategy with respect to the fund's assets.

In most cases, we anticipate that the agent lender would be able to conclude it is acting solely under a mandate determined by the fund manager (i.e. a professional client), in which case it should not be considered in scope for the Consumer Duty.

However, if the agent lender went beyond acting in accordance with the mandate determined by its professional client and instead collaborated with the professional client on design of the securities lending product or strategy to be employed (or prepared materials for retail investors on the securities lending product or strategy), it is more likely that the agent lender would be able to determine or materially influence customer outcomes and so that the Consumer Duty would apply.

3.5.2 Scenario 1(b): Pension fund

Under this scenario, the agent lender's client is a pension fund or scheme (or a manager of the pension fund or scheme). The agent lender acts upon the instructions of the pension fund or its manager, to employ an agency lending strategy with respect to the pension fund's assets.

As a preliminary point of analysis, the definition of 'retail customers' for the purpose of the Consumer Duty includes beneficiaries under pension schemes. FCA guidance confirms this includes beneficiaries of occupational pension schemes, as per limb (g) of the 'retail client' definition introduced by PS22/9.¹⁰ Accordingly, an FCA-regulated firm provides services to or creates a product used by pension funds, it is necessary to consider whether the Consumer Duty applies (even if the pension scheme itself is an occupational pension scheme regulated by The Pensions Regulator and not the FCA).

We consider that the same general analysis and tests would therefore apply as for scenario 1(a). In particular, in many cases we expect an agent lender would be able to conclude it is acting solely under a mandate determined by the fund manager (i.e. a professional client), in which case it should not be considered in scope for the Consumer Duty. However, if the agent lender went beyond acting in accordance with the mandate determined by its professional client (as discussed for scenario 1(a) above), it is more likely that the agent lender would be able to determine or materially influence customer outcomes and so that the Consumer Duty would apply.

¹⁰ In December 2022, the FCA consulted on certain further technical clarifications to support this policy intention. This note is therefore drafted upon the basis that beneficiaries of pension schemes should be considered retail clients as a general matter.

3.6 Scenario 2: Client is a retail aggregator platform or other regulated entity providing services to underlying retail customers

Under this scenario, the agent lender's client is a retail aggregator platform or other regulated entity (professional client) that in turn provides regulated financial services to its own underlying retail customers.

In particular, in this scenario the agent lender's professional client holds assets for the underlying retail customers and seeks to use securities lending to generate returns for the underlying retail customers.

Based on discussions with ISLA members, we understand that there is a broad spectrum of factual matrices that may be envisaged, that in turn gives rise to a range of outcomes in terms of the likelihood of triggering application of the Consumer Duty. Therefore, the practical guidance for scenario 2 identifies various practical indicators that would make it more or less likely for the Consumer Duty to apply due to their ability to impact (or lack of impact) on different retail customer outcomes, as set out below.

We note that not all indicators may be relevant to all agent lenders' business models, so firms should identify and consider the factors that are relevant to them in their individual circumstances. Where indicators are not relevant to a firm's business model (e.g. indicators relating to how securities are held by an agent lender, which are not relevant where an agent lender does not act as custodian), they can generally be disregarded.

Based on discussions with ISLA members, we understand that there is a broad spectrum of factual matrices that may be envisaged

3.6.1 Scenario 2: Practical indicators that the Consumer Duty is less likely to apply

The following practical indicators would support an analysis that the agent lender cannot determine or materially influence retail customer outcomes and so the Consumer Duty is less likely to apply.

Practical indicator	Relevant retail customer outcomes and analysis
The agent lender acts purely in accordance with its professional client's instructions or independently determined mandate	<p>Relevant outcomes</p> <ul style="list-style-type: none">• Products and services• Price and value <p>Analysis: if the agent lender is acting solely on the instructions of its professional client, under a mandate independently determined by that professional client, it is less likely to be in scope of the Consumer duty</p>
The agent lender holds securities for its professional client in an account that indicates the securities belong to the professional client (not its underlying retail customers)	<p>Relevant outcomes</p> <ul style="list-style-type: none">• Products and services <p>Analysis: this supports an analysis that the agent lender is providing services (solely) to its professional client, and not to underlying retail customers.</p>
Agent lender does not provide any bespoke features or pricing to the professional client (as compared with its other professional clients seeking to lend their own securities)	<p>Relevant outcomes</p> <ul style="list-style-type: none">• Products and services <p>Analysis: this supports an analysis that the agent lender has not designed or collaborated with its professional client to design or manufacture a retail-specific securities lending offering.</p>

Practical indicator	Relevant retail customer outcomes and analysis
Professional client confirms and agrees that the professional client is acting as principal in connection with any securities lending transactions.	<p>Relevant outcomes</p> <ul style="list-style-type: none">• Products and services <p>Analysis: this supports an analysis that the agent lender is providing services (solely) to its professional client, and not to underlying retail customers.</p>
Professional client indicates that securities lending services will be used by it as a component element of another product or service that the professional client is responsible for designing and providing to end retail clients.	<p>Relevant outcomes</p> <ul style="list-style-type: none">• Products and services• Price and value <p>Analysis: this supports an analysis that the agent lender has not designed or collaborated with its professional client to design or manufacture a retail-specific securities lending offering. Rather, the securities lending is a wholesale product provided to the professional client, which the professional client then uses as part of a service offering or product it independently designs, manufactures and offers to its retail customers.</p>
Agent lender has no visibility of or influence on the products and services professional client provides to its underlying customers. In particular, it <ul style="list-style-type: none">• does not specify any (economic or other) parameters of the professional client's products or services provided to underlying retail clients;• does not draft, review or approve any retail customer-facing terms and conditions or other promotional or explanatory materials provided by the professional client to its underlying retail customers; and• does not know the identity of or have any direct contact with underlying retail customers.	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Products and services• Consumer understanding• Consumer support <p>Analysis: this supports an analysis that the agent lender is providing services (solely) to its professional client, and not to underlying retail customers, and does not otherwise have the ability to influence or determine end retail customer outcomes.</p>

