

Chapter 5

Client money: insurance distribution activity

5.5 Segregation and the operation of client money accounts

Application

5.5.1 **R** Unless otherwise stated each of the provisions in ■ CASS 5.5 applies to *firms* which are acting in accordance with ■ CASS 5.3 (Statutory trust) or ■ CASS 5.4 (Non-statutory trust).

5.5.2 **G** One purpose of ■ CASS 5.5 is to ensure that, unless otherwise permitted, *client money* is kept separate from the *firm's own money*. Segregation, in the event of a *firm's* failure, is important for the effective operation of the trust that is created to protect *client money*. The aim is to clarify the difference between *client money* and general creditors' entitlements in the event of the *failure* of the *firm*.

Requirement to segregate

5.5.3 **R** A *firm* must, except to the extent permitted by ■ CASS 5.5, hold *client money* separate from the *firm's money*.

Money due to a client from a firm

5.5.4 **R** If a *firm* is liable to pay *money* to a *client*, it must as soon as possible, and no later than one *business day* after the *money* is due and payable:

- (1) pay it into a *client bank account*, in accordance with ■ CASS 5.5.5 R; or
- (2) pay it to, or to the order of, the *client*.

Segregation

5.5.5 **R** A *firm* must segregate *client money* by either:

- (1) paying it as soon as is practicable into a *client bank account*; or
- (2) paying it out in accordance with ■ CASS 5.5.80 R.

5.5.6 **G** The *FCA* expects that in most circumstances it will be practicable for a *firm* to pay *client money* into a *client bank account* by not later than the next *business day* after receipt.

- 5.5.7** **G** Where an insurance transaction involves more than one *firm* acting in a chain such that for example *money* is transferred from a "producing" broker who has received *client money* from a *consumer* to an intermediate broker and thereafter to an *insurance undertaking*, each broker *firm* will owe obligations to its immediate *client* to segregate *client money* which it receives (in this example the producing broker in relation to the *consumer* and the intermediate broker in relation to the producing broker). A *firm* which allows a third party broker to hold or control *client money* will not thereby be relieved of its fiduciary obligations (see ■ CASS 5.5.34 R).
- 5.5.8** **R** A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted at intervals of not more than twenty five *business days* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.
- 5.5.9** **R** A *firm* must not hold *money* other than *client money* in a *client bank account* unless it is:
- (1) a minimum sum required to open the account, or to keep it open; or
 - (2) *money* temporarily in the account in accordance with ■ CASS 5.5.16 R (Withdrawal of commission and mixed remittance); or
 - (3) interest credited to the account which exceeds the amount due to *clients* as interest and has not yet been withdrawn by the *firm*.
- 5.5.10** **R** If it is prudent to do so to ensure that *client money* is protected (and provided that doing so would otherwise be in accordance with ■ CASS 5.5.63 R (1)(b)(ii)), a *firm* may pay into, or maintain in, a *client bank account* money of its own, and that *money* will then become *client money* for the purposes of ■ CASS 5 and the *client money (insurance) distribution rules*.
- 5.5.11** **R** A *firm*, when acting in accordance with ■ CASS 5.3 (statutory trust), must ensure that the total amount of *client money* held for each *client* in any of the *firm's client money bank accounts* is positive and that no payment is made from any such account for the benefit of a *client* unless the *client* has provided the *firm* with cleared funds to enable the payment to be made.
- 5.5.11A** **G** When a *firm* acts in accordance with ■ CASS 5.3 (Statutory trust) it should not make a payment from the *client bank account* unless it is satisfied on reasonable grounds that the *client* has provided it with cleared funds. Accordingly, a *firm* should normally allow a reasonable period of time for cheques to clear. If a withdrawal is made and the *client's* cheque is subsequently dishonoured it will be the *firm's* responsibility to make good the *shortfall* in the account as quickly as possible (and without delay whilst a cheque is re-presented).
- 5.5.12** **R** If *client money* is received by the *firm* in the form of an automated transfer, the *firm* must take reasonable steps to ensure that:

- (1) the *money* is received directly into a *client bank account*; and
- (2) if *money* is received directly into the *firm's* own account, the *money* is transferred into a *client bank account* no later than the next *business day* after receipt.

5.5.13

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A *firm* can hold *client money* in either a *general client bank account* (■ CASS 5.5.38 R) or a *designated client bank account* (■ CASS 5.5.39 R). A *firm* holds all *client money* in *general client bank accounts* for its *clients* as part of a common pool of *money* so those particular *clients* do not have a claim against a specific sum in a specific account; they only have a claim to the *client money* in general. A *firm* holds *client money* in *designated client bank accounts* for those *clients* who requested that their *client money* be part of a specific pool of *money*, so those particular *clients* do have a claim against a specific sum in a specific account; they do not have a claim to the *client money* in general unless a *primary pooling event* occurs. If the *firm* becomes insolvent, and there is (for whatever reason) a *shortfall* in *money* held for a *client* compared with that *client's* entitlements, the available funds will be distributed in accordance with the *client money (insurance) distribution rules*.

