# Client Assets

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# Chapter 1

# Application and general provisions

## 1.1 Application and purpose

### Application

1.1.1 G *CASS* applies to a *firm* as specified in the remainder of this chapter.

### Purpose

1.1.2 G The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules*, *evidential provisions* and *guidance* in *CASS* apply.

## 1.2 General application: who? what?

### General application: who?

**1.2.1** G The *rules* in ■ CASS 1.2 set out the maximum scope of this sourcebook. The application of *CASS* is modified for certain activities by ■ CASS 1.4. Also particular chapters or sections of *CASS* may have provisions which limit their application.

**1.2.2** R *CASS* applies to every *firm*, except as provided for in ■ CASS 1.2.3 R, with respect to the carrying on of:

(1) all *regulated activities* except to the extent that a provision of *CASS* provides for a narrower application; and

*(2)* *unregulated activities* to the extent specified in any provision of *CASS*.

**1.2.3** R *CASS* does not apply to an *ICVC*.

**1.2.4** R With the exception of this chapter and the *insurance client money chapter*, *CASS* does not apply to:

(1) an *authorised professional firm* with respect to its *non-mainstream regulated activities*; or

(2) the *Society*.

**1.2.5** R The *insurance client money chapter* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, which are *insurance distribution activities*, if:

(1) the *firm's designated professional body* has made rules which implement article 10.6 of the *IDD*;

(2) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and

(3) the *firm* is subject to the rules in the form in which they were approved.

**1.2.5A** G

(1) In the *client money chapter* and the *insurance client money chapter*, an *insurance undertaking* acts as such when it carries on the business of *effecting or carrying out contracts of insurance*.

(2) An *insurance undertaking* does not act as such when it enters into a *reinsurance contract* as a client of the *reinsurer*.

**1.2.6** G [deleted]

## General application: what?

**1.2.7** G

(1) [deleted]

(2) [deleted]

(3) [deleted]

(3A) [deleted]

(4) [deleted]

(5) [deleted]

(6) [deleted]

(7) The *debt management client money chapter* applies to *CASS debt management firms* receiving or holding *client money* for, or on behalf of, a client in the course of or in connection with *debt management activity*.

## Application for retail clients, professional clients and eligible counterparties

**1.2.8** G

(1) *CASS* applies directly in respect of activities conducted with or for all categories of clients.

(2) [deleted]

(3) The *insurance client money chapter* does not generally distinguish between different categories of *client*. However, the term *consumer* is used for those to whom additional obligations are owed, rather than the term *retail client*. This is to be consistent with the *client* categories used in the Insurance: New Conduct of Business sourcebook.

(4) Each provision in the *collateral rules*, *custody chapter*, the *client money chapter* and ■ CASS 9 (Information to clients) makes it clear whether it applies to activities carried on for *retail clients*, *professional clients* or both.

(4A) There is no further modification of the *rules* in the chapters referred to in (4) for activities carried on for *eligible counterparties*. Such

*clients* are treated in the same way as other *professional clients* for the purposes of these *rules*.

(5) The *debt management client money chapter* generally applies in respect of relevant dealings with the client category known as *customers*. In general, the client categories of *retail clients*, *professional clients*, as well as *eligible counterparties*, have no relevance to *credit-related regulated activities*, including *debt management activities*.

**1.2.9** G [deleted]

## Application for affiliates

**1.2.9A** G

(1) The fact that a *firm's client* is an *affiliated company* for *MiFID business* does not affect the operation of *CASS* to the *firm* in relation to that *client*.

(2) For business that is not *MiFID business*, the operation of the *custody chapter* or the *client money chapter* may differ if a *firm's client* is an *affiliated company* and depending on certain other conditions (see, for example, ■ CASS 6.1.10B R and ■ CASS 7.10.26 R).

## Investments and money held under different regimes

**1.2.10** R [deleted]

**1.2.11** R

(1) A *firm* must not keep *money* in respect of which any one of the following chapters applies in the same *client bank account* or *client transaction account* as *money* in respect of which another of the following chapters applies:

(a) the *client money chapter*;

(b) the *insurance client money chapter*;

(c) the *debt management client money chapter*.

(2) In accordance with ■ CASS 7.10.36 R, a *firm* which is subject to the *client money chapter* and holds *money* both (i) in its capacity as a *trustee firm* and (ii) other than in its capacity as a *trustee firm* must not keep *money* held in its capacity as a *trustee firm* in the same *client bank account* or *client transaction account* as *money* held other than in its capacity as a *trustee firm*.

(3) To the extent that the restriction under (1) or (2) applies to a *firm*, the *client bank accounts* and *client transaction accounts* that a *firm* holds in respect of different chapters or in its different capacities (as the case may be) must be separately designated.

**1.2.12** G The purpose of the *rules* regarding the segregation of investments and *money* held under different regimes is to reduce the risk of confusion between assets held under different regimes either on an on-going basis or on the *failure* of a *firm* or a third party holding those assets.

**1.2.13** G A *firm* may, where permitted by the relevant *rules* opt to hold under a single chapter *money* that would otherwise be held under different chapters (see ■ CASS 7.10.3 R and ■ CASS 7.10.30 R). However, making such an election does not remove the requirement under ■ CASS 1.2.11R (1).

## 1.3 General application: where?

**1.3.1** G The *rules* in ■ CASS 1.3 set out the maximum territorial scope of this sourcebook. Particular *rules* may have express territorial limitations.

### UK establishments: general

**1.3.2** R ■ CASS 1 to ■ CASS 13 apply to every *firm*, in relation to *regulated activities* carried on by it from an *establishment* in the *United Kingdom*.

**1.3.2A** G The territorial scope of ■ CASS 14 is set out at ■ CASS 14.1.6R.

**1.3.3** R [deleted]

**1.3.4** R [deleted]

## 1.4 Application: particular activities

### Occupational pension scheme firms (OPS firms)

1.4.1 R In the case of *OPS activity* undertaken by an *OPS firm*, *CASS* applies with the following general modifications:

(1) references to *customer* are to the *OPS* or *welfare trust*, whichever fits the case, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on; and

(2) if an *OPS firm* is required by any *rule* in *CASS* to provide information to, or obtain consent from, a *customer*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *OPS* or *welfare trust* in respect of which that *firm* is acting, unless the context requires otherwise.

### Stock lending activity with or for clients

1.4.2 G (1) The *custody chapter* and the *client money chapter* apply in respect of any *stock lending activity* that is undertaken with or for a *client* by a *firm*.

(2) The *collateral rules* apply, where relevant, in respect of *stock lending activity*.

### Corporate finance business

1.4.3 G (1) The *custody chapter* and the *client money chapter* apply in respect of *corporate finance business* that is undertaken by a *firm*.

(2) The *collateral rules* apply, where relevant, in respect of *corporate finance business*.

### Oil market activity and energy market activity

1.4.4 G (1) The *custody chapter* and the *client money chapter* apply in respect of *oil market activity* and other *energy market activity* that is undertaken by a *firm*.

(2) The *collateral rules* apply, where relevant, in respect of *energy market activity*.

## Appointed representatives and tied agents

**1.4.5** G

(1) Although *CASS* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the Act). In determining whether a *firm* has complied with any provision of *CASS*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*). Equally, *CASS* does not apply directly to *tied agents*. A *MiFID investment firm* will be fully and unconditionally responsible for the acts and omission of the *tied agents* that it appoints.

*(2)* *Firms* should also refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives* and *tied agents*.

## Depositaries

**1.4.6** R

The *client money chapter* does not apply to a *depositary* when acting as such.

**1.4.6A** G

Firms acting as trustee or depositary of an AIF are reminded of the obligations in ■ FUND 3.11 (Depositaries) and Chapter IV (Depositary) of the AIFMD level 2 regulation which apply in addition to those in *CASS*.

**1.4.6B** G

*Firms acting as trustee or depositary of a UK UCITS* are reminded of the obligations in ■ COLL 6.6B (UCITS depositaries) and in the *UCITS level 2 regulation*, which apply in addition to those in *CASS*.

**1.4.7** R

Subject to ■ CASS 1.4.6 R, *CASS* applies to a *depositary*, when acting as such, with the following general modifications: '*client*' means '*trustee*', 'trust', 'AIF', 'AIFM acting on behalf of the AIF', '*UCITS scheme*', '*authorised fund manager* acting on behalf of the *UCITS scheme*', or '*collective investment scheme*', as appropriate.

**1.4.8** R

[deleted]

**1.4.8A** R

(1) The application of *CASS* for a *trustee firm* acting as a *depositary* is set out in ■ CASS 1.4.6 R and ■ CASS 1.4.7 R.

(2) The application of *CASS* for a *trustee firm* that is not acting as a *depositary* is limited as follows:

(a) the *mandate rules* apply;

(b) for *MiFID business*, the *custody chapter* and the *client money chapter* apply; and

(c) for business that is not *MiFID business*, the *custody chapter* and the *client money chapter* apply only to *trustee firms* acting as trustees of *personal pension schemes* or *stakeholder pension schemes*, including *SIPPs*.

(3) To the extent that *CASS* applies to a *trustee firm*, it applies with the following general modification: '*client*' means 'relevant *trustee*', 'trust', or 'beneficiary', as appropriate.

## Auction regulation bidding

**1.4.9** R [deleted]

**1.4.10** R [deleted]

**1.4.11** G [deleted]

**1.4.12** G [deleted]

**1.4.13** R [deleted]

**1.4.14** R [deleted]

## Debt management activities

**1.4.15** G

(1) The *debt management client money chapter* applies to *CASS debt management firms* receiving or holding *client money*.

(2) The *mandate rules* apply, where relevant, to *CASS debt management firms* carrying on *debt management activity*.

## 1.5 Application: electronic media and E-Commerce

### Application to electronic media

**1.5.1** G ■ GEN 2.2.14 R (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be "in writing" unless a contrary intention appears.

**1.5.2** G For any electronic communication with a *customer*, a *firm* should:

(1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication; the arrangements should be proportionate and take into account the different levels of risk in a *firm's* business;

(2) be able to demonstrate that the *customer* wishes to communicate using this form of media; and

(3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.

**1.5.3** G *Firms* should note that ■ GEN 2.2.14 R does not affect any other legal requirement that may apply in relation to the form or manner of executing a *document* or agreement.

**1.5.4** G [deleted]

# Chapter 1A

# CASS firm classification and operational oversight

## 1A.1 Application

**1A.1.1** R

(1) Subject to (2), (3) and (4), this chapter applies to a *firm* to which either or both of ■ CASS 6 (Custody rules) and ■ CASS 7 (Client money rules) applies.

(2) In relation to a *firm* to which ■ CASS 5 (Client money: insurance distribution activity) and ■ CASS 7 (Client money rules) apply, this chapter does not apply in relation to *client money* that a *firm* holds in accordance with ■ CASS 5.

(3) The *rules* and *guidance* in ■ CASS 1A.2 apply to a *firm* even if at the date of the determination or, as the case may be, the notification, either or both of ■ CASS 6 and ■ CASS 7 do not apply to it, provided that:

(a) either or both of those chapters applied to it during part or all of the previous calendar year; or

(b) it projects that either or both will apply to it in the current calendar year.

(4) This chapter does not apply to a *firm* to which only ■ CASS 6 applies, applied or is projected to apply, merely because:

(a) it is, was, or is projected to be a *firm* which *arranges safeguarding and administration of assets*; or

(b) when acting as a *small AIFM* and in relation to *excluded custody activities*, it would be, would have been or would be projected to be a *firm* which *arranges safeguarding and administration of assets* but for the exclusion in article 72AA of the *RAO*.

**1A.1.2** R

The *rules* and *guidance* in ■ CASS 1A.2 (CASS firm classification) do not apply to a *firm* following its *failure*.

## 1A.2 CASS firm classification

**1A.2.1** G The application of certain *rules* in this chapter depends upon the 'CASS firm type' within which a *firm* falls. The 'CASS firm types' are defined in accordance with ■ CASS 1A.2.7 R. The 'CASS firm type' within which a *firm* falls is also used to determine whether it is required to have the *CASS operational oversight function* described in ■ CASS 1A.3.1A R and whether the reporting obligations in ■ SUP 16.14 (Client money and asset return) apply to it.

**1A.2.2** R

(1) A *firm* must once every year, and by the time it is required to make a notification in accordance with ■ CASS 1A.2.9R (4), determine whether it is a *CASS large firm*, *CASS medium firm* or a *CASS small firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in ■ CASS 1A.2.7 R.

(2) For the purpose of determining its 'CASS firm type' in accordance with ■ CASS 1A.2.7 R, a *firm* must:

(a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year ending on 31 December and use that figure to determine its 'CASS firm type';

(b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year and use that figure to determine its 'CASS firm type'; but

(c) in either case, exclude from its calculation any *client money* held in accordance with ■ CASS 5 (Client money: insurance distribution activity) or ■ CASS 13 (Claims management: client money).

**1A.2.3** R For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given *day* during a calendar year a *firm* must:

(1) in complying with ■ CASS 1A.2.2R (2)(a), base its calculation upon internal reconciliations performed during the previous year;

(2) in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or that *safe custody assets* into sterling at the previous *day's* closing spot exchange rate; and

(3) in relation to *safe custody assets* only, calculate their total value using the previous *day's* closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

**1A.2.4** G One of the consequences of ■ CASS 1A.2.2 R is that a *firm* that determines itself to be a *CASS small firm* or a *CASS medium firm* will, at least if it exceeds during the course of a calendar year either of the limits in ■ CASS 1A.2.7 R that applies to it, become in the next calendar year:

(1) in the case of a *CASS small firm*, a *CASS medium firm* or a *CASS large firm*; and

(2) in the case of a *CASS medium firm*, a *CASS large firm*.

**1A.2.5** R

(1) Notwithstanding ■ CASS 1A.2.2 R, provided that the conditions in (2) are satisfied a *firm* may elect to be treated:

(a) as a *CASS medium firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS small firm*; and

(b) as a *CASS large firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS medium firm*.

(2) The conditions to which (1) refers are that in either case:

(a) the election is notified to the *FCA*in writing;

(b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and

(c) the *FCA* has not objected.

**1A.2.6** G ■ CASS 1A.2.5 R provides a *firm* with the ability to opt in to a higher category of 'CASS firm type'. This may be useful for a *firm* whose holding of *client money* and *safe custody assets* is near the upper categorisation limit for a *CASS small firm* or a *CASS medium firm*.

**1A.2.7** R CASS firm types

| CASS firm type | Highest total amount of *client money* held during the *firm's* last calendar year or as the case may be that it projects that it will hold during the current calendar year | Highest total value of *safe custody assets* held by the *firm* during the *firm's* last calendar year or as the case may be that it projects that it will hold during the current calendar year |
|---|---|---|
| *CASS large firm* | more than £1 billion | more than £100 billion |
| *CASS medium firm* | an amount equal to or greater than £1 million and less than or equal to £1 billion | an amount equal to or greater than £10 million and less than or equal to £100 billion |
| *CASS small firm* | less than £1 million | less than £10 million |

**1A.2.8** R [deleted]

**1A.2.8A** R [deleted]

**1A.2.9** R Once every calendar year a *firm* must notify to the *FCA* in writing the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the *day* specified in (1) to (4):

(1) if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or

(2) if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or

(3) in any other case, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money* or *safe custody assets*; and

(4) in every case, of its 'CASS firm type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).

