

Chapter 13

Claims management: client money

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

Application

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

Purpose

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

Failure of the authorised firm: primary pooling event

- 13.11.3 **R** A *primary pooling event* occurs:
- (1) on the *failure* of the *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*; or
 - (3) on the coming into force of a *requirement* or *requirements* which, either separately or in combination:
 - (a) is or are for all *client money* held by the *firm*; and
 - (b) require the *firm* to take steps to cease holding all *client money*.

Pooling and distribution after a primary pooling event

- 13.11.4 **R** If a *primary pooling event* occurs, then:
- (1) all *client money*:
 - (a) held in the *firm's client bank accounts*; and
 - (b) any *client money* identifiable in any other account held by the *firm* into which *client money* has been received;
 is treated as pooled together to form a notional pool; and

- (2) a *firm* must calculate the amount it should be holding on behalf of each individual *customer* as at the time of the *primary pooling event* using the method of calculating individual *customer* balance provided for by ■ CASS 13.10.13R.

Distribution if client money not transferred to another firm

- 13.11.5** **R** Where a *primary pooling event* occurs and the *client money* pool is not transferred to another *firm* in accordance with ■ CASS 13.11.6R, a *firm* must distribute *client money* comprising the notional pool so that each *client* receives a sum that is rateable to its entitlement to the notional pool calculated in accordance with ■ CASS 13.11.4R(2).

Transfer of client money to another firm

- 13.11.6** **R** If, in the event of a *primary pooling event* occurring, the *regulated claims management activity* business undertaken by a *firm* ("the transferor") is to be transferred to another *firm* ("the transferee"), then the transferor may move the *client money* pool to the transferee.

- 13.11.7** **R** If the transferor decides to move the *client money* pool to the transferee, the transferor must immediately on making the decision, and before the move takes place, notify the *FCA* in writing of:

- (1) the proposed move, including the date of the proposed move if known at the time of the notification; and
- (2) the proposed transferee.

- 13.11.8** **R** The *client money* pool may be transferred under ■ CASS 13.11.6R only if it will be held by the transferee in accordance with ■ CASS 13, including the statutory trust in ■ CASS 13.3.1R.

- 13.11.9** **R** If there is a *shortfall* in the *client money* transferred under ■ CASS 13.11.6R then the *client money* must be allocated to each of the *customers* for whom the *client money* was held so that each client is allocated a sum which is rateable to that *customer's client money* entitlement in accordance with ■ CASS 13.11.4R(2). This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.

- 13.11.10** **R** The transferee must, within seven *days* after the transfer of *client money* under ■ CASS 13.11.6R notify *customers* 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 *customers* and conduct *regulated claims management activities* for those *customers*.

Failure of an approved bank: secondary pooling event

- 13.11.11** **R** A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *firm* holds *client money* in a *client bank account*.
- 13.11.12** **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 13.11.13R(1)**, **■ CASS 13.11.13R(2)** and **■ CASS 13.11.13R(3)** will apply.
 - (2) **■ CASS 13.11.13R** does not apply if, on the *failure* of the *approved bank*, the *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*.
- 13.11.13** **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 *customers* 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 *customer* 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 *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 13.10.9R**.
- 13.11.14** **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.
- 13.11.15** **R** Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with **■ CASS 13.6.10R** (Interest).