Non-statutory trust - segregation of designated investments

5.5.14

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- (1) A *firm* which handles *client money* in accordance with the *rules* for a non-statutory trust in ■ CASS 5.4 may, to the extent it considers appropriate, but subject to (2), satisfy the requirement to segregate *client money* by segregating or arranging for the segregation of *designated investments* with a value at least equivalent to such *money* as would otherwise have been segregated into a *client bank account*.
- (2) A *firm* may not segregate *designated investments* unless it:
 - (a) takes reasonable steps to ensure that any *consumers* whose *client money* interests may be protected by such segregation are aware that the *firm* may operate such an arrangement and have (whether through its *terms of business*, client agreements, or otherwise in writing) an adequate opportunity to give their informed consent;
 - (b) ensures that the terms on which it will segregate *designated investments* include provision for it to take responsibility for meeting any *shortfall* in its *client money* resource which is attributable to falls in the market value of a segregated *investment*;
 - (c) provides in the deed referred to in ■ CASS 5.4.6 R for *designated investments* which it segregates to be held by it on the terms of the non-statutory trust; and
 - (d) takes reasonable steps to ensure that the segregation is at all times in conformity with the range of permitted *investments*, general principles and conditions in ■ CASS 5 Annex 1 R.

5.5.15

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A *firm* which takes advantage of ■ CASS 5.5.14 R will need to consider whether its *permission* should include the *permitted activity of managing investments*. If the *firm* is granted a power to manage with discretion the funds over which it is appointed as trustee under the trust deed required by

■ CASS 5.4 then it will be likely to need a *permission to manage investments*. It is unlikely to need such a permission, however, if it is merely granted a power to invest but the deed stipulates that the funds may only be managed with discretion by another *firm* (which has the necessary *permission*). Such an arrangement would not preclude the *firm* holding *client money* as trustee from appointing another *firm* (or *firms*) as manager and setting an appropriate strategy and overall asset allocation, subject to the limits set out in ■ CASS 5 Ann 1 R. A *firm* may also need to consider whether it needs a *permission* to operate a *collective investment scheme* if any of its *clients* are to participate in the income or gains arising from the acquisition or disposal of *designated investments*.

Withdrawal of commission and mixed remittance

5.5.16

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- (1) A *firm* may draw down *commission* from the *client bank account* if:
 - (a) it has received the *premium* from the *client* (or from a third party *premium* finance provider on the *client's* behalf); and
 - (b) this is consistent with the *firm's terms of business* which it maintains with the relevant *client* and the *insurance undertaking* to whom the *premium* will become payable;

and the *firm* may draw down *commission* before payment of the *premium* to the *insurance undertaking*, provided that the conditions in (a) and (b) are satisfied.
- (2) If a *firm* receives a *mixed remittance* (that is part *client money* and part other *money*), it must:
 - (a) pay the full sum into a *client bank account* in accordance with ■ CASS 5.5.5 R; and
 - (b) pay the *money* that is not *client money* out of the *client bank account* as soon as reasonably practicable and in any event by not later than twenty-five *business days* after the day on which the remittance is cleared (or, if earlier, when the *firm* performs the *client money* calculation in accordance with ■ CASS 5.5.63 R (1)).

5.5.17

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- (1) As soon as *commission* becomes due to the *firm* (in accordance with ■ CASS 5.5.16 R (1)) it must be treated as a remittance which must be withdrawn in accordance with ■ CASS 5.5.16 R (2). The procedure required by ■ CASS 5.5.16 R will also apply where *money* is due and payable to the *firm* in respect of *fees* due from *clients* (whether to the *firm* or other professionals).
- (2) *Firms* are reminded that *money* received in accordance with ■ CASS 5.2 must not, except where a *firm* and an *insurance undertaking* have (in accordance with ■ CASS 5.1.5A R) agreed otherwise, be kept in a *client bank account*. *Client money* received from a third-party *premium* finance provider should, however, be segregated into a *client bank account*.
- (3) Where a *client* makes payments of *premium* to a *firm* in instalments, ■ CASS 5.5.16 R (1) applies in relation to each instalment.
- (4) If a *firm* is unable to match a remittance with a transaction it may be unable to immediately determine whether the payment comprises a *mixed remittance* or is *client money*. In such cases the remittance

should be treated as *client money* while the *firm* takes steps to match the remittance to a transaction as soon as possible.