**1A.2.10** R For the purpose of the annual notification to which ■ CASS 1A.2.9 Rrefers, a *firm* must apply the calculation *rule* in ■ CASS 1A.2.3 R.

**1A.2.11** G For the purpose of ■ CASS 1A.2.9R (1), the *FCA* will treat that obligation as satisfied if a *firm* submitted a *CMAR* for each period within the previous calendar year in compliance with ■ SUP 16.14.3 R.

**1A.2.12** R A *firm's* 'CASS firm type' and any change to it takes effect:

(1) if the *firm* notifies the *FCA* in accordance with ■ CASS 1A.2.9 R (1) or ■ CASS 1A.2.9 R (2), on 1 February following the notification; or

(2) if the *firm* notifies the *FCA* in accordance with ■ CASS 1A.2.9 R (3), on the *day* it begins to hold *client money* or *safe custody assets*; or

(3) if the *firm* makes an election under ■ CASS 1A.2.5 R (1), and provided the conditions in ■ CASS 1A.2.5 R (2) are satisfied, on the *day* the notification made under ■ CASS 1A.2.5 R (2)(a) states that the election is intended to take effect.

**1A.2.13** G Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Client Assets Firm Classification".

## 1A.3 Responsibility for CASS operational oversight

**1A.3.1** R

(1) A *CASS small firm* must allocate to a single *director* or *senior manager* of sufficient skill and authority responsibility for:

(a) oversight of the *firm's* operational compliance with *CASS*; and

(b) reporting to the *firm's governing body* in respect of that oversight.

(2) [deleted]

[**Note:** article 7, first paragraph of the *MiFID Delegated Directive*]

**1A.3.1-A** G

The material in ■ CASS 1A.3.1BG about how ■ CASS 1A.3 fits into the *FCA* senior managers and certification regime for *SMCR firms* also applies to a *CASS small firm* that is an *SMCR firm* and the function in ■ CASS 1A.3.1R.

**1A.3.1A** R

A *CASS medium firm* and a *CASS large firm* must allocate to a single *director* or *senior manager* of sufficient skill and authority the function of:

(1) oversight of the operational effectiveness of that *firm's* systems and controls that are designed to achieve compliance with *CASS*;

(2) reporting to the *firm's governing body* in respect of that oversight; and

(3) completing and submitting a *CMAR* to the *FCA* in accordance with ■ SUP 16.14.

[**Note:** article 7, first paragraph of the *MiFID Delegated Directive*]

**1A.3.1B** G

(1) (a) This paragraph ■ CASS 1A.3.1BG describes how ■ CASS 1A.3.1AR applies to *SMCR firms*.

(b) The function in ■ CASS 1A.3.1AR is not a separate *controlled function* and performing that function does not require approval as an *approved person*.

(c) However, nothing in paragraphs (1A) to (4) affects the requirement for the function in ■ CASS 1A.3.1AR to be allocated to a single *director* or *senior manager* of sufficient skill and authority in accordance with ■ CASS 1A.3.1AR and ■ CASS 1A.3.2AR.

(1A) There are three elements of the regime for *SMCR firms* that are particularly relevant to ■ CASS 1A, although they do not all apply to all *SMCR firms*:

(a) a *firm's* obligation to allocate certain responsibilities to its *SMF managers* (see ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities));

(b) a *firm's* obligation to ensure that one or more of its *SMF managers* have overall responsibility for each of its activities, business areas and management functions (see ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility)); and

(c) the certification regime (the certification regime is explained in ■ SYSC 27 (Senior managers and certification regime: Certification regime) and ■ SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) explains that the certification regime comes into force sometime after other parts of the senior managers and certification regime).

(2) (a) This paragraph (2) explains how ■ CASS 1A.3.1AR applies to an *SMCR firm* to which ■ SYSC 24 and ■ SYSC 26 both apply.

(b) The *firm* must allocate responsibility for the *firm's* compliance with *CASS* to one of its *SMF managers* (see ■ SYSC 24.2.1R). That responsibility is an "*FCA-prescribed senior management responsibility*". The full list of *FCA-prescribed senior management responsibilities* is in the table in ■ SYSC 24.2.6R.

(c) Although the *CASS* function in ■ SYSC 24.2.1R is different from the function in ■ CASS 1A.3.1AR, the *firm* may allocate the function in ■ CASS 1A.3.1AR to the *SMF manager* in (b).

(d) The *firm* may allocate the *CASS FCA-prescribed senior management responsibility* described in (b) to an *SMF manager* who does not perform any other function coming within the *FCA* regime for *SMF managers* in *SMCR firms*. See ■ SUP 10C.7 (Other overall responsibility function (SMF18)) and ■ SUP 10C.8.1R (Other local responsibility function (SMF22)) for details. Where this is the case, the manager will be performing the *other overall responsibility function* or the *other local responsibility function*.

(e) The *firm* may choose to allocate the function in ■ CASS 1A.3.1AR to someone who is not an *approved person* and *SMF manager*. If so:

(i) that *person* will be subject to the employee certification regime described in ■ SYSC 27 (Senior managers and certification regime: (Certification Regime);

(ii) that *person* will be subject to supervision by the *SMF manager* in (b); and

(iii) the function in ■ CASS 1A.3.1AR will be the *CASS* oversight *FCA certification function* in ■ SYSC 27.8.1R.

(3) In relation to an *SMCR firm* to which ■ SYSC 24 applies but ■ SYSC 26 does not apply, the *guidance* in sub-paragraphs (2)(b), (2)(c), and 2(e) applies, but the *guidance* in sub-paragraph (2)(d) does not apply.

(4) (a) The position of an *SMCR firm* to which neither ■ SYSC 24 nor ■ SYSC 26 apply is slightly different.

(b) The *firm* may choose to allocate the function in ■ CASS 1A.3.1AR to an *SMF manager*.

(c) The *firm* may instead choose to allocate the function in ■ CASS 1A.3.1AR to someone who is not an *SMF manager*.

(d) Where (c) applies, the *person* performing the function in ■ CASS 1A.3.1AR will fall into the certification regime. The function in ■ CASS 1A.3.1AR will be the *CASS* oversight *FCA certification function* in ■ SYSC 27.8.1R.

**1A.3.1C** R [deleted]

**1A.3.1D** G [deleted]

**1A.3.2** R [deleted]

**1A.3.2A** R Where a *firm* allocates the responsibilities in ■ CASS 1A.3.1R or ■ CASS 1A.3.1AR ("the CASS oversight responsibilities") to a *director* or *senior manager* ("P"), the *firm* must not allocate any other responsibilities to P in addition to the CASS oversight responsibilities, unless the *firm* is satisfied on reasonable grounds that:

(1) P will still be able to discharge the CASS oversight responsibilities effectively; and

(2) the *firm's* full compliance with *CASS* will not be compromised.

[**Note:** article 7, second paragraph of the *MiFID Delegated Directive*]

**1A.3.2B** R A *firm* may allow the CASS oversight responsibilities to be shared amongst one or more *directors* or *senior managers* where this is done as part of a job share between those *persons*.

**1A.3.3** R (1) Subject to (2), a *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with ■ CASS 1A.3.1 R or ■ CASS 1A.3.1A R.

(2) A *CASS small firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.

(3) A *firm* must ensure that the record made under this *rule* is retained for a period of five years after it is made.

# Chapter 3

# Collateral

3

## 3.1 Application and Purpose

### Application

3.1.1 R This chapter applies to a *firm* when it receives or holds assets in connection with an arrangement to secure the obligation of a *client* in the course of, or in connection with, its *designated investment business*, including *MiFID business*.

3.1.2 G *Firms* are reminded that the application of this chapter is also dependent on the location from which the activity is undertaken (see ■ CASS 1.3.2R).

3.1.3 R This chapter does not apply to a *firm* that has only a bare security interest (without rights to hypothecate) in the *client's* asset. In such circumstances, the *firm* must comply with the *custody rules* or *client money rules* as appropriate.

3.1.4 G For the purpose of this chapter only, a bare security interest in the *client's* asset gives a *firm* the right to realise the assets only on a *client's* default and without the right to use other than in default.

### Purpose

3.1.5 G The purpose of this chapter is to ensure that an appropriate level of protection is provided for those assets over which a *client* gives a *firm* certain rights. The arrangements covered by this chapter are those under which the *firm* is given a right to use the asset, and the *firm* treats the asset as if legal title and associated rights to that asset had been transferred to the *firm* subject only to an obligation to return equivalent assets to the *client* upon satisfaction of the *client's* obligation to the *firm*. The rights covered in this chapter do not include those arrangements by which the *firm* has only a bare security interest in the *client's* asset (in which case the *custody rules* or *client money rules* apply).

3.1.6 G Examples of the arrangements covered by this chapter include the taking of collateral by a *firm*, under the ISDA English Law (transfer of title) and the New York Law Credit Support Annexes (assuming the right to rehypothecate has not been disapplied).

**3.1.7** G This chapter recognises the need to apply a differing level of regulatory protection to the assets which form the basis of the two different types of arrangement described in ■ CASS 3.1.5 G. Under the bare security interest arrangement, the asset continues to belong to the *client* until the *firm's* right to realise that asset crystallises (that is, on the *client's* default). But under a "right to use arrangement", the *client* has transferred to the *firm* the legal title and associated rights to the asset, so that when the *firm* exercises its right to treat the asset as its own, the asset ceases to belong to the *client* and in effect becomes the *firm's* asset and is no longer in need of the full range of *client* asset protection. The *firm* may exercise its right to treat the asset as its own by, for example, clearly so identifying the asset in its own books and records.

**3.1.7A** G *Firms* are reminded of the *client's best interests rule* which requires a *firm* to act honestly, fairly and professionally, in accordance with the best interests of its *clients*, when agreeing to, entering into, exercising its rights under and fulfilling its obligations under an arrangement covered by this chapter, and when structuring its business to include such arrangements.

**3.1.8** G A *prime brokerage firm* is reminded of the additional obligations in CASS 9.3.1R which apply to *prime brokerage agreements*.

3

## 3.2 Requirements

### Application

3.2.1 R [deleted]

3.2.2 R A *firm* that receives or holds a *client's* assets under an arrangement to which this chapter applies and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the *client*.

3.2.3 G If the *firm* has the right to use the *client's* asset under a "right to use arrangement" but has not yet exercised its right to treat the asset as its own, the *client money rules* or the *custody rules* will continue to apply as appropriate until such time as the *firm* exercises its right, at which time ■ CASS 3.2.2 R will apply.

3.2.4 G When appropriate, *firms* that enter into the arrangements with *retail clients* covered in this chapter will be expected to identify in the statement of *custody assets* sent to the *client* in accordance with ■ COBS 16.4 (Statements of client designated investments or client money), article 63 of the *MiFID Org Regulation* (see ■ COBS 16A.5) or ■ CASS 9.5 (Reporting to clients on request) details of the assets which form the basis of the arrangements. Where the *firm* utilises global netting arrangements, a statement of the assets held on this basis will suffice.

# Chapter 5

# Client money: insurance distribution activity

## 5.1 Application

5

**5.1.1** R

(1) ■ CASS 5.1 to ■ CASS 5.6 apply, subject to (2), (3) and ■ CASS 5.1.3 R to ■ CASS 5.1.6 R, to a *firm* that receives or holds *money* in the course of or in connection with its *insurance distribution activity*.

(2) ■ CASS 5.1 to ■ CASS 5.6 do not, subject to (3), apply:

(a) to a *firm* to the extent that it acts in accordance with the *client money chapter*; or

(b) [deleted]

(c) to an *insurance undertaking* in respect of its *permitted activities*; or

(d) to a *managing agent* when acting as such; or

(e) with respect to *money* held by a *firm* which:

(i) is an *approved bank*; and

(ii) has requisite capital under article 10(6)(b) of the *IDD*;

but only when held by the *firm* in an account with itself, in which case the *firm* must notify the *client* (whether through a *client* agreement, *terms of business*, or otherwise in writing) that:

*(iii)* *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and

(iv) as a result, the *money* will not be held in accordance with ■ CASS 5.1 to ■ CASS 5.6.

(3) A *firm* may elect to comply with:

(a) [deleted]

(b) ■ CASS 5.1, ■ CASS 5.2 and ■ CASS 5.4 to ■ CASS 5.6 in respect of *money* which it receives in the course of carrying on an activity which would be *insurance distribution activity*, and which *money* would be *client money*, but for article 72D of the *Regulated Activities Order* (Large risks contracts where risk situated outside the EEA);

but the election must be in respect of all the *firm*'s business which consists of that activity.

(4) A *firm* must keep a record of any election in (3).

**5.1.2** G A *firm* that is an *approved bank*, and relies on the exemption under ■ CASS 5.1.1 R (2)(e), should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time.

**5.1.3** R An *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the rules of its *designated professional body* as specified in ■ CASS 5.1.4 R, in force on 14 January 2005, must comply with those rules and if it does so, it will be deemed to comply with ■ CASS 5.2 to ■ CASS 5.6.

**5.1.4** R For the purposes of ■ CASS 5.1.3 R the relevant rules are:

(1) If regulated by the Law Society (of England and Wales);

(a) the Solicitors' Accounts Rules 1998; or

(b) where applicable, the Solicitors Overseas Practice Rules 1990;

(2) if regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;

(3) if regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

**5.1.4A** R (1) A *firm* will, subject to (3), be deemed to comply with ■ CASS 5.3 to ■ CASS 5.6 if it receives or holds *client money* and it either:

(a) in relation to a service charge, complies with the requirement to segregate such money in accordance with section 42 of the Landlord and Tenant Act 1987 ("the 1987 Act"); or

(b) in relation to money which is clients' money for the purpose of the Royal Institution of Chartered Surveyors' Rules of Conduct ("RICS rules") in force as at 14 January 2005, it complies with the requirement to segregate and account for such money in accordance with the RICS Members' Accounts rules.

(2) Paragraph (1)(a) also applies to a *firm* in Scotland or in Northern Ireland if in acting as a property manager the *firm* receives or holds a service charge and complies (so far as practicable) with section 42 of the 1987 Act as if the requirements of that provision applied to it.

(3) In addition to complying with (1), a *firm* must ensure that an account in which *money* held pursuant to the trust fund mentioned in section 42(3) of the 1987 Act or an account maintained in accordance with the RICS rules satisfies the requirements in ■ CASS 5.5.49 R to the extent that the *firm* will hold money as trustee or otherwise on behalf of its clients.