3.6.2 Scenario 2: Practical indicators that the Consumer Duty is more likely to apply

The following practical indicators would support an analysis that the agent lender can determine or materially influence retail customer outcomes and so the Consumer Duty may apply. In some cases, we also identify factors which may mitigate the influence of the relevant indicator on retail customer outcomes or risk of consumer harm arising from the agent lender’s actions or failure to act.

Practical indicator	Relevant retail customer outcomes and analysis
Agent lender holds securities in an account that indicates the securities belong to its professional client’s underlying customers	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Products and services• Price and value <p>Analysis: this may indicate that retail clients are the principal counterparties to securities lending transactions, and/or that risks and returns on securities lending services provided by the agent lender will directly impact retail customer outcomes.</p> <p>Potential mitigating factors against this indicator may include agreeing contractual provisions with the professional client under which the agent lender provides an indemnity against any losses arising from securities lending activity, thereby mitigating potential risks to retail customers of losses or other harm.</p>
Agent lender has designed a bespoke product at the professional client’s request	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Products and services• Price and value <p>Analysis: if the agent lender has designed or collaborated with the professional client on design of the agency lending product to be provided to retail customers, it is likely to be considered a (co-) manufacturer of the product, subject to the Consumer Duty.</p>

Practical indicator	Relevant retail customer outcomes and analysis
Professional client indicates it is “white labelling” the agent lender’s service	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Products and services <p>Analysis: if the agent lender is aware that the professional client is providing its securities lending service to retail customers under a “white labelling” model, it would need to consider carefully whether this is consistent with offering the securities lending service as a non-retail service, or whether it would need to consider retail end customers as a “target market” for this service, in which case the Consumer Duty would apply.</p> <p>Potential mitigating factors against this indicator include a scenario where the professional client indicates it is using the securities lending services as part of a broader “white labelled” product or service offering to retail clients, which is independently designed, manufactured and offered to retail clients by the professional client, using certain wholesale products and services (including securities lending) as elements of the broader “white labelled” product or service.</p>
Agent lender determines the target market of end retail customers to whom the securities lending product may be offered	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Products and services <p>Analysis: as the agent lender would be responsible for determining the target market in this scenario, it would likely be considered a co-manufacturer of the product subject to the Consumer Duty.</p>

Practical indicator	Relevant retail customer outcomes and analysis
Agent lender determines how much the professional client can charge to its underlying retail customers for securities lending, or otherwise sets economic or other parameters of the products and services that the professional client provides to its underlying retail customers	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Price and value• Products and services <p>Analysis: if the agent lender is able to determine economic or other parameters of the product offered to retail customers, it is likely to be considered a co-manufacturer of the product subject to the Consumer Duty.</p>
Agent lender drafts, reviews or approves retail customer-facing terms and conditions or other promotional or explanatory materials provided by the professional client to its underlying retail customers.	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Consumer understanding <p>Analysis: in this case, the agent lender would be able to directly determine or materially influence consumer understanding of the product or service being offered, and so would likely be subject to relevant aspects of the Consumer Duty (depending on the level of its input or influence). For example, an ability to review and comment on draft materials (where the professional client has discretion whether or not to accept such comments) may not be sufficient to trigger application of the Consumer Duty. However, if the agent lender has a greater level of influence or decision-making powers over the customer documentation, this is more likely to trigger application of the Consumer Duty.</p>
Agent lender has direct contact with underlying retail customers.	<p>Relevant outcomes:</p> <ul style="list-style-type: none">• Consumer support• Consumer understanding <p>Analysis: if the agent lender has direct contact with underlying retail customers to provide help or support on agency securities lending aspects of the service provided to the retail customer by the professional client, this would likely be subject to relevant aspects of the Consumer Duty (potentially depending on the level of help or support provided).</p>

About ISLA

The International Securities Lending Association (ISLA) is a leading non-profit industry association, representing the common interests of securities lending and financing market participants across Europe, Middle East and Africa. Its geographically diverse membership of over 190 firms includes institutional investors, asset managers, custodial banks, prime brokers and service providers.

Working closely with the industry, as well as national, regional, and global regulators and policy makers, ISLA advocates for, amongst other things, the importance of securities lending to the broader financial services industry. It supports both the Global Master Securities Lending Agreement (GMSLA) legal framework, including the Title Transfer and Securities Interest over Collateral variants, as well as the periodical enforceability and security enforcement across global jurisdictions.

Through member working groups, industry guidance, consultations and first-class events, ISLA plays a pivotal role in the creation and promotion of market best practices and processes, thought leadership, standards for legal frameworks, and securities lending guides and related documents.

Farrah Mahmood, Director – Regulatory Affairs
E: Farrah.Mahmood@islaemea.org | Tel: +44 (0) 7557 967 567

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Laura Douglas, Senior Associate, Regulatory Specialist
E: Laura.Douglas@CliffordChance.com | T :+44 (0)20 7006 1113



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General Enquiries

6th Floor, 1 George Yard, London, EC3V 9DF | Tel: +44 (0) 203 786 2374 | Email: regtech@islaemea.org | www.islaemea.org