Appointed representatives, field representatives and other agents

- 5.5.18 **R**
- (1) Subject to (4), a *firm* must in relation to each of its *appointed representatives, field representatives* and other agents comply with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R (Immediate segregation) or with ■ CASS 5.5.23 R (Periodic segregation and reconciliation).
 - (2) A *firm* must in relation to each *representative* or other agent keep a record of whether it is complying with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R or with ■ CASS 5.5.23 R.
 - (3) A *firm* is, but without affecting the application of ■ CASS 5.5.19 R to ■ CASS 5.5.23 R, to be treated as the recipient of *client money* which is received by any of its *appointed representatives, field representatives* or other agents.
 - (4) Paragraphs (1) to (3) do not apply in relation to an *appointed representative, field representative* or other agent to which (if it were a *firm*) ■ CASS 5.1.4AR (1) or ■ CASS 5.1.4AR (2) would apply, but subject to the *representative* or agent maintaining an account which satisfies the requirements of ■ CASS 5.5.49 R to the extent that the *representative* or agent will hold *client money* on trust or otherwise on behalf of its *clients*.

Immediate segregation

- 5.5.19 **R**
- A *firm* must establish and maintain procedures to ensure that *client money* received by its *appointed representatives, field representatives, or other agents* of the *firm* is:
- (1) paid into a *client bank account* of the *firm* in accordance with ■ CASS 5.5.5 R; or
 - (2) forwarded to the *firm*, or in the case of a *field representative* forwarded to a specified business address of the *firm*, so as to ensure that the *money* arrives at the specified business address by the close of the third *business day*.

- 5.5.20 **G**
- For the purposes of ■ CASS 5.5.19 R, the *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* no later than the next *business day* after receipt (*business day* two) in order for it to reach that *firm* or specified business address by the close of the third *business day*. Procedures requiring the *client money* to be sent to the *firm* or the specified business address of the *firm* by first class post no later than the next *business day* after receipt would meet the requirements of ■ CASS 5.5.19 R.

- 5.5.21 **R**
- If *client money* is received in accordance with ■ CASS 5.5.19 R, the *firm* must ensure that its *appointed representatives, field representatives* or other agents keep *client money* (whether in the form of *premiums, claims money* or *premium refunds*) separately identifiable from any other *money* (including

that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.

5.5.22 G A *firm* which acts in accordance with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R need not comply with ■ CASS 5.5.23 R.

Periodic segregation and reconciliation

5.5.23 R

- (1) A *firm* must, on a regular basis, and at reasonable intervals, ensure that it holds in its *client bank account* an amount which (in addition to any other amount which it is required by these *rules* to hold) is not less than the amount which it reasonably estimates to be the aggregate of the amounts held at any time by its *appointed representatives*, *field representatives*, and other agents.
- (2) A *firm* must, not later than ten *business days* following the expiry of each period in (1):
 - (a) carry out, in relation to each such *representative* or agent, a reconciliation of the amount paid by the *firm* into its *client bank account* with the amount of *client money* actually received and held by the *representative* or other agent; and
 - (b) make a corresponding payment into, or withdrawal from, the account.

5.5.24 G

- (1) ■ CASS 5.5.23 R allows a *firm* with *appointed representatives*, *field representatives* and other agents to avoid the need for the *representative* to forward *client money* on a daily basis but instead requires a *firm* to segregate into its *client money bank account* amounts which it reasonably estimates to be sufficient to cover the amount of *client money* which the *firm* expects its *representatives* or agents to receive and hold over a given period. At the expiry of each such period, the *firm* must obtain information about the actual amount of *client money* received and held by its *representatives* so that it can reconcile the amount of *client money* it has segregated with the amounts actually received and held by its *representatives* and agents. The frequency at which this reconciliation is to be performed is not prescribed but it must be at regular and reasonable intervals having regard to the nature and frequency of the *insurance business* carried on by its *representatives* and agents. For example, a period of six *months* might be appropriate for a *representative* which conducts business involving the receipt of *premiums* only infrequently whilst for other *representatives* a periodic reconciliation at *monthly* intervals (or less) may be appropriate.
- (2) Where a *firm* operates on the basis of ■ CASS 5.5.23 R, the *money* which is segregated into its *client bank account* is *client money* and will be available to meet any obligations owed to the *clients* of its *representatives* who for this purpose are treated as the *firm's clients*.

5.5.25 G A *firm* which acts in accordance with ■ CASS 5.5.23 R need not comply with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R.

Client entitlements

- 5.5.26 **R** A *firm* must take reasonable steps to ensure that it is notified promptly of any receipt of *client money* in the form of *client* entitlements.