**5.1.5** R Subject to ■ CASS 5.1.5A R *money* is not *client money* when:

(1) it becomes properly due and payable to the *firm*:

(a) for its own account; or

(b) in its capacity as agent of an *insurance undertaking* where the *firm* acts in accordance with ■ CASS 5.2; or

(2) it is otherwise received by the *firm* pursuant to an arrangement made between an *insurance undertaking* and another *person* (other than a *firm*) by which that other *person* has authority to underwrite risks, settle claims or handle refunds of *premiums* on behalf of that *insurance undertaking* outside the *United Kingdom* and where the *money* relates to that business.

**5.1.5A** R ■ CASS 5.1.5 R (1)(b) and ■ CASS 5.1.5 R (2) do not apply, and hence *money* is *client money*, in any case where:

(1) in relation to an activity specified in ■ CASS 5.2.3 R (1) (a) to ■ CASS 5.2.3 R (1) (c), the *insurance undertaking* has agreed that the *firm* may treat *money* which it receives and holds as agent of the *undertaking*, as *client money* and in accordance with the provisions of ■ CASS 5.3 to ■ CASS 5.6; and

(2) the agreement in (1) is in writing and adequate to show that the *insurance undertaking* consents to its interests under the trusts (or in Scotland agency) in ■ CASS 5.3.2 R or ■ CASS 5.4.7 R being subordinated to the interests of the *firm's* other *clients*.

**5.1.6** R Except where a *firm* and an *insurance undertaking* have (in accordance with ■ CASS 5.1.5A R) agreed otherwise, for the purposes of ■ CASS 5.1 to ■ CASS 5.6 an *insurance undertaking* (when acting as such) with whom a *firm* conducts *insurance distribution activity* is not to be treated as a *client* of the *firm*.

## Purpose

**5.1.7** G (1) *Principle* 10 (Clients' assets) requires a *firm* to arrange adequate protection for *clients*' assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and handling of *client money*. The *rules* in ■ CASS 5.1 to ■ CASS 5.6 also give effect to the requirement in article 10.6 of the *IDD* that all necessary measures should be taken to protect *clients* against the inability of an *insurance intermediary* to transfer *premiums* to an *insurance undertaking* or to transfer the proceeds of a claim or *premium* refund to the insured.

(2) There are two particular approaches which *firms* can adopt which reflect options given in article 10.6. The first is to provide by law or contract for a transfer of risk from the *insurance intermediary* to the *insurance undertaking* (■ CASS 5.2). The second is that *client money* is strictly segregated by being transferred to *client accounts* that cannot be used to reimburse other creditors in the event of the *firm's* insolvency (■ CASS 5.3 and ■ CASS 5.4 provide different means of achieving such segregation). ■ CASS 5.1.5A R permits a *firm* subject to certain conditions to treat *money* which it collects as agent of an *insurance undertaking* as *client money*; the principle of strict segregation is, however, satisfied because such *undertakings* must agree to their interests being subordinated to the interests of the *firm's* other *clients*.



**5.1.8** G A *firm* which carries on *MiFID business* or *designated investment business* in relation to life assurance business may, in accordance with ■ CASS 7.10.3R and in relation to that business only, either comply with ■ CASS 7 or elect to comply with the *insurance client money chapter*.

**5.1.9** G *Firms* are reminded that ■ SUP 3 contains provisions which are relevant to the preparation and delivery of reports by auditors.

## 5.2 Holding money as agent of an insurance undertaking

### Introduction

**5.2.1** G If a *firm* holds *money* as agent of an *insurance undertaking* then the *firm's clients* (who are not *insurance undertakings*) will be adequately protected to the extent that the *premiums* which it receives are treated as being received by the *insurance undertaking* when they are received by the agent and claims *money* and *premium* refunds will only be treated as received by the *client* when they are actually paid over. The *rules* in ■ CASS 5.2 make provision for agency agreements between *firms* and *insurance undertakings* to contain terms which make clear when *money* should be held by a *firm* as agent of an undertaking. *Firms* should refer to ■ CASS 5.1.5 R to determine the circumstances in which they may treat *money* held on behalf of *insurance undertakings* as *client money*.

**5.2.2** G

(1) Agency agreements between *insurance intermediaries* and *insurance undertakings* may be of a general kind and facilitate the introduction of business to the *insurance undertaking*. Alternatively, an agency agreement may confer on the *intermediary* contractual authority to commit the *insurance undertaking* to risk or authority to settle claims or handle *premium* refunds (often referred to as "binding authorities"). ■ CASS 5.2.3 R requires that binding authorities of this kind must provide that the *intermediary* is to act as the agent of the *insurance undertaking* for the purpose of receiving and holding *premiums* (if the *intermediary* has authority to commit the *insurance undertaking* to risk), claims *monies* (if the *intermediary* has authority to settle claims on behalf of the *insurance undertaking*) and *premium* refunds (if the *intermediary* has authority to make refunds of *premium* on behalf of the *insurance undertaking*). Accordingly such *money* is not, except where a *firm* and an *insurance undertaking* have in compliance with ■ CASS 5.1.5A R agreed otherwise, *client money* for the purposes of ■ CASS 5.

(2) Other introductory agency agreements may also, depending on their precise terms, satisfy some or all of the requirements of the type of written agreement described in ■ CASS 5.2.3 R. It is desirable that an *intermediary* should, before informing its *clients* (in accordance with ■ CASS 5.2.3 R (3)) that it will receive *money* as agent of an *insurance undertaking*, agree the terms of that notification with the relevant *insurance undertakings*.

## Requirement for written agreement before acting as agent of an insurance undertaking

**5.2.3** R

(1) A *firm* must not agree to:

(a) *deal in investments as agent* for an *insurance undertaking* in connection with an *insurance distribution activity*; or

(b) act as agent for an *insurance undertaking* for the purpose of settling claims or handling *premium* refunds; or

(c) otherwise receive *money* as agent of an *insurance undertaking*;

unless:

(d) it has entered into a written agreement with the *insurance undertaking* to that effect; and

(e) it is satisfied on reasonable grounds that the terms of the policies issued by the *insurance undertaking* to the *firm's clients* are likely to be compatible with such an agreement; and

(f) (i) (in the case of (a)) the agreement required by (d) expressly provides for the *firm* to act as agent of the *insurance undertaking* for the purpose of receiving *premiums* from the *firm's clients*; and

(ii) (in the case of (b)) the agreement required by (d) expressly provides for the *firm* to act as agent of the *insurance undertaking* for the purpose of receiving and holding claims *money* (or, as the case may be, *premium* refunds) prior to transmission to the *client* making the *claim* (or, as the case may be, entitled to the *premium refund*) in question.

(2) A *firm* must retain a copy of any agreement it enters pursuant to (1) for a period of at least six years from the date on which it is terminated.

(3) Where a *firm* holds, or is to hold, *money* as agent for an *insurance undertaking* it must ensure that it informs those of its *clients* which are not *insurance undertakings* and whose transactions may be affected by the arrangement (whether in its *terms of business*, *client agreements* or otherwise in writing) that it will hold their *money* as agent of the *insurance undertaking* and if necessary the extent of such agency and whether it includes all items of *client money* or is restricted, for example, to the receipt of *premiums*.

(4) A *firm* may (subject to the consent of the *insurance undertaking* concerned) include in an agreement in (1) provision for *client money* received by its *appointed representative*, field representatives and other agents to be held as agent for the *insurance undertaking* (in which event it must ensure that the *representative* or agent provides the information to *clients* required by (3)).

**5.2.4** G

*Firms* are reminded that ■ CASS 5.1.5A R provides that, if the *insurance undertaking* has agreed in writing, *money* held in accordance with an agreement made under ■ CASS 5.2.3 R may be treated as *client money* and may (but not otherwise) be kept in a *client bank account*.

**5.2.5** G A *firm* which provides for the protection of a *client*(which is not an *insurance undertaking*) under ■ CASS 5.2 is relieved of the obligation to provide protection for that *client* under ■ CASS 5.3 or ■ CASS 5.4 to the extent of the items of client *money* protected by the agency agreement.

**5.2.6** G A *firm* may, in accordance with ■ CASS 5.2.3 R (4), arrange for an *insurance undertaking* to accept responsibility for the *money* held by its *appointed representatives*, *field representatives*, and other agents, in which event ■ CASS 5.5.18 R to ■ CASS 5.5.25 G will not apply.



**5.2.7** G A *firm* may operate on the basis of an agency agreement as provided for by ■ CASS 5.2.3 R for some of its *clients* and with protection provided by a *client money* trust in accordance with ■ CASS 5.3 or ■ CASS 5.4 for other *clients*. A *firm* may also operate on either basis for the same *client* but in relation to different transactions. A *firm* which does so should be satisfied that its administrative systems and controls are adequate and, in accordance with ■ CASS 5.2.4 G, should ensure that *money* held for both types of *client* and business is kept separate.

## 5.3 Statutory trust



**5.3.1** G Section 137B(1) of the Act (Miscellaneous ancillary matters) provides that *rules* may make provision which results in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). ■ CASS 5.3.2 R creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of failure of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

**5.3.2** R A *firm* (other than a *firm* acting in accordance with ■ CASS 5.4) receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:

(1) for the purposes of and on the terms of ■ CASS 5.3, ■ CASS 5.5 and the *client money (insurance) distribution rules*;

(2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such) for whom that *money* is held, according to their respective interests in it;

(3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* according to their respective interests in it;

(4) on the failure of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2) and (3); and

(5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

**5.3.3** G

(1) A *firm* which holds *client money* can discharge its obligation to ensure adequate protection for its *clients* in respect of such *money* by complying with ■ CASS 5.3 which provides for such *money* to be held by the *firm* on the terms of a trust imposed by the *rules*.

(2) The trust imposed by ■ CASS 5.3 is limited to a trust in respect of *client money* which a *firm* receives and holds. The consequential and supplementary requirements in ■ CASS 5.5 are designed to secure the proper segregation and maintenance of adequate *client money* balances. In particular, ■ CASS 5.5 does not permit a *firm* to use *client money* balances to provide credit for *clients* (or potential *clients*) such that, for example, their *premium* obligations may be met in advance

of the *premium* being remitted to the *firm*. A *firm* wishing to provide credit for *clients* may however do so out of its own funds.

## 5.4 Non-statutory client money trust



### Introduction

**5.4.1** G

(1) ■ CASS 5.4 permits a *firm*, which has adequate resources, systems and controls, to declare a trust on terms which expressly authorise it, in its capacity as trustee, to make advances of credit to the *firm's clients*. The *client money* trust required by ■ CASS 5.4 extends to such debt obligations which will arise if the *firm*, as trustee, makes credit advances, to enable a *client's premium* obligations to be met before the *premium* is remitted to the *firm* and similarly if it allows claims and *premium* refunds to be paid to the *client* before receiving remittance of those *monies* from the *insurance undertaking*.

(2) ■ CASS 5.4 does not permit a *firm* to make advances of credit to itself out of the *client money* trust. Accordingly, ■ CASS 5.4 does not permit a *firm* to withdraw *commission* from the *client money* trust before it has received the *premium* from the *client* in relation to the *non-investment insurance contract* which generated the *commission*.

### Voluntary nature of this section

**5.4.2** R

A *firm* may elect to comply with the requirements in this section, and may do so for some of its business whilst complying with ■ CASS 5.3 for other parts.

**5.4.3** R

A *firm* is not subject to ■ CASS 5.3 when and to the extent that it acts in accordance with this section.

### Conditions for using the non-statutory client money trust

**5.4.4** R

A *firm* may not handle *client money* in accordance with the *rules* in this section unless each of the following conditions is satisfied:

(1) the *firm* must have and maintain systems and controls which are adequate to ensure that the *firm* is able to monitor and manage its *client money* transactions and any credit risk arising from the operation of the trust arrangement and, if in accordance with ■ CASS 5.4.2 R a *firm* complies with both the rules in ■ CASS 5.3 and ■ CASS 5.4, such systems and controls must extend to both arrangements;

(2) the *firm* must obtain, and keep current, written confirmation from its auditor that it has in place systems and controls which are adequate to meet the requirements in (1);

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(3) the *firm* must designate a *manager* with responsibility for overseeing the *firm's* day to day compliance with the systems and controls in (1) and the *rules* in this section;

(4) the *firm* (if, under the terms of the non-statutory trust, it is to handle *client money* for *retail customers*) must have and at all times maintain capital resources of not less than £50,000 calculated in accordance with ■ MIPRU 4.4.1 R; and

(5) in relation to each of the *clients* for whom the *firm* holds *money* in accordance with ■ CASS 5.4, the *firm* must take reasonable steps to ensure that its *terms of business* or other *client agreements* adequately explain, and obtain the *client's* informed consent to, the *firm* holding the *client's money* in accordance with ■ CASS 5.4 (and in the case of a *client* which is an *insurance undertaking* (when acting as such) there must be an agreement which satisfies ■ CASS 5.1.5A R).

**5.4.5** G The amount of a *firm's* capital resources maintained for the purposes of ■ MIPRU 4.2.11 R will also satisfy (in whole or in part) the requirement in ■ CASS 5.4.4 R (4).

## Client money to be received under the non-statutory client money trust

**5.4.6** R Except to the extent that a *firm* acts in accordance with ■ CASS 5.3, a *firm* must not receive or hold any *client money* unless it does so as trustee (or, in Scotland, as agent) and has properly executed a deed (or equivalent formal document) to that effect.

## Contents of trust deed

**5.4.7** R The deed referred to in ■ CASS 5.4.6 R must provide that the *money* (and, if appropriate, *designated investments*) are held:

(1) for the purposes of and on the terms of:

(a) ■ CASS 5.4;

(b) the applicable provisions of ■ CASS 5.5; and

(c) the *client money (insurance) distribution rules*

(2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such) for whom that *money* is held, according to their respective interests in it;

(3) after all valid claims in (2) have been met for *clients* which are *insurance undertakings* according to their respective interests in it;

(4) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2) and (3); and

(5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

**5.4.8** R The deed (or equivalent formal document) referred to in ■ CASS 5.4.6 R may provide that:

(1) the *firm*, acting as trustee (or, in Scotland, as agent), has power to make advances or give credit to *clients* or *insurance undertakings* from *client money*, provided that it also provides that any debt or other obligation of a *client* or resulting obligation of an *insurance undertaking*, in relation to an advance or credit, is held on the same terms as ■ CASS 5.4.7 R;

(2) the benefit of a letter of credit or unconditional guarantee provided by an *approved bank* on behalf of a *firm* to satisfy any shortfall in the *firm's client money* resource (as calculated under ■ CASS 5.5.65 R) when compared with the firm's client money requirement (as calculated under ■ CASS 5.5.66 R or as appropriate ■ CASS 5.5.68 R), is held on the same terms as ■ CASS 5.4.7 R.

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## 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** G 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** R

(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** G 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** R

(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** G

(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'sclients*.

**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.

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**5.5.40** G

(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** R

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*;

(2) disclose in writing to its *client* at the outset of the *client* relationship (whether by way of a client agreement, *terms of business* or otherwise in writing) or, if later, not less than 20 *business days* before it begins to hold *client money* of that *client* with that bank:

(a) that it is holding or intends to hold *client money* with a bank in the same *group*;

(b) the identity of the bank concerned; and

(c) that the *client* may choose not to have his *money* placed with such a bank.



