

## Chapter 11

# Debt management client money chapter



## 11.13 Client money distribution in the event of a failure of a firm or approved bank

### Application

- 11.13.1 **R** This section (the *debt management client money distribution rules*) applies to a *CASS debt management firm* that holds *client money* which is subject to the *debt management client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

### Purpose

- 11.13.2 **G** The *debt management client money distribution rules* seek, in the event of the *failure* of a *CASS debt management firm* or of an *approved bank* at which the *CASS debt management firm* holds *client money*, to protect *client money* and to facilitate the timely payment of sums to creditors or the timely return of *client money* to clients.

### Failure of a CASS debt management firm: primary pooling event

- 11.13.3 **R** A *primary pooling event* occurs:
- (1) on the *failure* of a *CASS debt management firm*;
  - (2) on the vesting of assets in a *trustee* in accordance with an '*assets requirement*' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act* where such a *requirement* is imposed in respect of all *client money* held by the *firm*.

### Pooling and distribution after a primary pooling event

- 11.13.4 **R** If a *primary pooling event* occurs, then:
- (1) all *client money*:
    - (a) held in the *CASS debt management firm's client bank accounts*;  
and
    - (b) received by the *CASS debt management firm* on behalf of a *client* but not yet paid into the *firm's client bank accounts*;
 is treated as pooled together to form a notional pool;
  - (2) a *CASS debt management firm* must calculate the amount it should be holding on behalf of each individual client as at the time of the

*primary pooling event* using the method of calculating individual client balance provided for by ■ CASS 11.11.21 R;

- (3) a *CASS debt management firm* must decide whether it is in the best interests of its clients to transfer all its *debt management activity* business to another *CASS debt management firm*.

### **Distribution if client money not transferred to another firm**

- 11.13.5 **R** Where a *primary pooling event* occurs and the *client money* is not transferred to another *firm* in accordance with ■ CASS 11.13.4 R, a *CASS debt management firm* must distribute *client money* comprising the notional pool so that each *client* receives a sum that is rateable to their entitlement to the notional pool calculated in ■ CASS 11.13.4 R (2).

### **Transfer of client money to another firm**

- 11.13.6 **G** If in the event of a *primary pooling event* occurring the *debt management activity* business undertaken by a *CASS debt management firm* ("the transferor") is to be transferred to another *CASS debt management firm* ("the transferee"), then the transferor may also move the *client money* associated with that business to the transferee.

- 11.13.7 **R** The remaining *client money* may be transferred under ■ CASS 11.13.6 G only if it will be held by the transferee in accordance with the *debt management client money chapter*, including the statutory trust in ■ CASS 11.6.1 R.

- 11.13.8 **R** If there is a *shortfall* in the *client money* transferred under ■ CASS 11.13.6 G then the *client money* must be allocated to each of the *clients* for whom the *client money* was held so that each client is allocated a sum which is rateable to that client's *client money* entitlement in accordance with ■ CASS 11.13.4 R (2). This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.

- 11.13.9 **R** The transferee must, within seven *days* after the transfer of *client money* under ■ CASS 11.13.6 G notify *clients* that:

- (1) their *money* has been transferred to the transferee; and
- (2) they have the option of having *client money* returned to them or to their order by the transferee, otherwise the transferee will hold the *client money* for the *clients* and conduct *debt management activities* for those *clients*.

### **Failure of an approved bank: secondary pooling event**

- 11.13.10 **R** A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *CASS debt management firm* holds *client money* in a *client bank account*.

- 11.13.11 **R** (1) Subject to (2), if a *secondary pooling event* occurs as a result of the *failure* of an *approved bank* where one or more *client bank accounts*

are held then in relation to every *client bank account* of the *firm*, the provisions of ■ CASS 11.13.12 R (1), ■ CASS 11.13.12 R (2) and ■ CASS 11.13.12 R (3) will apply.

- (2) ■ CASS 11.13.12 R does not apply if, on the *failure* of the *approved bank*, the *CASS debt management firm* pays to its *clients*, or pays into a *client bank account* at an unaffected *approved bank*, an amount equal to the amount of *client money* that would have been held if a shortfall had not occurred as a result of the *failure*.

11.13.12 **R** Money held in each *client bank account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *client bank accounts*, that has arisen as a result of the *failure* of the *approved bank*, must be borne by all *clients* whose *client money* is held in a *client bank account* of the *firm*, rateably in accordance with their entitlements to the pool;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *CASS debt management firm* must make and retain a record of each *client's* share of the *client money* shortfall at the *failed approved bank* until the *client* is repaid; and
- (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in ■ CASS 11.11.17 R.

11.13.13 **R** The term 'which should have been held' is a reference to the failed *approved bank's* failure to hold the *client money* at the time of the pooling event.

11.13.14 **R** Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with ■ CASS 11.9.11 R (Interest).