- 5.5.27 **G** The 'entitlements' mentioned in **■** CASS 5.5.26 R refer to any kind of miscellaneous payment which the *firm* receives on behalf of a *client* and which are due to be paid to the *client*.

- 5.5.28 **R** When a *firm* receives a *client* entitlement on behalf of a *client*, it must pay any part of it which is *client money*:
 - (1) for *client* entitlements received in the *United Kingdom*, into a *client bank account* in accordance with **■** CASS 5.5.5 R; or
 - (2) for *client* entitlements received outside the *United Kingdom*, into any bank account operated by the *firm*, provided that such *client money* is:
 - (a) paid to, or in accordance with, the instructions of the *client* concerned; or
 - (b) paid into a *client bank account* in accordance with **■** CASS 5.5.5 R (1), as soon as possible but no later than five *business days* after the *firm* is notified of its receipt.

- 5.5.29 **R** A *firm* must take reasonable steps to ensure that a *client* entitlement which is *client money* is allocated within a reasonable period of time after notification of receipt.

Interest and investment returns

- 5.5.30 **R**
 - (1) In relation to *consumers*, a *firm* must, subject to (2), take reasonable steps to ensure that its *terms of business* or other client agreements adequately explain, and where necessary obtain a *client's* informed consent to, the treatment of interest and, if applicable, investment returns, derived from its holding of *client money* and any segregated *designated investments*.
 - (2) In respect of interest earned on *client bank* accounts, (1) does not apply if a *firm* has reasonable ground to be satisfied that in relation to *insurance distribution activities* carried on with or for a *consumer* the amount of interest earned will be not more than £20 per transaction.

- 5.5.31 **G** If no interest is payable to a *consumer*, that fact should be separately identified in the *firm's* client agreement or *terms of business*.

- 5.5.32 **G** If a *firm* outlines its *policy* on its payment of interest, it need not necessarily disclose the actual rates prevailing at any particular time; the *firm* should disclose the terms, for example, the relevant reference rate plus or minus 'x' percentage points.

Transfer of client money to a third party

5.5.33 **G** ■ CASS 5.5.34 R sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to another broker for the purposes of the *client's* transaction being effected. A *firm* can only discharge itself from its fiduciary duty by acting in accordance with, and in the circumstances permitted by, ■ CASS 5.5.80 R.

5.5.34 **R** A *firm* may allow another *person*, such as another broker to hold or control *client money*, but only if:

- (1) the *firm* transfers the *client money* for the purpose of a transaction for a *client* through or with that *person*; and
- (2) in the case of a *consumer*, that *customer* has been notified (whether through a client agreement, *terms of business*, or otherwise in writing) that the *client money* may be transferred to another *person*.

5.5.35 **G** In relation to the notification required by ■ CASS 5.5.34 R (2), there is no need for a *firm* to make a separate disclosure in relation to each transfer made.

5.5.36 **G** A *firm* should not hold excess *client money* with another broker. It should be held in a *client bank account*.

Client bank accounts

5.5.37 **G** The FCA generally requires a *firm* to place *client money* in a *client bank account* with an *approved bank*. However, a *firm* which is an *approved bank* must not (subject to ■ CASS 5.1.1 R (2)(e)) hold *client money* in an account with itself.

5.5.38 **R**

- (1) A *firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.
- (2) If the *firm* is a bank, it must not hold *client money* in an account with itself.

5.5.39 **R** A *firm* may open one or more *client bank accounts* in the form of a *designated client bank account*. Characteristics of these accounts are that:

- (1) the account holds *money* of one or more *clients*;
- (2) the account includes in its title the word 'designated';
- (3) the *clients* whose *money* is in the account have each consented in writing to the use of the bank with which the *client money* is to be held; and
- (4) in the event of the *failure* of that bank, the account is not pooled with any other type of account unless a *primary pooling event* occurs.

5.5.40

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- (1) A *firm* may operate as many *client* accounts as it wishes.
- (2) A *firm* is not obliged to offer its *clients* the facility of a *designated client bank account*.
- (3) Where a *firm* holds *money* in a *designated client bank account*, the effect upon either:
 - (a) the *failure* of a bank where any other *client bank account* is held; or
 - (b) the *failure* of a third party to whom *money* has been transferred out of any other *client bank account* in accordance with
 - CASS 5.5.34 R;
 (each of which is a *secondary pooling event*) is that *money* held in the *designated client bank account* is not pooled with *money* held in any other account. Accordingly *clients* whose *money* is held in a *designated client bank account* will not share in any *shortfall* resulting from a *failure* of the type described in (a) or (b).
- (4) Where a *firm* holds *client money* in a *designated client bank account*, the effect upon the failure of the *firm* (which is a *primary pooling event*) is that *money* held in the *designated client bank account* is pooled with *money* in every other *client bank account* of the *firm*. Accordingly, *clients* whose *money* is held in a *designated client bank account* will share in any *shortfall* resulting from a *failure* of the *firm*.