**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]

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### [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 *firm* must notify the *FCA* 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 *firm* must notify the *FCA* immediately it becomes aware that it may not be able to make good any *shortfall* 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 *firm* will have fulfilled its contractual and fiduciary obligations in relation to any *client money* held for or on behalf of its *client*, or in relation to the *firm's* ability to require repayment of that *money* from a third party.

**5.5.80** R Money ceases to be *client money* if it is paid:

(1) to the *client*, or a duly authorised representative of the *client*; or

(2) to a third party on the instruction of or with the specific consent of the *client*, 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 *client* (not being an account which is also in the name of the *firm*); or

(4) to the *firm* itself, when it is due and payable to the *firm* in accordance with ■ CASS 5.1.5 R (1); or

(5) to the *firm* itself, when it is an excess in the *client bank account* as set out in ■ CASS 5.5.63 R (1)(b)(ii).

**5.5.81** G (1) A *firm* which pays professional fees (for example to a loss adjuster or valuer) on behalf of a *client* 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 *client*.

(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.

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## 5.6 Client money distribution

### Application

**5.6.1** R

(1) ■ CASS 5.6 (the *client money (insurance) distribution rules*) applies to a *firm* that in holding *client money* is subject to ■ CASS 5.3 (statutory trust) or ■ CASS 5.4 (Non-statutory trust) when a *primary pooling event* or a *secondary pooling event* occurs.

(2) In the event of there being any discrepancy between the terms of the trust as required by ■ CASS 5.4.7 R (1)(c) and the provisions of ■ CASS 5.6, the latter shall apply.

**5.6.2** G

(1) The *client money (insurance) distribution rules* have force and effect on any *firm* that holds *client money* in accordance with ■ CASS 5.3 or ■ CASS 5.4. Therefore, they may apply to a *UK branch* of a an *overseas firm*. In this case, the *UK branch* of the *firm* may be treated as if the *branch* itself is a free-standing entity subject to the *client money (insurance) distribution rules*.

*(2)* *Firms* that act in accordance with ■ CASS 5.4 (Non-statutory trust) are reminded that the *client money (insurance) distribution rules* should be given effect in the terms of trust required by ■ CASS 5.4.

### Purpose

**5.6.3** G

The *client money (insurance) distribution rules* seek to facilitate the timely return of *client money* to a *client* in the event of the *failure* of a *firm* or third party at which the *firm* holds *client money*.

### Failure of the authorised firm: primary pooling event

**5.6.4** G

A *primary pooling event* triggers a notional pooling of all the *client money*, in every type of *client money* account, and the obligation to distribute it.

**5.6.5** R

A *primary pooling event* occurs:

(1) on the *failure* of the *firm*; or

(2) on the vesting of assets in a trustee in accordance with an 'assets *requirement*' imposed under 55P(1)(b) or (c) (as the case may be) of the *Act*; or

(3) on the coming into force of a *requirement* for all *client money* held by the *firm*; or

(4) when the *firm* notifies, or is in breach of its duty to notify, the *FCA*, in accordance with ■ CASS 5.5.77 R, that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

**5.6.6** R ■ CASS 5.6.5 R (4) does not apply so long as:

(1) the *firm* is taking steps, in consultation with the *FCA*, to establish those records; and

(2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.



## Pooling and distribution

**5.6.7** R If a *primary pooling event* occurs:

*(1)* *client money* held in each *client money* account of the *firm* is treated as pooled;

(2) the *firm* must distribute that *client money* in accordance with ■ CASS 5.3.2 R or, as appropriate, ■ CASS 5.4.7 R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with ■ CASS 5.5.66 R; and

(3) the *firm* must, as trustee, call in and make demand in respect of any debt due to the *firm* as trustee, and must liquidate any *designated investment*, and any letter of credit or guarantee upon which it relies for meeting any *shortfall* in its *client money* resource and the proceeds shall be pooled together with other *client money* as in (1) and distributed in accordance with (2).

**5.6.8** G A *client's* main claim is for the return of *client money* held in a *client bank account*. A *client* may claim for any *shortfall* against *money* held in a *firm's* own account. For that claim, the *client* will be an unsecured creditor of the *firm*.

## Client money received after the failure of the firm

**5.6.9** R *Client money* received by the *firm* (including in its capacity as trustee under ■ CASS 5.4 (Non-statutory trust)) after a *primary pooling event* must not be pooled with *client money* held in any *client money* account operated by the *firm* at the time of the *primary pooling event*. It must be placed in a *client bank account* that has been opened after that event and must be handled in accordance with the *client money rules*, and returned to the relevant *client* without delay, except to the extent that:

(1) it is *client money* relating to a transaction that has not completed at the time of the *primary pooling event*; or

(2) it is *money* relating to a *client*, for whom the *client money* requirement, calculated in accordance with ■ CASS 5.5.66 R or

■ CASS 5.5.68 R, shows that *money* is due from the *client* to the *firm* including in its capacity as trustee under ■ CASS 5.4 (Non-statutory trust) at the time of the *primary pooling event*.

**5.6.10** G *Client money* received after the *primary pooling event* relating to an incomplete transaction should be used to complete that transaction.

**5.6.11** R If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:

(1) pay the full sum into the separate *client bank account* opened in accordance with ■ CASS 5.6.9 R; and

(2) pay the *money* that is not *client money* out of that *client bank account* into the *firm's* own bank account within one *business day* of the *day* on which the remittance is cleared.

**5.6.12** G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

## Failure of a bank, other broker or settlement agent: secondary pooling events

**5.6.13** R If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.

**5.6.14** R A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under ■ CASS 5.5.34 R.

**5.6.15** R ■ CASS 5.6.20 R to ■ CASS 5.6.31 R do not apply if, on the *failure* of the third party, the *firm* repays to its *clients* or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party.

**5.6.16** G When *client money* is transferred to a third party, a *firm* continues to owe a fiduciary duty to the *client*. However, consistent with a fiduciary's responsibility (whether as agent or trustee) for third parties under general law, a *firm* will not be held responsible for a *shortfall* in *client money* caused by a third party *failure* if it has complied with those duties.

**5.6.17** G To comply with its duties, the *firm* should show proper care:

(1) in the selection of a third party; and

(2) when monitoring the performance of the third party.

In the case of *client money* transferred to a bank, by demonstrating compliance with ■ CASS 5.5.43 R, a *firm* should be able to demonstrate that it has taken reasonable steps to comply with its duties.

## Failure of a bank

**5.6.18** G When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with ■ CASS 5.6.20 R. The *firm* would be expected to reflect the *shortfall* that arises at the *firm's* bank in the periodic *client money* calculation by reducing the *client money* resource and *client money* requirement accordingly.

**5.6.19** G The *client money (insurance) distribution rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *fails*, and who therefore requested that their *client money* be placed in a *designated client bank account* as a different bank, should not suffer the loss of the bank that has *failed*.



## Failure of a bank: pooling

**5.6.20** R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, then:

(1) in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 5.6.22 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply;

(2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 5.6.24 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply; and

(3) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* is not pooled with any other *client money*.

**5.6.21** R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* are held then in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 5.6.24 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply.

**5.6.22** R *Money* held in each *general 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 *general client bank accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in a *general client bank account* of the *firm*, rateably in accordance with their entitlements;

(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 *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* 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 accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

**5.6.23** G The term 'which should have been held' is a reference to the *failed* bank's failure (and elsewhere, as appropriate, is a reference to the other *failed* third party's failure) to hold the *client money* at the time of the pooling event.

**5.6.24** R For each *client* with a *designated client bank account* held at the *failed* bank:

(1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;

(2) a new *client money* entitlement must be calculated for each of the relevant *clients* by the *firm*, 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 bank until the *client* is repaid; and

(4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

**5.6.25** R A *client* whose *money* was held, or which should have been held, in a *designated client bank account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* or *client transaction account* of the *firm*.

## Client money received after the failure of a bank

**5.6.26** R *Client money* received by the *firm* after the *failure* of a bank, that would otherwise have been paid into a *client bank account* at that bank:

(1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and

(2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:

(a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or

(b) returned to the *client* as soon as possible.

**5.6.27** R If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

(1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and

(2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the remittance is cleared.

**5.6.28** G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

## Failure of an intermediate broker or settlement agent: pooling



**5.6.29** R If a *secondary pooling event* occurs as a result of the *failure* of another broker or *settlement agent* to whom the firm has transferred *client's money* then, in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 5.6.26 R to ■ CASS 5.6.28 G and ■ CASS 5.6.30 R will apply.

**5.6.30** R *Money* held in each *general 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 *general client bank accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *general client bank account* of the *firm*, rateably in accordance with their entitlements;

(2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (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* intermediate broker or *settlement agent* until the *client* is repaid; and

(4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

## Client money received after the failure of a broker or settlement agent

**5.6.31** R *Client money* received by the *firm* after the *failure* of another broker or *settlement agent*, to whom the *firm* has transferred *client money* that would otherwise have been paid into a *client bank account* at that broker or *settlement agent*:

(1) must not be transferred to the *failed* thirty party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* broker or *settlement agent*; and

(2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:

(a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or

(b) returned to the *client* as soon as possible.

### Notification on the failure of a bank, other broker or settlement agent

5.6.32 R The provisions of ■ CASS 5.5.61 R apply.

## 5.7 Mandates

5

| | | |
|---|---|---|
| 5.7.1 | R | [deleted] |
| 5.7.2 | R | [deleted] |
| 5.7.3 | G | [deleted] |
| 5.7.4 | G | [deleted] |
| 5.7.5 | G | [deleted] |
| 5.7.6 | R | [deleted] |

5

## 5.8 Safe keeping of client's documents and other assets

### Application

5.8.1 R

(1) ■ CASS 5.8 applies to a *firm* (including in its capacity as trustee under ■ CASS 5.4) which in the course of *insurance distribution activity* takes into its possession for safekeeping any *client* title *documents* (other than *documents* of no value) or other tangible assets belonging to *clients*.

(2) ■ CASS 5.8 does not apply to a *firm* when:

(a) carrying on an *insurance distribution activity* which is in respect of a *reinsurance contract*; or

(b) acting in accordance with ■ CASS 6 (Custody rules).

### Purpose

5.8.2 G

The *rules* in this section amplify the obligation in *Principle* 10 which requires a *firm* to arrange adequate protection for *client's* assets. *Firms* carrying on *insurance distribution activities* may hold, on a temporary or longer basis, *client* title *documents* such as *policy documents* (other than *policy documents* of no value) and also items of physical property if, for example, a *firm* arranges for a valuation. The *rules* are intended to ensure that *firms* make adequate arrangements for the safe keeping of such property.

### Requirement

5.8.3 R

(1) A *firm* which has in its possession or control *documents* evidencing a *client's* title to a *contract of insurance* or other similar *documents* (other than documents of no value) or which takes into its possession or control tangible assets belonging to a *client*, must take reasonable steps to ensure that any such *documents* or items of property:

(a) are kept safe until they are delivered to the *client*;

(b) are not delivered or given to any other *person* except in accordance with instructions given by the *client*; and that

a record is kept as to the identity of any such *documents* or items of property and the dates on which they were received by the *firm* and delivered to the *client* or other *person*.

(2) A *firm* must retain the record required in (1) for a period of three years after the document or property concerned is delivered to the *client* or other *person*.

## Segregation of designated investments: permitted investments, general principles and conditions (This Annex belongs to ■ CASS 5.5.14 R)



1 The general principles which must be followed when client money segregation includes designated investments:

(a) there must be a suitable spread of investments;

(b) investments must be made in accordance with an appropriate liquidity strategy;

(c) the investments must be in accordance with an appropriate credit risk policy;

(d) any foreign exchange risks must be prudently managed.

2 Table of permitted designated investments for the purpose of CASS 5.5.14 R (1).

| Investment type | Qualification |
|---|---|
| 1. Negotiable *debt security* (including a certificate of deposit) | (a) Remaining term to maturity of 5 years or less; and<br>(b) The issuer or *investment* must have a short-term credit rating of A1 by Standard and Poor's, or P1 by Moody's Investor Services, or F1 by Fitch if the instrument has a remaining term to maturity of 366 days or less; or a minimum long term credit rating of AA- by Standards and Poor's, or Aa3 by Moody's Investor Services or AA- by Fitch if the instrument has a term to maturity of more than 366 days. |
| 2. A *repo* in relation to negotiable *debt security* | As for 1 above and where the credit rating of the counterparty also meets the criteria in 1. |
| 3. Bond funds | (a) An *authorised fund* or a *recognised scheme* or an investment company which is registered by the Securities and Exchange Commission of the United States of America under the Investment Company Act 1940;<br>(b) A minimum credit rating and risk rating of Aaf and S2 respectively by Standard and Poor's or Aa and MR2 respectively by Moody's Investor Services or AA and V2 respectively by Fitch. |
| 4. Money market fund | (a) An *authorised fund* or a *recognised scheme*;<br>(b) A minimum credit and risk rating of Aaa and MR1+ respectively by Moody's Investor Services or AAAm by Standard and Poor's or AAA and V1+ respectively by Fitch. |
| 5. *Derivatives* | Only for the purpose of prudently managing foreign currency risks. |

3 The general conditions which must be satisfied in the segregation of *designated investments* are:

(a) any redemption of an *investment* must be by payment into the *firm's client money* bank account;

(b) where the credit or risk rating of a *designated investment* falls below the minimum set out in the Table, the *firm* must dispose of the *investment* as soon as possible and in any event not later than 20 *business days* following the downgrade;

(c) where any *investment* or issuer has more than one rating, the lowest shall apply.

# Chapter 6

# Custody rules

6

## 6.1 Application

**6.1.1** R This chapter (the *custody rules*) applies to a *firm*:

(1) [deleted]

(a) [deleted]

(b) [deleted]

(1A) when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*;

(1B) when it is *safeguarding and administering investments*, in the course of business that is not *MiFID business*;

(1C) when it is *acting as trustee or depositary of an AIF*;

(1D) when it is *acting as trustee or depositary of a UK UCITS*; and

(1E) in respect of any arrangement for a *client* to transfer full ownership of a *safe custody asset* (or an asset which would be a *safe custody asset* but for the arrangement) to the *firm* which is:

(a) in the course of, or in connection with, the *firm's designated investment business*; and

(b) for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, and the application of the *custody rules* to a *firm* under this paragraph is set out in the *rules* and *guidance* in ■ CASS 6.1.6 R to ■ CASS 6.1.9 G; and

(1F) when it is a *small AIFM* carrying on *excluded custody activities*.

(2) [deleted]

**6.1.1-A** R In applying the *custody rules* to a *small AIFM's excluded custody activities*, any reference to a *firm* carrying on the *regulated activities* of *safeguarding and administering investments*, *safeguarding and administering assets (without arranging)* or *arranging safeguarding and administration of assets* includes those *excluded custody activities* that would, but for the exclusion in article 72AA of the *RAO*, amount to whichever of those *regulated activities* is referred to.