5.5.41

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A *firm* may hold *client money* with a bank that is not an *approved bank* if all the following conditions are met:

- (1) the *client money* relates to one or more insurance transactions which are subject to the law or market practice of a jurisdiction outside the *United Kingdom*;
- (2) because of the applicable law or market practice of that overseas jurisdiction, it is not possible to hold the *client money* in a *client bank account* with an *approved bank*;
- (3) the *firm* holds the *money* with such a bank for no longer than is necessary to effect the transactions;
- (4) the *firm* notifies each relevant *client* and has, in relation to a *consumer*, a *client agreement*, or *terms of business* which adequately explain that:
 - (a) *client money* will not be held with an *approved bank*;
 - (b) in such circumstances, the legal and regulatory regime applying to the bank with which the *client money* is held will be different from that of the *United Kingdom* and, in the event of a *failure* of the bank, the *client money* may be treated differently from the treatment which would apply if the *client money* were held by an *approved bank* in the *United Kingdom*; and
 - (c) if it is the case, the particular bank has not accepted that it has no right of set-off or counterclaim against *money* held in a *client bank account*, in respect of any sum owed on any other account

of the *firm*, notwithstanding the *firm's* request to the bank as required by ■ CASS 5.5.49 R; and

(5) the *client money* is held in a designated bank account.

A firm's selection of a bank

5.5.42 **G** A *firm* owes a duty of care to a *client* when it decides where to place *client money*. The review required by ■ CASS 5.5.43 R is intended to ensure that the risks inherent in placing *client money* with a bank are minimised or appropriately diversified by requiring a *firm* to consider carefully the bank or banks with which it chooses to place *client money*. For example, a *firm* which is likely only to hold relatively modest amounts of *client money* will be likely to be able to satisfy this requirement if it selects an *authorised* UK clearing bank.

5.5.43 **R** Before a *firm* opens a *client bank account* and as often as is appropriate on a continuing basis (and no less than once in each financial year), it must take reasonable steps to establish that the bank is appropriate for that purpose.

5.5.44 **G** A *firm* should consider diversifying placements of *client money* with more than one bank where the amounts are, for example, of sufficient size to warrant such diversification.

5.5.45 **G** When considering where to place *client money* and to determine the frequency of the appropriateness test under ■ CASS 5.5.43 R, a *firm* should consider taking into account, together with any other relevant matters:

- (1) the capital of the bank;
- (2) the amount of *client money* placed, as a proportion of the bank's capital and *deposits*;
- (3) the credit rating of the bank (if available); and
- (4) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the bank and its *affiliated companies*.

5.5.46 **G** A *firm* will be expected to perform due diligence when opening a *client bank account* with a bank that is authorised in the *United Kingdom*. Any continuing assessment of that bank may be restricted to verification that it remains authorised in the *United Kingdom*.

Group banks

5.5.47 **R** Subject to ■ CASS 5.5.41 R, a *firm* that holds or intends to hold *client money* with a bank which is in the same *group* as the *firm* must:

- (1) undertake a continuous review in relation to that bank which is at least as rigorous as the review of any bank which is not in the same *group*, in order to ensure that the decision to use a *group* bank is appropriate for the *client*;

- 5.5.48** **R** If a *client* has notified a *firm* in writing that he does not wish his *money* to be held with a bank in the same *group* as the *firm*, the *firm* must either:
- (1) place that *client money* in a *client bank account* with another bank in accordance with **■ CASS 5.5.38 R**; or
 - (2) return that *client money* to, or pay it to the order of, the *client*.

Notification and acknowledgement of trust (banks)

- 5.5.49** **R** When a *firm* opens a *client bank account*, the *firm* must give or have given written notice to the bank requesting the bank to acknowledge to it in writing:
- (1) that all *money* standing to the credit of the account is held by the *firm* as trustee (or if relevant in Scotland, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against *money* in that account in respect of any sum owed to it on any other account of the *firm*; and
 - (2) that the title of the account sufficiently distinguishes that account from any account containing *money* that belongs to the *firm*, and is in the form requested by the *firm*.

- 5.5.50** **R** In the case of a *client bank account* in the *United Kingdom*, if the bank does not provide the acknowledgement referred to in **■ CASS 5.5.49 R** within 20 *business days* after the *firm* dispatched the notice, the *firm* must withdraw all *money* standing to the credit of the account and deposit it in a *client bank account* with another bank as soon as possible.

- 5.5.51** **R** In the case of a *client bank account* outside the *United Kingdom*, if the bank does not provide the acknowledgement referred to in **■ CASS 5.5.49 R** within 20 *business days* after the *firm* dispatched the notice, the *firm* must notify the *client* of this fact as set out in **■ CASS 5.5.53 R**.

- 5.5.52** **G** *Firms* are reminded of the provisions of **■ CASS 5.5.41 R (4)**, which sets out the notification and consents required when using a bank that is not an *approved bank*.

Notification to clients: use of an approved bank outside the United Kingdom

5.5.53 **R** A firm must not hold, for a consumer, client money in a client bank account outside the United Kingdom, unless the firm has previously disclosed to the consumer (whether in its terms of business, client agreement or otherwise in writing):

- (1) that his money may be deposited in a client bank account outside the United Kingdom but that the client may notify the firm that he does not wish his money to be held in a particular jurisdiction;
- (2) that in such circumstances, the legal and regulatory regime applying to the approved bank will be different from that of the United Kingdom and, in the event of a failure of the bank, his money may be treated in a different manner from that which would apply if the client money were held by a bank in the United Kingdom; and
- (3) if it is the case, that a particular bank has not accepted that it has no right of set-off or counterclaim against money held in a client bank account in respect of any sum owed on any other account of the firm, notwithstanding the firm's request to the bank as required by **■ CASS 5.5.49 R**.

5.5.54 **G** There is no need for a firm to make a separate disclosure under **■ CASS 5.5.53 R (1)** and **■ CASS 5.5.53 R (2)** in relation to each jurisdiction.

5.5.55 **G** Firms are reminded of the provisions of **■ CASS 5.5.41 R (4)**, which sets out the notification and consents required when using a bank that is not an approved bank.

5.5.56 **R** If a client has notified a firm in writing before entering into a transaction that client money is not to be held in a particular jurisdiction, the firm must either:

- (1) hold the client money in a client bank account in a jurisdiction to which the client has not objected; or
- (2) return the client money to, or to the order of, the client.

5.5.57 **G** Firms are reminded of the provisions of **■ CASS 5.5.41 R (4)**, which sets out the notification and consents required when using a bank that is not an approved bank.

Notification to consumers: use of broker or settlement agent outside the United Kingdom

5.5.58 **R** A firm must not undertake any transaction for a consumer that involves client money being passed to another broker or settlement agent located in a jurisdiction outside the United Kingdom, unless the firm has previously disclosed to the consumer (whether in its terms of business, client agreement or otherwise in writing):

- (1) that his *client money* may be passed to a *person* outside the *United Kingdom* but the *client* may notify the *firm* that he does not wish his *money* to be passed to a *person* in a particular jurisdiction; and
- (2) that, in such circumstances, the legal and regulatory regime applying to the broker or *settlement agent* will be different from that of the *United Kingdom* and, in the event of a *failure* of the broker or *settlement agent*, this *money* may be treated in a different manner from that which would apply if the *money* were held by a broker or *settlement agent* in the *United Kingdom*.

5.5.59 **G** There is no need for a *firm* to make a separate disclosure under ■ CASS 5.5.58 R in relation to each jurisdiction.

5.5.60 **R** If a *client* has notified a *firm* before entering into a transaction that he does not wish his *money* to be passed to another broker or *settlement agent* located in a particular jurisdiction, the *firm* must either:

- (1) hold the *client money* in a *client bank account* in the *United Kingdom* or a jurisdiction to which the *money* has not objected and pay its own *money* to the *firm's* own account with the broker, agent or counterparty; or
- (2) return the *money* to, or to the order of, the *client*.

Notification to the FCA: failure of a bank, broker or settlement agent

5.5.61 **R** On the *failure* of a third party with which *client money* is held, a *firm* must notify the *FCA*:

- (1) as soon as it becomes aware, of the *failure* of any bank, other broker or *settlement agent* or other entity with which it has placed, or to which it has passed, *client money*; and
- (2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

Client money calculation and reconciliation

5.5.62 **G**

- (1) In order that a *firm* may check that it has sufficient *money* segregated in its *client bank account* (and held by third parties) to meet its obligations to *clients* it is required periodically to calculate the amount which should be segregated (the *client money* requirement) and to compare this with the amount shown as its *client money* resource. This calculation is, in the first instance, based upon the *firm's* accounting records and is followed by a reconciliation with its banking records. A *firm* is required to make a payment into the *client bank account* if there is a *shortfall* or to remove any *money* which is not required to meet the *firm's* obligations.
- (2) For the purpose of calculating its *client money* requirement two alternative calculation methods are permitted, but a *firm* must use the same method in relation to ■ CASS 5.3 and ■ CASS 5.4. The first

refers to individual *client* cash balances; the second to aggregate amounts of *client money* recorded on a *firm* business ledgers.