**6.1.1A** G The *regulated activity* of *safeguarding and administering investments* covers both the *safeguarding and administration of assets (without arranging)*

and*arranging safeguarding and administration of assets*, when those assets are either *safe custody investments* or *custody assets*. A *safe custody investment* is, in summary, a *designated investment* which a *firm* receives or holds on behalf of a *client*. *Custody assets* include *designated investments*, and any other assets that the *firm* holds or may hold in the same portfolio as a *designated investment* held for or on behalf of a *client*.

**6.1.1B** R

(1) *Firms* to which the *custody rules* apply by virtue of ■ CASS 6.1.1R (1B) or (1E) must also apply the *custody rules* to those *custody assets* which are not *safe custody investments* in a manner appropriate to the nature and value of those *custody assets*.

*(2)* *Firms* to which the *custody rules* apply by virtue of ■ CASS 6.1.1R (1C) must also apply the *custody rules*:

(a) to those *custody assets* which are not *AIF custodial assets* but are *safe custody investments*; and

(b) in a manner appropriate to the nature and value of those *custody assets*, to those *custody assets* which are neither *AIF custodial assets* nor *safe custody investments*.

*(3)* *Firms* to which the *custody rules* apply by virtue of ■ CASS 6.1.1R(1D) must also apply them:

(a) to those *custody assets* which are not *UCITS custodial assets* but are *safe custody investments*; and

(b) in a manner appropriate to the nature and value of those *custody assets*, to those *custody assets* which are neither *UCITS custodial assets* nor *safe custody investments*.

**6.1.1C** G

In accordance with article 42 of the *Regulated Activities Order*, a *firm* ("I") will not be *arranging safeguarding and administration of assets* if it introduces a *client* to another *firm* whose *permitted activities* include the *safeguarding and administration of investments*, or to an *exempt person* acting as such, with a view to that other *firm* or *exempt person*:

(1) providing a safe custody service in the *United Kingdom*; or

(2) arranging for the provision of a safe custody service in the *United Kingdom* by another *person*;

and the other *firm*, *exempt person* or other *person* who is to provide the safe custody service is not in the same *group* as I, and does not remunerate I.

**6.1.2** G

*Firms* are reminded that dividends (actual or payments in lieu), *stock lending* fees and other payments received for the benefit of a *client*, and which are due to the *clients*, should be held in accordance with the *client money chapter* where appropriate.

**6.1.3** G

[deleted]

## Business in the name of the firm

**6.1.4** R The *custody rules* do not apply where a *firm* carries on business in its name but on behalf of the *client* where that is required by the very nature of the transaction and the *client* is in agreement.

[**Note:** recital 51 to *MiFID*]

**6.1.5** G For example, this chapter does not apply where a *firm* borrows *safe custody assets* from a client as principal under a *stock lending* agreement.

## Title transfer collateral arrangements

**6.1.6** R (1) [deleted]

(2) [deleted]

A *firm* must not enter into a *TTCA* in respect of an asset belonging to a *retail client*.

Where a *firm* entered into a *TTCA* in respect of an asset belonging to a *retail client* (or one which would belong to a *retail client* but for the arrangement) before 3 January 2018, the *firm* must terminate that *TTCA*.

[**Note:** article 16(10) of *MiFID* and article 5(5) of the *MiFID Delegated Directive*]

Except for ■ CASS 6.1.6BR to ■ CASS 6.1.9G and provided that the *TTCA* is not with a *retail client*, the *custody rules* do not apply to a *firm* in respect of an asset which is subject to a *TTCA* and which would otherwise be a *safe custody asset*.

[**Note:** recital 52 to *MiFID*]

**6.1.6A** R [deleted]

**6.1.6B** R (1) A *firm* must ensure that any *TTCA* is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.

(2) Regardless of the form of the agreement in (1) (which may have additional commercial purposes), it must cover the *client's* agreement to:

(a) the terms for the arrangement relating to the transfer of the *client's* full ownership of the *safe custody asset* to the *firm*;

(b) any terms under which the ownership of the *safe custody asset* is to transfer from the *firm* back to the *client*; and

(c) (to the extent not covered by the terms under (b)), any terms for the termination of:

(i) the arrangement under (a); or

(ii) the overall agreement in (1).

(3) A *firm* must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.



**6.1.6C** G The terms referred to in ■ CASS 6.1.6BR (2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of the *safe custody asset* to the *firm* is not in effect from time to time, or is contingent on some other condition.

**6.1.6D** R (1) A *firm* must properly consider and document the use of *TTCAs* in the context of:

(a) the relationship between the *client's* obligation to the *firm*; and

(b) the *safe custody assets* subjected to *TTCAs* by the *firm*.

(2) A *firm* must be able to demonstrate that it has complied with the requirement under (1).

(3) When considering, and documenting, the appropriateness of the use of *TTCAs*, a *firm* must take into account the following factors:

(a) whether there is only a very weak connection between the *client's* obligation to the *firm* and the use of *TTCAs*, including whether the likelihood of a *client's* liability to the *firm* is low or negligible;

(b) the extent by which the amount of *safe custody assets* subject to a *TTCA* is in excess of the *client's* obligations (including where the *TTCA* applies to all *safe custody assets* from the point of receipt by the *firm*) and whether the *client* might have no obligations at all to the *firm*; and

(c) whether all the *client's safe custody assets* are made subject to *TTCAs*, without consideration of what obligation the *client* has to the *firm*.

(4) Where a *firm* uses a *TTCA*, it must highlight to the *client* the risks involved and the effect of any *TTCA* on the *client's safe custody assets*.

[**Note:** article 6 of the *MiFID Delegated Directive*]

**6.1.6E** G A *firm* may choose to combine its *client* communication under ■ CASS 6.1.6DR(4) with any communication made in order to comply with article 15.1(a)(ii) of the *SFTR* or ■ CASS 9.3.1R(2)(d).

**6.1.7** G [deleted]

**6.1.8** G *Firms* are reminded of the *client's best interests rule*, which requires them to act honestly, fairly and professionally in accordance with the best interests of their *clients* when structuring their business particularly in respect of the effect of that structure on *firms*' obligations under this chapter.

## Termination of title transfer collateral arrangements

6

**6.1.8A** R

(1) If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate a *TTCA* and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication which also records the date the communication was received.

(2) A *firm* must keep a *client's* written communication, or a written record of the *client's* communication in (1), for five years, starting from the date the communication was received by the *firm*.

(3) (a) If a *firm* agrees to the termination of a *TTCA*, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's safe custody asset* will be held under the *custody rules* by the *firm* thereafter.

(b) If a *firm* does not agree to terminate a *TTCA*, it must notify the *client* of its disagreement in writing.

(4) A *firm* must keep a written record of any notification it makes to a *client* under (3) for a period of five years, starting from the date the notification was made.

**6.1.8B** G ■ CASS 6.1.8AR (3)(a) refers only to a *firm's* agreement to terminate an existing *TTCA*. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.

**6.1.8C** G When a *firm* notifies a *client* under ■ CASS 6.1.8AR (3)(a) of when the termination of a *TTCA* is to take effect, it should take into account:

(1) any relevant terms relating to such a termination that have been agreed with the *client*; and

(2) the period of time it reasonably requires to return the *safe custody asset* to the *client* or to update the registration under (Holding of client assets) ■ CASS 6.2and update its records under ■ CASS 6.6 (Records, accounts and reconciliations).

**6.1.8D** R If a *TTCA* is terminated, then the exemption at ■ CASS 6.1.6R(4) no longer applies.

**6.1.8E** G

(1) Following the termination of a *TTCA* , where a *firm* does not immediately return the *safe custody assets* to the *client* the *firm* should consider whether the *custody rules* apply in respect of the *safe custody assets* pursuant to ■ CASS 6.1.1R.

(2) Where the *custody rules* apply to a *firm* for *safe custody assets* in these circumstances then the *firm* is required to comply with those *rules* and should, for example, update the registration under ■ CASS 6.2(Holding of client assets), update its records under ■ CASS 6.6 (Records, accounts and reconciliations) and treat any *shortfall* in accordance with ■ CASS 6.6.54 R (in each case as appropriate).

**6.1.9** G *Firms* are reminded that, in certain cases, the *collateral rules* apply where a *firm* receives collateral from a *client* in order to secure the obligations of the *client*.

## Prime brokerage agreements

**6.1.9A** G A *prime brokerage firm* is reminded of the additional obligations in ■ CASS 9.3.1 R which apply to *prime brokerage agreements*.

## Affiliated companies - MiFID business

**6.1.10** G The fact that a *client* is an *affiliated company* in respect of *MiFID business* does not affect the operation of the *custody rules* in relation to that *client*.

## Affiliated companies - non-MiFID business

**6.1.10A** G [deleted]

**6.1.10B** R In respect of a *firm's* business falling under ■ CASS 6.1.1R (1B), the *custody rules* do not apply to the *firm* when it is *safeguarding and administering investments* on behalf of an *affiliated company*, unless:

(1) the *firm* has been notified that the *designated investment* belongs to a *client* of the affiliated company; or

(2) the affiliated company is a *client* dealt with at arm's length.

**6.1.11** G [deleted]

## Delivery versus payment transaction exemption

**6.1.12** R

(1) Subject to (2) and ■ CASS 6.1.12B R and with the written agreement of the relevant *client*, a *firm* need not treat this chapter as applying in respect of a delivery versus payment transaction through a *commercial settlement system* if:

(a) in respect of a *client's* purchase, the *firm* intends for the asset in question to be due to the *client* within one *business day* following the *client's* fulfilment of its payment obligation to the *firm*; or

(b) in respect of a *client's* sale, the *firm* intends for the asset in question to be due to the *firm* within one *business day* following the *firm's* fulfilment of its payment obligation to the *client*.

(2) If the payment or delivery by the *firm* to the *client* has not occurred by the close of business on the third *business day* following the date on which a *firm* makes use of the exemption under (1), the *firm* must stop using that exemption for the transaction.

(3) If the period referred to in ■ CASS 6.1.12R (2) has expired before such a delivery versus payment transaction through a *commercial settlement system* has settled, a *firm* may, until settlement and provided that doing so is consistent with the *firm's permissions* and it complies with (4), segregate the *firm's* own *money* as *client money* (in accordance with the *client money rules*) of an amount equivalent to the value at which that *safe custody asset* is reasonably expected to settle instead of holding the *client's safe custody assets* (in accordance with the *custody rules*).

(4) Where a *firm* intends to segregate *money* as *client money* instead of the *client's safe custody asset* under (3) it must, before doing so, ensure that this would result in *money* being held for the relevant *client* in respect of the *shortfall* under ■ CASS 7.17.2R (statutory trust).

(5) Where a *firm* segregates an amount of *client money* instead of the *client's safe custody assets* under (3) it must also:

(a) ensure the *money* is segregated under ■ CASS 7.13 (Segregation of client money) and recorded as being held for the relevant *client(s)* under ■ CASS 7.15 (Records, accounts and reconciliations);

(b) keep a record of the actions the *firm* has taken under this *rule* which includes a description of the *safe custody asset* in question, identifies the relevant affected *client*, and specifies the amount of *money* that the *firm* has appropriated as *client money* to cover the value of the *safe custody asset*; and

(c) update the record made under (5)(b) when the transaction in question has settled and the *firm* has re-appropriated the *money*.

**6.1.12A** G

(1) The amount of *client money* a *firm* segregates for the purposes of ■ CASS 6.1.12R (3) may be determined by the previous day's closing mark to market valuation of the relevant *safe custody asset* or, if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

(2) Where a *firm* is segregating *money* for the purposes of ■ CASS 6.1.12R (3) it should, as regularly as necessary, and having regard to *Principle* 10:

(a) review the value of the *safe custody asset* in question in line with (1); and

(b) where the *firm* has found that the value of the *safe custody asset* has changed, adjust the amount of *money* it has appropriated to

ensure that these monies are sufficient to cover the latest value of the *safe custody asset*.

**6.1.12B** R A *firm* cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under ■ CASS 6.1.12 R in either or both of the following circumstances:

(1) it is not a direct member or participant of the relevant *commercial settlement system*, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that *commercial settlement system*;

(2) the transaction in question is being settled by another *person* on behalf of the *firm* through an account held at the relevant *commercial settlement system* by that other *person*.

**6.1.12C** G Where a *firm* does not meet the requirements in ■ CASS 6.1.12 R or ■ CASS 6.1.12B R for use of the exemption in ■ CASS 6.1.12 R, the *firm* is subject to the *custody rules* in respect of any *safe custody asset* it holds in connection with the delivery versus payment transaction in question.

**6.1.12D** G

(1) In line with ■ CASS 6.1.12 R, where a *firm* receives a *safe custody asset* from a *client* in respect of a delivery versus payment transaction the *firm* is carrying out through a *commercial settlement system* in respect of a *client's* sale, and the *firm* has not fulfilled its payment obligation to the *client* by close of business on the third *business day* following the date of the *client's* fulfilment of its delivery obligation to the *firm*, the *firm* should consider whether the *custody rules* apply in respect of the *safe custody asset* pursuant to ■ CASS 6.1.1R (1A) to ■ CASS 6.1.1R (1D).

(2) Upon settlement of a delivery versus payment transaction a *firm* is carrying out through a *commercial settlement system* (including when it is settled within the three business day period referred to in ■ CASS 6.1.12 R), in respect of:

(a) a *client's* purchase, the *custody rules* apply to the relevant *safe custody asset* the *firm* receives upon settlement; and

(b) a *client's* sale, the *client money rules* will apply to the relevant *money* received on settlement.

**6.1.12E** R

(1) If a *firm* makes use of the exemption under ■ CASS 6.1.12 R, it must obtain the *client's* written agreement to the *firm's* use of this exemption.

(2) In respect of each *client*, the written agreement in (1) must be retained during the time that the *firm* makes use, or intends to make use, of the exemption under ■ CASS 6.1.12 R in respect of that *client's safe custody assets*.

**6.1.13** G [deleted]

**6.1.14** G [deleted]

## Temporary handling of safe custody assets

**6.1.15** G The *custody rules* do not apply if a *firm* temporarily handles a *safe custody asset* belonging to a *client*. A *firm* should temporarily handle a *safe custody asset* for no longer than is reasonably necessary. In most transactions this would be no longer than one *business day*, but it may be longer or shorter depending upon the transaction in question. For example, when a *firm* executes an order to sell shares which have not been registered on a de-materialised exchange, handling documents for longer periods may be reasonably necessary. However, in the case of *safe custody assets* in *bearer form*, the *firm* is expected to handle them for less than one *business day*. When a *firm* temporarily handles *safe custody assets*, it is still obliged to comply with *Principle* 10 (Clients' assets).



**6.1.16** G When a *firm* temporarily handles a *safe custody asset*, in order to comply with its obligation to act in accordance with *Principle* 10 (Clients' assets), the following are guides to good practice:

(1) a *firm* should keep the *safe custody asset* secure, record it as belonging to that *client*, and forward it to the *client* or in accordance with the *client's* instructions as soon as practicable after receiving it; and

(2) a *firm* should make and retain a record of the fact that the *firm* has handled that *safe custody asset* and of the details of the *client* concerned and of any action the *firm* has taken.