5.5.63

R

- (1) A *firm* must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 *business days*:
 - (a) check whether its *client money* resource, as determined by ■ CASS 5.5.65 R on the previous *business day*, was at least equal to the *client money* requirement, as determined by ■ CASS 5.5.66 R or ■ CASS 5.5.68 R, as at the close of business on that day; and
 - (b) ensure that:
 - (i) any *shortfall* is paid into a *client bank account* by the close of business on the day the calculation is performed; or
 - (ii) any excess is withdrawn within the same time period unless ■ CASS 5.5.9 R or ■ CASS 5.5.10 R applies to the extent that the *firm* is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and
 - (c) include in any calculation of its *client money* requirement (whether calculated in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R) any amounts attributable to *client money* received by its *appointed representatives*, *field representatives* or other agents and which, as at the date of calculation, it is required to segregate in accordance with ■ CASS 5.5.19 R.
- (2) A *firm* must within ten *business days* of the calculation in (a) reconcile the balance on each *client bank account* as recorded by the *firm* with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.
- (3) When any discrepancy arises as a result of the reconciliation carried out in (2), the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the *firm*.
- (4) While a *firm* is unable to resolve a difference arising from a reconciliation, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and either pay its own *money* into a relevant account or make a withdrawal of any excess.

5.5.64

R

A *firm* must keep a record of whether it calculates its *client money* requirement in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R and may only use one method during each annual accounting period (which method must be the same in relation to both ■ CASS 5.3 and ■ CASS 5.4).

Client money resource

5.5.65

R

The *client money resource*, for the purposes of ■ CASS 5.5.63 R (1)(a), is:

- (1) the aggregate of the balances on the *firm's client money bank accounts*, as at the close of business on the previous *business day* and, if held in accordance with ■ CASS 5.4, *designated investments* (valued on a prudent and consistent basis) together with *client money* held by a third party in accordance with ■ CASS 5.5.34 R; and
- (2) (but only if the *firm* is comparing the *client money resource* with its *client's money* (accruals) requirement in accordance with ■ CASS 5.5.68 R) to the extent that *client money* is held in accordance with ■ CASS 5.3 (statutory trust), insurance debtors (which in this case cannot include pre-funded items); and
- (3) (but only if the *firm* is comparing the *client money resource* with its *client's money* (accruals) requirement in accordance with ■ CASS 5.5.68 R) to the extent that *client money* is held in accordance with ■ CASS 5.4 (non-statutory trust):
 - (a) all insurance debtors (including pre-funded items whether in respect of advance *premiums*, claims, *premium* refunds or otherwise) shown in the *firm's* business ledgers as amounts due from *clients*, *insurance undertakings* and other *persons*, such debts valued on a prudent and consistent basis to the extent required to meet any shortfall of the *client money resource* compared with the *firm's client money* requirement; and
 - (b) the amount of any letter of credit or unconditional guarantee provided by an *approved bank* and held on the terms of the trust (or, in Scotland, agency), limited to:
 - (i) the maximum sum payable by the *approved bank* under the letter of credit or guarantee; or
 - (ii) if less, the amount which would, apart from the benefit of the letter of credit or guarantee, be the *shortfall* of the *client money resource* compared with the *client money* requirement under ■ CASS 5.5.66 R or ■ CASS 5.5.68 R.

But a *firm* may treat a transaction with an *insurance undertaking* which is not a *UK domestic firm* as complete, and accordingly may (but only for the purposes of the calculation in (1)) disregard any unreconciled items of *client money* transferred to an intermediate broker relating to such a transaction, if:

- (4) it has taken reasonable steps to ascertain whether the transaction is complete; and
- (5) it has no reason to consider the transaction has not been completed; and
- (6) a period of at least 12 *months* has elapsed since the *money* was transferred to the intermediate broker for the purpose of the transaction.

Client money (client balance) requirement

5.5.66 **R** A firm's client money (client balance) requirement is the sum of, for all clients, the individual client balances calculated in accordance with **■** CASS 5.5.67 R but excluding any individual balances which are negative (that is, uncleared client funds).

5.5.67 **R** The individual client balance for each client must be calculated as follows:

- (1) the amount paid by a client to the firm (to include all premiums); plus
- (2) the amount due to the client (to include all claims and premium refunds); plus
- (3) the amount of any interest or investment returns due to the client;
- (4) less the amount paid to insurance undertakings for the benefit of the client (to include all premiums and commission due to itself) (i.e. commissions that are due but have not yet been removed from the client account);
- (5) less the amount paid by the firm to the client (to include all claims and premium refunds);

and where the individual client balance is found by the sum ((1) + (2) + (3)) - ((4) + (5)).

Client money (accruals) requirement

5.5.68 **R** A firm's client money (accruals) requirement is the sum of the following:

- (1) all insurance creditors shown in the firm's business ledgers as amounts due to insurance undertakings, clients and other persons; plus
- (2) unearned commission being the amount of commission shown as accrued (but not shown as due and payable) as at the date of the calculation (a prudent estimate must be used if the firm is unable to produce an exact figure at the date of the calculation).

5.5.69 **R** A firm which calculates its client money requirement on the preceding basis must in addition and within a reasonable period be able to match its client money resource to its requirement by reference to individual clients (with such matching being achieved for the majority of its clients and transactions).

[deleted]

5.5.70 **R** [deleted]

5.5.71 **G** [deleted]

5.5.72 **R** [deleted]

		[deleted]
5.5.73	R	[deleted]
		[deleted]
5.5.74	R	[deleted]
5.5.75	R	[deleted]
		Failure to perform calculations or reconciliation
5.5.76	R	A <i>firm</i> must notify the <i>FCA</i> immediately if it is unable to, or does not, perform the calculation required by ■ CASS 5.5.63 R (1) .
5.5.77	R	A <i>firm</i> must notify the <i>FCA</i> immediately it becomes aware that it may not be able to make good any <i>shortfall</i> identified by ■ CASS 5.5.63 R (1) by the close of business on the day the calculation is performed and if applicable when the reconciliation is completed.
5.5.78	R	[deleted]
		Discharge of fiduciary duty
5.5.79	G	The purpose of ■ CASS 5.5.80 R to ■ CASS 5.5.83 R is to set out those situations in which a <i>firm</i> will have fulfilled its contractual and fiduciary obligations in relation to any <i>client money</i> held for or on behalf of its <i>client</i> , or in relation to the <i>firm's</i> ability to require repayment of that <i>money</i> from a third party.
5.5.80	R	Money ceases to be <i>client money</i> if it is paid: <ol style="list-style-type: none"> (1) to the <i>client</i>, or a duly authorised representative of the <i>client</i>; or (2) to a third party on the instruction of or with the specific consent of the <i>client</i>, but not if it is transferred to a third party in the course of effecting a transaction, in accordance with ■ CASS 5.5.34 R; or (3) into a bank account of the <i>client</i> (not being an account which is also in the name of the <i>firm</i>); or (4) to the <i>firm</i> itself, when it is due and payable to the <i>firm</i> in accordance with ■ CASS 5.1.5 R (1); or (5) to the <i>firm</i> itself, when it is an excess in the <i>client bank account</i> as set out in ■ CASS 5.5.63 R (1)(b)(ii).
5.5.81	G	(1) A <i>firm</i> which pays professional fees (for example to a loss adjuster or valuer) on behalf of a <i>client</i> may do so in accordance with ■ CASS 5.5.80 R (2) where this is done on the instruction of or with the consent of the <i>client</i> .

- (2) When a *firm* wishes to transfer *client money* balances to a third party in the course of transferring its business to another *firm*, it should do so in compliance with ■ CASS 5.5.80 R and a transferee *firm* will come under an obligation to treat any *client money* so transferred in accordance with these *rules*.
- (3) *Firms* are reminded of their obligation, when transferring *money* to third parties in accordance with ■ CASS 5.5.34 R, to use appropriate skill, care and judgment in their selection of third parties in order to ensure adequate protection of *client money*.
- (4) *Firms* are reminded that, in order to calculate their *client money* resource in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.65 R, they will need to have systems in place to produce an accurate accounting record showing how much *client money* is being held by third parties at any point in time. For the purposes of ■ CASS 5.5.63 R to ■ CASS 5.5.65 R, however, a *firm* must assume that *monies* remain at an intermediate broker awaiting completion of the transaction unless it has received confirmation that the transaction has been completed.

5.5.82 **R** When a *firm* draws a cheque or other payable order to discharge its fiduciary duty under ■ CASS 5.5.80 R, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.

5.5.83 **R** For the purposes of ■ CASS 5.1.5 R, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum will become due and payable to the *firm* or may be withdrawn from a *client bank account* by way of reimbursement.

Records

5.5.84 **R** A *firm* must ensure that proper records, sufficient to show and explain the *firm's* transactions and commitments in respect of its *client money*, are made and retained for a period of three years after they were made.