## Exemptions which do not apply to MiFID business

**6.1.16A** R The exemptions in ■ CASS 6.1.16B R to ■ CASS 6.1.16D G do not apply to a *MiFID investment firm* which holds *financial instruments* belonging to a client in the course of *MiFID business*.

**6.1.16B** R [deleted]

## Managers of AIFs and UCITS

**6.1.16BA** G

(1) The *custody rules* do not apply to a *firm* that is *managing an AIF* or *managing a UK UCITS* in relation to *excluded custody activities*, except where the *firm* is a *small AIFM*.

(2) The *custody rules* can apply to a *firm* that is *managing an AIF* or *managing a UK UCITS* in relation to activities that are not *excluded custody activities*. For example, where the *firm*:

(a) holds *financial instruments* belonging to a *client* in the course of its *MiFID business* (see ■ CASS 6.1.1R (1A)); or

(b) is *safeguarding and administering investments*, in the course of business that is not *MiFID business* (see ■ CASS 6.1.1R (1B)).

## Personal investment firms

**6.1.16C** R The *custody rules* do not apply to a *personal investment firm* when it temporarily holds a *designated investment*, other than in *bearer form*, belonging to a *client*, if the *firm*:

(1) keeps it secure, records it as belonging to that *client*, and forwards it to the *client* or in accordance with the *client's* instructions, as soon as practicable after receiving it;

(2) retains the *designated investment* for no longer than the *firm* has taken reasonable steps to determine is necessary to check for errors and to receive the final *document* in connection with any series of transactions to which the *documents* relate; and

(3) makes a record, which must then be retained for a period of 5 years after the record is made, of all the *designated investments* handled in accordance with (1) and (2) together with the details of the *clients* concerned and of any action the *firm* has taken.

**6.1.16D** G Administrative convenience alone should not lead a *personal investment firm* to rely on ■ CASS 6.1.16C R. *Personal investment firms* should consider what is in the *client's* interest and not rely on ■ CASS 6.1.16C R as a matter of course.

## Trustees and depositaries (except depositaries of AIFs and UCITS)

**6.1.16E** R The specialist regime in ■ CASS 6.1.16F R to ■ CASS 6.1.16I G does not apply to a *MiFID investment firm* which holds *financial instruments* belonging to a client in the course of *MiFID business*.

**6.1.16F** R When a *trustee firm* or *depositary* acts as a *custodian* for a trust or *collective investment scheme*, (except for a *firm acting as trustee or depositary of an AIF* and a *firm acting as trustee or depositary of a UK UCITS*), and:

(1) the trust or *scheme* is established by written instrument; and

(2) the *trustee firm* or *depositary* has taken reasonable steps to determine that the relevant law and provisions of the trust instrument or *scheme* constitution will provide protections at least equivalent to the *custody rules* for the trust property or *scheme* property;

the *trustee firm* or *depositary* need comply only with the *custody rules* listed in the table below.

| Reference | Rule |
|---|---|
| CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16C R | Application |
| CASS 6.1.16E R to CASS 6.1.16I G | Trustees and depositaries |
| CASS 6.1.22 G to CASS 6.1.24 G | General purpose |
| CASS 6.2.1 R and CASS 6.2.2 R | Protection of clients' safe custody assets |
| CASS 6.2.3 R and CASS 6.2.3B G | Registration and recording of legal title |

| Reference | Rule |
|---|---|
| CASS 6.2.7 R | Holding |
| CASS 6.3.1 R to CASS 6.3.4B G | Depositing safe custody assets with third parties |
| CASS 6.4.1 R and CASS 6.4.2 G | Use of safe custody assets |
| CASS 6.6 | Records, accounts and reconciliations |

**6.1.16G** G The reasonable steps referred in ■ CASS 6.1.16FR (2) could include obtaining an appropriate legal opinion to that effect.

**6.1.16H** R [deleted]



**6.1.16I** G A *trustee firm* or *depositary* that just *arranges safeguarding and administration of assets* may also take advantage of the exemption in ■ CASS 6.1.16J R (Arrangers).

## Depositaries of AIFs

**6.1.16IA** R (1) Subject to (2), when a *firm* is *acting as trustee or depositary of an AIF* the *firm* need comply only with the *custody rules* in the table below:

| Reference | Rule |
|---|---|
| CASS 6.1.1 R, CASS 6.1.9 G, CASS 6.1.9A G and CASS 6.1.16IB G | Application |
| CASS 6.1.22 G to CASS 6.1.24 G | General purpose |
| CASS 6.2.3 R and CASS 6.2.3B G to CASS 6.2.6 G | Registration and recording of legal title |
| CASS 6.2.7 R | Holding |
| CASS 6.6.2 R, CASS 6.6.4 R, CASS 6.6.6 R, CASS 6.6.7 R, CASS 6.6.57R (2) and CASS 6.6.58 G | Records, accounts and reconciliations |

(2) When a *firm* is *acting as trustee or depositary of an AIF* that is an *authorised AIF* the *firm* must, in addition to the *custody rules* in (1), also comply with the *custody rules* in the table below:

| Reference | Rule |
|---|---|
| CASS 6.1.1BR (2) | Application |
| CASS 6.6.8 R, CASS 6.6.11 R to CASS 6.6.32 G, CASS 6.6.41 G, CASS 6.6.43 G and CASS 6.6.47 G. | Records, accounts and reconciliations |

**6.1.16IB** G *Firms acting as trustee or depositary of an AIF* are reminded of the obligations in ■ FUND 3.11 (Depositaries) and Chapter IV (Depositary) of the *AIFMD level 2 regulation* which apply in addition to those in ■ CASS 6.

**6.1.16IC** G A *firm* (Firm A) to which another *firm acting as trustee or depositary of an AIF* (Firm B) has delegated safekeeping functions in accordance with ■ FUND 3.11.28 R (Delegation: safekeeping) will not itself be *acting as trustee*

*or depositary of an AIF* for that *AIF*. ■ CASS 6.1.16IA R will not apply to Firm A in respect of that *AIF*. However, Firm A may be *safeguarding and administering investments* in respect of that *AIF*.

## Depositaries of UCITS

**6.1.16ID** R When a *firm* is *acting as trustee or depositary of a UK UCITS*, the *firm* need comply only with the *custody rules* in the table below:

| Reference | Rule |
|---|---|
| CASS 6.1.1R, CASS 6.1.1BR(3), CASS 6.1.9G, CASS 6.1.16IEG | Application |
| CASS 6.1.22G to CASS 6.1.24G | General purpose |
| CASS 6.2.3R, CASS 6.2.3AR, CASS 6.2.3BG, CASS 6.2.7R | Holding of client assets |
| CASS 6.6.2R, CASS 6.6.4R, CASS 6.6.7R, CASS 6.6.41AG, CASS 6.6.57R(2A), CASS 6.6.58G | Records, accounts and reconciliations |

**6.1.16IE** G *Firms acting as trustee or depositary of a UK UCITS* are reminded of the obligations in ■ COLL 6.6B (UCITS depositaries) which apply as well as those in ■ CASS 6.

**6.1.16IF** G

(1) A *firm* (Firm A) to which another *firm acting as trustee or depositary of a UK UCITS* (Firm B) has delegated safekeeping functions under ■ COLL 6.6B.25R (Delegation: safekeeping) will not itself be *acting as trustee or depositary of a UK UCITS* for that *UCITS scheme*.

(2) ■ CASS 6.1.16IDR will not apply to Firm A for that *UCITS scheme*.

(3) However, Firm A may be *safeguarding and administering investments* in respect of that *UCITS scheme*.

## Arrangers

**6.1.16J** R Only the *custody rules* in the table below apply to a *firm* when *arranging safeguarding and administration of assets*.

| Reference | Rule |
|---|---|
| CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16B R | Application |
| CASS 6.1.16J R | Arrangers |
| CASS 6.1.16K R | Records |
| CASS 6.1.22 G to CASS 6.1.24 G | General purpose |
| CASS 6.3.4A R and CASS 6.3.4B G | Third-party custody agreements |

**6.1.16K** R When a *firm arranges safeguarding and administration of assets*, it must ensure that proper records of the arrangements are made and retained for a period of 5 years after they are made.

6

**6.1.17** R

(1) [deleted]

(1A) [deleted]

(2) [deleted]

(3) [deleted]

**6.1.18** G [deleted]

**6.1.19** G [deleted]

**6.1.20** G [deleted]

**6.1.20A** G [deleted]

**6.1.21** R [deleted]

## General purpose

**6.1.22** G *Principle* 10 (Clients' assets) requires a *firm* to arrange adequate protection for *clients*' assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.

**6.1.23** G The *rules* in this chapter are designed primarily to restrict the commingling of *client* and the *firm's* assets and minimise the risk of the *client's safe custody assets* being used by the *firm* without the *client's* agreement or contrary to the *client's* wishes, or being treated as the *firm's* assets in the event of its insolvency.

**6.1.24** G The *custody rules* also, where relevant,implemented the provisions of *MiFID* which regulated the obligations of a *firm* when it held *financial instruments* belonging to a *client* in the course of its *MiFID business*.

## 6.2 Holding of client assets

### Requirement to protect clients' safe custody assets

6.2.1 R A *firm* must, when holding *safe custody assets* belonging to *clients*, make adequate arrangements so as to safeguard *clients*' ownership rights, especially in the event of the *firm's* insolvency, and to prevent the use of *safe custody assets* belonging to a *client* on the *firm's* own account except with the *client's* express consent.

[**Note:** article 16(8) of *MiFID*]

### Requirement to have adequate organisational arrangements

6.2.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients*' *safe custody assets*, or the rights in connection with those *safe custody assets*, as a result of the misuse of the *safe custody assets*, fraud, poor administration, inadequate record-keeping or negligence.

[**Note:** article 2(1)(f) of the *MiFID Delegated Directive*]

### Registration and recording of legal title

6.2.3 R Subject to ■ CASS 6.2.3A-1R, a *firm* must effect appropriate registration or recording of legal title to a *safe custody asset* belonging to a *client* in the name of:

(1) the *client*, unless the *client* is an *authorised person* acting on behalf of its *client*, in which case it may be registered in the name of the *client* of that *authorised person*;

(2) a *nominee company* which is controlled by:

(a) the *firm*;

(b) an *affiliated company*;

(c) a *recognised investment exchange*; or

(d) a third party with whom *financial instruments* are deposited under ■ CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties);

(3) any other third party, if the *firm* is not a *trustee firm* but is prevented from registering or recording legal title in the way set out in (1) or (2) and provided that:

(a) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(b) the *firm* has notified the *client* in writing;

(4) the *firm* if either:

(a) it is not a *trustee firm* but is prevented from registering or recording legal title in the way set out in (1), (2) or (3) and provided that:

(i) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(ii) the *firm* has notified the *client* if a *professional client*, or obtained prior written consent if a *retail client*.

(b) it is a *trustee firm* and is prevented from registering or recording legal title in the way set out in (1) or (2).

**6.2.3A-1** R A *firm* need not comply with ■ CASS 6.2.3 R for any *safe custody asset*:

(1) that it has deposited with a third party in accordance with ■ CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties); and

(2) for which, because of the arrangements with that third party for depositing the *safe custody asset*, it is not practicable for the *firm* to effect appropriate registration or recording of legal title itself.

**6.2.3A** R If:

(1) the *safe custody asset* is an *emission auction product* that is a *financial instrument*; and

(2) it is not practicable or possible for a *firm* to effect registration or recording of legal title in this asset in the manner set out in ■ CASS 6.2.3 R,

the *firm* must register or record legal title in its name provided it has notified the *client* in writing.

**6.2.3B** G A *firm*, when complying with ■ CASS 6.2.3R (3) or ■ CASS 6.2.3R (4)(a), will be expected to demonstrate that adequate investigations have been made of the jurisdiction concerned by reference to local sources, which may include an appropriate legal opinion.

**6.2.4** R A *firm* must accept the same level of responsibility to its *client* for any *nominee company* controlled by the *firm*, or any nominee company controlled by an *affiliated company* of the *firm*, with respect of any requirements of the *custody rules*.

**6.2.5** R A *firm* may only register or record legal title to its own *applicable asset* in the same name as that in which legal title to a *client's safe custody asset* is registered or recorded if the *firm's applicable asset* is separately identified from the *client's safe custody asset* in the *firm's* records, and either or both of the conditions in (1) and (2) are met.

(1) The *firm's* holding of its own *applicable asset* arises incidentally to:

(a) *designated investment business* it carries on for the account of any *client*; or

(b) steps taken by the *firm* to comply with an applicable *custody rule*;

and, in the case of either (a) or (b), the situation where registration or recording of legal title of the *firm's applicable asset* is in the same name as the *client's safe custody asset* under this *rule* remains in place only to the extent that it is reasonably necessary.

(2) The registration or recording of legal title of the *firm's* own *applicable asset* in the same name as the *client's safe custody asset* is only as a result of the law or market practice of a jurisdiction outside of the *United Kingdom*.

**6.2.6** G (1) Consistent with a *firm's* requirements to protect *clients' safe custody assets* and have adequate organisation arrangements in place (■ CASS 6.2.1 R and ■ CASS 6.2.2 R), before a *firm* registers or records legal title to its own *applicable asset* in the same name as that in which legal title to a *client's safe custody asset* is registered or recorded under ■ CASS 6.2.5 R, it should consider whether there are any means to avoid doing so.

(2) Examples of where the conditions under ■ CASS 6.2.5R (1) might be met include in the course of a *firm*:

(a) correcting a dealing error that relates to a transaction for the account of a *client*; or

(b) maintaining a small balance of the *firm's* own *applicable assets* for purely operational or compliance purposes (eg, as a float to cover potential custody *shortfalls*) in an amount that is proportionate to the total amount of *safe custody assets* held for *clients*; or

(c) allocating *safe custody assets* to *clients* following settlement of a bulk order; or

(d) facilitating a *client* transaction that involves fractional entitlements; or

(e) making good a *shortfall*.

**6.2.7** R A *firm* must ensure that any documents of title to *applicable assets* in *bearer form*, belonging to the *firm* and which it holds in its physical possession, are

kept separately from any document of title to a *client's safe custody assets* in *bearer form*.

## Allocated but unclaimed safe custody assets

**6.2.7A** R ■ CASS 6.2.8G to ■ CASS 6.2.16G do not apply to a *firm* following its *failure*.

**6.2.7B** G ■ CASS 6.7.2R to ■ CASS 6.7.7R (Disposal of safe custody assets) applies to a *firm* following its *failure* in respect of allocated but unclaimed *safe custody assets*.

**6.2.8** G The purpose of ■ CASS 6.2.10 R is to set out the requirements a *firm* must comply with if it chooses to divest itself of a *client's* unclaimed *safe custody assets*.



**6.2.9** G Before acting in accordance with ■ CASS 6.2.10 R to ■ CASS 6.2.16 G, a *firm* should consider whether its actions are permitted by law and consistent with the arrangements under which the *safe custody assets* are held. These provisions relate to a *firm's* obligations as an *authorised person*.

**6.2.10** R A *firm* may either (i) liquidate an unclaimed *safe custody asset* it holds for a *client*, at market value, and pay away the proceeds or (ii) pay away an unclaimed *safe custody asset* it holds for a *client*, in either case, to a registered charity of its choice provided:

(1) this is permitted by law and consistent with the arrangements under which that *safe custody asset* is held;

(2) it has held that *safe custody asset* for at least 12 years;

(3) in the 12 years preceding the divestment of that *safe custody asset*, it has not received instructions relating to any *safe custody assets* from or on behalf of the *client* concerned;

(4) it can demonstrate that it has taken reasonable steps to trace the *client* concerned and return that *safe custody asset*; and

(5) the *firm* complies with ■ CASS 6.2.14 R: the undertaking requirement.

**6.2.11** E (1) Taking reasonable steps in ■ CASS 6.2.10R (4) includes following this course of conduct:

(a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;

(b) writing to the *client* at the last known address either by post or by electronic mail to inform it:

(i) of the name of the *firm* with which the *client* first deposited the *safe custody asset* in question;

(ii) of the *firm's* intention to pay the *safe custody asset* to charity under ■ CASS 6.2.10 R if it does not receive instructions from the *client* within 28 *days*;

(c) where the *client* has not responded after the 28 *days* referred to in (b) attempting to communicate the information set out in (b) to the *client* on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;

(d) subject to (e) and (f), where the *client* has not responded within 28 *days* following the most recent communication, writing again to the *client* at the last known address either by post or by electronic mail to inform them that:

(i) as the *firm* received no instructions from the *client*, it will in 28 *days* pay the *safe custody asset* to charity under ■ CASS 6.2.10 R; and

(ii) an undertaking will be provided by the *firm* or a member of its *group* to pay to the *client* concerned a sum equal to the value of the *safe custody asset* at the time it was liquidated or paid away in the event of the *client* seeking to claim the *safe custody asset* in future;

(e) if the *firm* has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the *client* is no longer at a particular address, the *firm* should not use that address for the purposes of (d);

(f) if, after carrying out the steps in (a), (b) and (c), the *firm* has obtained positive confirmation that none of the contact details it holds for the relevant *client* are accurate or, if utilised, the communication is unlikely to reach the *client*, the *firm* does not have to comply with (d); and

(g) waiting a further 28 *days* following the most recent communication under this *rule* before divesting itself of the *safe custody asset* under ■ CASS 6.2.10 R.

(2) Compliance with (1) may be relied on as tending to establish compliance with ■ CASS 6.2.10R (4).

(3) Contravention of (1) may be relied on as tending to establish contravention of ■ CASS 6.2.10R (4).

**6.2.12** G For the purpose of ■ CASS 6.2.11E (1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including telephoning the *client*, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.

**6.2.13** R Where a *firm* liquidates a *safe custody asset* under ■ CASS 6.2.10 R, it must pay away the proceeds to charity as soon as practicable.

**6.2.14** R Where a *firm* divests itself of a *client's safe custody asset* under ■ CASS 6.2.10 R, it must comply with either (1)(a) or (1)(b) and, in either case, (2).

(1) (a) The *firm* must unconditionally undertake to pay to the *client* concerned a sum equal to the value of the *safe custody asset* at

the time it was liquidated or paid away in the event of the *client* seeking to claim the *safe custody asset* in future.

(b) The *firm* must ensure that an unconditional undertaking in the terms set out in (1)(a) is made by a member of its *group* and there is suitable information available for relevant *clients* to identify the member of the *group* granting the undertaking.

(2) Any undertaking under this *rule* must be:

(a) authorised by the *firm's governing body* where (1)(a) applies or the *governing body* of the *group* member where (1)(b) applies;

(b) legally enforceable by any *person* that had a legally enforceable claim to the unclaimed *safe custody asset* in question at the time it was divested by the firm, or by an assign or successor in title to such claim; and

(c) retained by the *firm*, and, where (1)(b) applies, by the *group* member, indefinitely.



**6.2.15** R

(1) If a *firm* pays away a *client's* unclaimed *safe custody assets* to charity or liquidates a *client's* unclaimed *safe custody assets* and pays the proceeds to charity under ■ CASS 6.2.10 R it must make and retain, or where the *firm* already has such records, retain:

(a) records of all *safe custody assets* divested under ■ CASS 6.2.10 R (including details of the value of each asset at that time and the identity of the *client* to whom the asset was allocated);

(b) all relevant documentation (including charity receipts); and

(c) details of the communications the *firm* had or attempted to make with the *client* concerned pursuant to ■ CASS 6.2.10R (4).

(2) Records in (1) must be retained indefinitely.

(3) If a member of the *firm's group* has provided an undertaking under ■ CASS 6.2.14R (1)(b) then the records in (1) must be readily accessible to that *group* member.

## Costs associated with divesting allocated but unclaimed client assets

**6.2.16** G

Any costs associated with the *firm* divesting itself of *safe custody assets* pursuant to ■ CASS 6.2.10 R to ■ CASS 6.2.15 R should be paid for from the *firm's* own funds, including:

(1) any costs associated with the *firm* carrying out the steps in ■ CASS 6.2.10R (4) or ■ CASS 6.2.11 E; and

(2) the cost of any insurance purchased by a *firm* or the relevant member of its *group* to cover any legally enforceable claim in respect of the assets divested under ■ CASS 6.2.10 R.

## 6.3 Depositing assets and arranging for assets to be deposited with third parties

### Depositing safe custody assets with third parties

6

**6.3.1** R

(1) A *firm* may deposit *safe custody assets* held by it on behalf of its *clients* into an account or accounts opened with a third party, but only if it exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those *safe custody assets*.

(1A) [deleted]

(2) [deleted]

(3) When a *firm* makes the selection, appointment and conducts the periodic review referred to under this *rule*, it must take into account:

(a) the expertise and market reputation of the third party; and

(b) any legal requirements related to the holding of those *safe custody assets* that could adversely affect *clients*' rights.

(4) [deleted]

[**Note:** article 3(1) of the *MiFID Delegated Directive*]

**6.3.2** G

In discharging its obligations under CASS 6.3.1 R, a *firm* should also consider, as appropriate, together with any other relevant matters:

(1) the third party's performance of its services to the *firm*;

(2) the arrangements that the third party has in place for holding and safeguarding the *safe custody asset*;

(2A) market practices related to the holding of the *safe custody asset* that could adversely affect *clients'* rights.

(3) current industry standard reports, for example "Assurance reports on internal controls of services organisations made available to third parties" made in line with Technical Release AAF 01/06 of The Institute of Chartered Accountants in England and Wales or equivalent;

(4) the capital or financial resources of the third party;

(5) the credit-worthiness of the third party;

(6) any other activities undertaken by the third party and, if relevant, any *affiliated company*; and

(7) whether the third party has the appropriate regulatory permissions.

**6.3.2A** R

(1) A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under ■ CASS 6.3.1 R. The *firm* must make the record on the date it makes the selection or appointment and must keep it from that date until five years after the *firm* ceases to use the third party to hold *safe custody assets* belonging to *clients*.

(2) A *firm* must make a record of each periodic review of its selection and appointment of a third party that it conducts under ■ CASS 6.3.1 R, its considerations and conclusions. The *firm* must make the record on the date it completes the review and must keep it from that date until five years after the *firm* ceases to use the third party to hold *safe custody assets* belonging to *clients*.



**6.3.3** G [deleted]

**6.3.4** R

(1) Subject to (2), a *firm* must only deposit *safe custody assets* with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of *safe custody assets* for the account of another *person* with a third party who is subject to such regulation.

(2) A *firm* must not deposit *safe custody assets* held on behalf of a *client* with a third party in a *third country* which does not regulate the holding and safekeeping of *safe custody assets* for the account of another *person* unless:

(a) the nature of the *safe custody assets* or of the *investment services* connected with those *safe custody assets* requires them to be deposited with a third party in that *third country*; or

(b) the *safe custody assets* are held on behalf of a *professional client* and the *client* requests the *firm* in writing to deposit them with a third party in that *third country*.

(3) [deleted]

(a) [deleted]

(b) [deleted]

(i) [deleted]

(ii) [deleted]

(iii) [deleted]

(4) The requirements under paragraphs (1) and (2) of this *rule* also apply when the third party has delegated any of its functions concerning

the holding and safekeeping of *safe custody assets* to another third party.

[**Note:** article 3(2)-(4) of the *MiFID Delegated Directive*]

**6.3.4A-2** G ■ CASS 6.3.4R(4) applies to a *firm* which deposits a *safe custody asset* into an account opened with a third party under ■ CASS 6.3.1R(1). It is therefore possible for more than one *firm* in a chain of custody to be subject to ■ CASS 6.3.4R(4) in respect of the same *safe custody asset*.

**6.3.4A-1** R A *firm* must take the necessary steps to ensure that any *client's safe custody assets* deposited with a third party are identifiable separately from the *applicable assets* belonging to the *firm* and from the *applicable assets* belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.

[**Note:** article 2(1)(d) of the *MiFID Delegated Directive*]

## Third-party custody agreements

**6.3.4A** R A *firm* must have entered into a written agreement with any *person* with whom it deposits *clients' safe custody assets* under ■ CASS 6.3.1 R, or with whom it arranges safeguarding and administration of assets which are *clients' safe custody assets*. This agreement must, at minimum:

(1) set out the binding terms of the arrangement between the *firm* and the third party;

(2) be in force for the duration of that arrangement; and

(3) clearly set out the custody service(s) that the third party is contracted to provide.

**6.3.4B** G A *firm* should consider carefully the terms of any agreement entered into with a third party under ■ CASS 6.3.4A R. The following terms are examples of the issues that should be addressed in these agreements (where relevant):

(1) that the title of the account in the third party's books and records indicates that any *safe custody asset* credited to it does not belong to the *firm*;

(2) that the third party will hold or record a *safe custody asset* belonging to the *firm's client* separately from any *applicable asset* belonging to the *firm* or to the third party;

(3) the arrangements for registration or recording of the *safe custody asset*, if this will not be registered in the *firm's client's* name;

(4) the restrictions over the circumstances in which the third party may withdraw assets from the account;

(5) the procedures and authorities for the passing of instructions to, or by, the *firm*;

(6) the procedures for the claiming and receiving of dividends, interest payments and other entitlements accruing to the *firm's client*; and

(7) the provisions detailing the extent of the third party's liability in the event of the loss of a *safe custody asset* caused by the fraud, wilful default or negligence of the third party or an agent appointed by him.

**6.3.5** R [deleted]

**6.3.6** R [deleted]



**6.3.6A** R

(1) A *firm* must not grant any security interest, lien or right of set-off to another *person* over *clients' safe custody assets* that enable that other *person* to dispose of the *safe custody assets* in order to recover debts unless condition (a) or (b) is satisfied:

(a) those debts relate to:

(i) one or more of the *firm's clients*; or

(ii) the provision of services by that other *person* to one or more of the *firm's clients*; or

(b) to the extent those debts relate to anything else then:

(i) the security interest, lien or right of set-off is required by applicable law in a *third country* jurisdiction in which the *safe custody assets* are held;

(ii) the *firm* discloses information to the *client* so that the *client* is informed of the risks associated with these arrangements; and

(iii) the *firm* has taken reasonable steps to determine that holding *safe custody assets* subject to that security interest, lien or right of set-off is in the best interests of the *firm's clients*.

Where security interests, liens or rights of set-off are granted by a *firm* over *safe custody assets*, or where the *firm* has been informed that they are granted, these must be recorded in *client* contracts and the *firm's* own books and records to make the ownership status of *safe custody assets* clear, such as in the event of an insolvency.

[**Note:** article 2(4) of the *MiFID Delegated Directive*]

**6.3.6B** G Under ■ CASS 6.3.6AR(1)(a), a security interest, lien or right of set-off to facilitate the clearing or settlement of transactions referring to *clients* of the *firm* may be regarded as being granted in order to recover debts that relate to the provision of services to one or more *clients*.

**6.3.6C** G

(1) Under ■ CASS 6.3.6AR(1)(b)(i) a security interest, lien or right of set-off may be regarded as being required by applicable law in a *third country* for example where:

(a) because of applicable law it is mandatory for such a security interest, lien or right of set-off to be given in order for the *safe custody assets* to be held in that *third country*; or

(b) (i) in the context of the service being provided for the *firm's client* the applicable law of that *third country* requires the use of a central securities depositary, securities settlement system or central counterparty;

(ii) the rules of that central securities depositary, securities settlement system or central counterparty are subject to the oversight of a regulator that performs that function under the applicable law; and

(iii) those rules require such a security interest, lien or right of set-off to be given.

(2) But a *firm* should not grant a security interest, lien or right of set-off under ■ CASS 6.3.6AR(1)(b)(i) that is wider than that under ■ CASS 6.3.6AR(1)(a) where another *person* in a *third country* simply requests or demands this as a condition of business.



**6.3.6D** G To comply with ■ CASS 6.3.6AR(2) and in relation to any security interests, liens or rights of set-off over *safe custody assets*, a *firm* should ensure that:

(1) the written terms of its *client* contracts include the *client's* agreement to another *person* having such a security interest, lien or right of set-off over the *client's* assets; and

(2) its books and records are able to show the *safe custody assets* in respect of which the *firm* is aware that such security interests, liens, or rights of set-off exist.

**6.3.7** G [deleted]

**6.3.8** R [deleted]

**6.3.9** R ■ CASS 6.3.6AR does not permit a *firm* to agree to a third party having any recourse or right against *client money* in a *client bank account* or standing to the credit of a *client transaction account* of the kind referred to in:

(1) paragraph (d) of ■ CASS 7 Annex 2R; or

(2) paragraph (e) of ■ CASS 7 Annex 3R; or

(3) paragraph (e) of ■ CASS 7 Annex 4R.

## 6.4 Use of safe custody assets

**6.4.1** R

(1) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* or otherwise use such *safe custody assets* for its own account or the account of any other *person* or *client* of the *firm*, unless:

(a) the *client* has given express prior consent to the use of the *safe custody assets* on specified terms; and

(b) the use of that *client's safe custody assets* is restricted to the specified terms to which the *client* consents.

(2) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* in an omnibus account maintained by a third party, or otherwise use *safe custody assets* held in such an account for its own account or for the account of any other *person* unless, in addition to the conditions set out in (1):

(a) each *client* whose *safe custody assets* are held together in an omnibus account has given express prior consent in accordance with (1)(a); or

(b) the *firm* has in place systems and controls which ensure that only *safe custody assets* belonging to *clients* who have given express prior consent in accordance with (1)(a) are so used.

(3) For the purposes of obtaining the express prior consent of a *client* under this *rule*, the consent must be clearly evidenced in writing and the signature of the *client* or an equivalent alternative means of affirmative execution is required.

(4) [deleted]

[**Note:** article 5(1) and (2) of the *MiFID Delegated Directive*]

**6.4.1A** G

The *FCA* expects *firms* which enter into arrangements under ■ CASS 6.4.1 R with *retail clients* to only enter into *securities financing transactions* and not otherwise use *retail clients*' *safe custody assets*.

**6.4.1B** G

(1) Prior express consent by *clients* should be given and recorded by *firms* in order to allow the *firm* to demonstrate clearly what the *client* agreed to and to help clarify the status of *safe custody assets*.

(2) *Clients'* consent may be given once at the start of the commercial relationship, as long as it is sufficiently clear that the *client* has consented to the use of their *safe custody assets*.

(3) Where a *firm* is acting on a *client* instruction to lend *safe custody assets* and where this constitutes consent to entering into the transaction, the *firm* should hold evidence to demonstrate this.

[**Note:** recital 10 to the *MiFID Delegated Directive*]

**6.4.1C** R A *firm* must take appropriate measures to prevent the unauthorised use of *safe custody assets* for its own account or the account of any other *person*, such as:

(1) the conclusion of agreements with *clients* on measures to be taken by the *firm* in case the *client* does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the *client* or unwinding the position;

(2) the close monitoring by the *firm* of its projected ability to deliver on the settlement date;

(3) the putting in place of remedial measures if the *firm* cannot deliver on the settlement date; and

(4) the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

[**Note:** article 5(3) of the *MiFID Delegated Directive*]

**6.4.1D** G Examples of remedial measures in ■ CASS 6.4.1CR(3) can be found in ■ CASS 6.6.54R.

**6.4.2** G *Firms* are reminded of the *client's best interests rule*, which requires the *firm* to act honestly, fairly and professionally in accordance with the best interests of their *clients*. For any transactions involving *retail clients* carried out under this section the *FCA* expects that:

(1) the *firm* ensures that *relevant collateral* is provided by the borrower in favour of the *client*;

(2) the current realisable value of the *safe custody asset* and of the *relevant collateral* is monitored daily; and

(3) the *firm* provides *relevant collateral* to make up the difference where the current realisable value of the collateral falls below that of the *safe custody asset* , unless otherwise agreed in writing by the *client*.

**6.4.2A** R A *firm* must adopt specific arrangements for all *clients* to ensure that the borrower of *client safe custody assets* provides the appropriate collateral and that the *firm* monitors the continued appropriateness of such collateral and

takes the necessary steps to maintain the balance with the value of the *client safe custody assets*.

[**Note:** article 5(4) of the *MiFID Delegated Directive*]

**6.4.2B** G The requirement to monitor collateral under ■ CASS 6.4.2AR applies to a *firm* where it is party to a *securities financing transaction*, including when acting as an agent for the conclusion of a *securities financing transaction* or in the case of a tripartite transaction between a borrower, a *client* and the *firm*.

[**Note:** recital 9 to the *MiFID Delegated Directive*]

**6.4.3** R Where a *firm* uses *safe custody assets* as permitted in this section, the records of the *firm* must include details of the *client* on whose instructions the use of the *safe custody assets* has been effected, as well as the number of *safe custody assets* used belonging to each *client* who has given consent, so as to enable the correct allocation of any loss.

[**Note:** article 5(2), second sub-paragraph of the *MiFID Delegated Directive*]

## 6.6 Records, accounts and reconciliations

### Records and accounts

6.6.1 G This section sets out the requirements a *firm* must meet when keeping records and accounts of the *safe custody assets* it holds for *clients*.

6.6.2 R A *firm* must keep such records and accounts as necessary to enable it at any time and without delay to distinguish *safe custody assets* held for one *client* from *safe custody assets* held for any other *client*, and from the *firm's* own *applicable assets*.

[**Note:** article 2(1)(a) of the *MiFID Delegated Directive*]

6.6.3 R A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *safe custody assets* held for *clients* and that they may be used as an audit trail.

[**Note:** article 2(1)(b) of the *MiFID Delegated Directive*]

6.6.4 R A *firm* must maintain a *client-specific safe custody asset record*.

6.6.5 G The requirements in ■ CASS 6.6.2 R to ■ CASS 6.6.4 R are for a *firm* to keep internal records and accounts of *clients'* *safe custody assets*. Therefore any records falling under those requirements should be maintained by the *firm*, and should be separate to any records the *firm* may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, *clients'* *safe custody assets*.

The *FCA* expects that compliance by a *firm* with ■ CASS 6.6 as a whole (to the extent applicable to that *firm*) will be sufficient to comply with the requirement under ■ CASS 6.6.3R to maintain its records and accounts in a way that ensures they may be used as an audit trail.

### Right to use agreements

6.6.6 R A *firm* must keep a copy of every executed *client* agreement that includes that *firm's* right to use *safe custody assets* for its own account (see ■ CASS 6.4.1 R), including in the case of a *prime brokerage agreement* the disclosure annex referred to in ■ CASS 9.3.1 R.

## General record-keeping

**6.6.7** R Unless otherwise stated, a *firm* must ensure that any record made under the *custody rules* is retained for a period of five years starting from the later of:

(1) the date it was created; and

(2) (if it has been modified since the date it was created), the date it was most recently modified.

**6.6.8** R For each *internal custody record check*, each *physical asset reconciliation* and each *external custody reconciliation* carried out by a firm, it must make a record including:

(1) the date it carried out the relevant process;

(2) the actions the firm took in carrying out the relevant process; and

(3) a list of any discrepancies the *firm* identified and the actions the *firm* took to resolve those discrepancies.



## Policies and procedures

**6.6.9** G *Firms* are reminded that they must, under ■ SYSC 6.1.1 R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* in this chapter. This should include, for example, establishing and maintaining policies and procedures concerning:

(1) the frequency and method of the checks and reconciliations the *firm* is required to carry out under this section;

(2) the frequency with which the firm is required to review its arrangements in compliance with this chapter; and

(3) the resolution of discrepancies and the treatment of *shortfalls* under this section.

## Internal custody record checks

**6.6.10** G (1) An *internal custody record check* is one of the steps a *firm* takes to satisfy its obligations under:

(a) *Principle* 10 (Clients' assets);

(b) ■ CASS 6.2.2 R (Requirement to have adequate organisational arrangements);

(c) ■ CASS 6.6.2 R to ■ CASS 6.6.4 R (Records and accounts); and

(d) where relevant, ■ SYSC 4.1.1 R (General requirements) and ■ SYSC 6.1.1 R (Compliance).

(2) An *internal custody record check* is a check as to whether the *firm's* records and accounts of the *safe custody assets* held by the *firm* (including, for example, those deposited with third parties under ■ CASS 6.3 (Depositing safe custody assets with third parties)) correspond with the *firm's* obligations to its *clients* to hold those *safe custody assets*.

**6.6.10A** R ■ CASS 6.6.11R does not apply to a *firm* following its *failure*.

**6.6.10B** G ■ CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure*.

**6.6.11** R

(1) A *firm* must perform an *internal custody record check*:

(a) subject to paragraph (2), as regularly as is necessary but without allowing more than one month to pass between each *internal custody record check*; and

(b) as soon as reasonably practicable after the date to which the *internal custody record check* relates.

(2) A *firm* that holds no *safe custody assets* other than *physical safe custody assets* must perform an *internal custody record check* as regularly as necessary but, in any case, no less often than its *physical asset reconciliations* under ■ CASS 6.6.22 R.

**6.6.12** G ■ CASS 6.6.44 R sets out the matters which a *firm* must have regard to when determining the frequency at which to undertake an *internal custody record check*.

**6.6.13** R A *firm* must perform an internal custody record check using either the *internal custody reconciliation method* or the *internal system evaluation method*. It must not use a combination of these methods.

**6.6.14** R A *firm* must only use its internal records (for example its depot and *client*-specific ledgers for *safe custody assets* or other internal accounting records) in order to perform an *internal custody record check*.

**6.6.15** G ■ CASS 6.6.14 R means that a *firm* must not base its *internal custody record checks* on any records that the *firm* may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, *clients*' *safe custody assets*.

## The internal custody reconciliation method for internal custody record checks

**6.6.16** R A *firm* may only use the *internal custody reconciliation method* if:

(1) it separately maintains an *aggregate safe custody asset record* and a *client-specific safe custody asset record*; and

(2) its *aggregate safe custody asset record* and its *client-specific safe custody asset record* are capable of being compared.

**6.6.17** R The *internal custody reconciliation method* requires a *firm* to perform a comparison between its *aggregate safe custody asset record* and its *client-specific safe custody asset record*, as at the date of the *internal custody record check*.

## The internal system evaluation method for internal custody record checks

**6.6.18** G

(1) The *internal system evaluation method* is available to any *firm*, including one that is not able to use the *internal custody reconciliation method* because it does not meet the requirements at ■ CASS 6.6.16R (1) and ■ CASS 6.6.16R (2).

(2) The purpose of the *internal system evaluation method* is to detect weaknesses in a *firm's* systems and controls and any recordkeeping discrepancies. However, this method is not designed to substitute a *firm's* other measures for ensuring compliance with the *custody rules*, such as monitoring the accuracy of its records (see also ■ CASS 6.2.2 R and ■ CASS 6.6.3 R).



**6.6.19** R

The *internal system evaluation method* requires a *firm* to:

(1) establish a process that evaluates:

(a) the completeness and accuracy of the *firm's* internal records and accounts of *safe custody assets* held by the *firm* for *clients*, in particular whether sufficient information is being completely and accurately recorded by the *firm* to enable it to:

(i) comply with ■ CASS 6.6.4 R; and

(ii) readily determine the total of all the *safe custody assets* that the *firm* holds for its *clients*; and

(b) whether the *firm's* systems and controls correctly identify and resolve all discrepancies in its internal records and accounts of *safe custody assets* held by the *firm* for *clients*;

(2) run the evaluation process established under (1) on the date of each *internal custody record check*; and

(3) promptly investigate and, without undue delay, resolve any causes of discrepancies that the evaluation process reveals.

**6.6.20** G

The evaluation process under ■ CASS 6.6.19R (1) should verify that the *firm's* systems and controls correctly identify and resolve at least the following types or causes of discrepancies:

(1) items in the *firm's* records and accounts that might be erroneously overstating or understating the *safe custody assets* held by a *firm* (for example, 'test' entries and 'balancing' entries);

(2) negative balances;

(3) processing errors;

(4) journal entry errors (eg, omissions and unauthorised system entries); and

(5) IT errors (eg, software issues that could lead to inaccurate records).

## Physical asset reconciliations

**6.6.21** G

(1) A *physical asset reconciliation* is a separate process to the *internal custody record check*. *Firms* that hold *physical safe custody assets* for *clients* are required to perform both processes.

(2) The purpose of a *physical asset reconciliation* is to check that a *firm's* internal records and accounts of the *physical safe custody assets* kept by the *firm* for *clients* are accurate and complete, and to ensure any discrepancies are investigated and resolved.

**6.6.21A** R

■ CASS 6.6.22R does not apply to a *firm* following its *failure*.

**6.6.21B** G

■ CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure*.

**6.6.22** R

A *firm* that holds *physical safe custody assets* must perform a *physical asset reconciliation* for all the *physical safe custody assets* it holds for *clients*:

(1) as regularly as is necessary but without allowing more than six months to pass between each *physical asset reconciliation*; and

(2) as soon as reasonably practicable after the date to which the *physical asset reconciliation* relates.

**6.6.23** G

■ CASS 6.6.44 R sets out the matters which a *firm* must have regard to when determining the frequency at which to undertake a *physical asset reconciliation*.

**6.6.24** R

When performing a *physical asset reconciliation* a *firm* must:

(1) count all the *physical safe custody assets* held by the *firm* for *clients* as at the date to which the *physical asset reconciliation* relates; and

(2) compare the count in (1) against what the *firm's* internal records and accounts state as being in the *firm's* possession as at the same date.

**6.6.25** R

A *firm* must perform each *physical asset reconciliation* under ■ CASS 6.6.24 R using the *total count method* or the *rolling stock method*.

**6.6.26** G

Regardless of the method used, a *firm* should ensure that all *safe custody assets* held by the *firm* as *physical safe custody assets* for *clients* are subject to a *physical asset reconciliation* at the frequency required under ■ CASS 6.6.22 R.

**6.6.27** R

If a *firm* completes a *physical asset reconciliation* in a single stage, such that the *firm*:

(1) performs a single count under ■ CASS 6.6.24R (1) which encompasses all the *physical safe custody assets* held by the *firm* for *clients* as at the date to which the *physical asset reconciliation* relates; and

(2) compares that count against the *firm's* internal records and accounts in accordance with ■ CASS 6.6.24R (2);

then the *firm* will have used the *total count method* for that *physical asset reconciliation*.

**6.6.28** R If a *firm* completes a *physical asset reconciliation* in two or more stages, such that the *firm*:

(1) performs two or more counts under ■ CASS 6.6.24R (1) (each on a separate occasion and relating to a different stock line or group of stock lines forming part of the *firm's* overall holdings of *physical safe custody assets*) which, once all of the counts are complete, encompass all the *physical safe custody assets* held by the *firm* for *clients*; and

(2) compares each of those counts against the *firm's* internal records and accounts in accordance with ■ CASS 6.6.24R (2);

then the *firm* will have used the *rolling stock method* for that *physical asset reconciliation*.

**6.6.29** G

(1) The *rolling stock method* allows a *firm* to perform its *physical asset reconciliation* in several stages, with each stage referring to a line of stock or group of stock lines in a *designated investment* selected by a *firm* (for example, all the *shares* with an *issuer* whose name begins with the letter 'A' or all the stock lines held in connection with a particular business line).

(2) Where a firm uses the *rolling stock method* to perform a *physical asset reconciliation*, all the stages in that *physical asset reconciliation* must be completed in time to ensure the firm complies with ■ CASS 6.6.22 R.

**6.6.30** R

(1) If a *firm* wishes to use the *rolling stock method* to perform a *physical asset reconciliation* it must first establish and document in writing its reasons for concluding that the way in which it will carry out its *physical asset reconciliations* is adequately designed to mitigate the risk of the *firm's* records being manipulated or falsified.

(2) A *firm* must retain any documents created under (1) for a period of at least five years after the date it ceases to use the *rolling stock method* to perform its *physical asset reconciliation*.

**6.6.31** G The documents under ■ CASS 6.6.30R (1) should, for example, cover the systems and controls the *firm* will have in place to mitigate the risk of 'teeming and lading' in respect of all the *physical safe custody assets* held by the *firm* for *clients* and across all the *firm's* business lines.

**6.6.32** G To meet the requirement to have adequate organisational arrangements under ■ CASS 6.2.2 R, a *firm* should consider performing 'spot checks' as to whether title to an appropriate sample of *physical safe custody assets* that it holds is registered correctly under ■ CASS 6.2.3 R (Registration and recording of legal title).

## External custody reconciliations

**6.6.33** G The purpose of an *external custody reconciliation* is to ensure the completeness and accuracy of a *firm's* internal records and accounts of *safe custody assets* held by the *firm* for *clients* against those of relevant third parties.

**6.6.34** R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts of *safe custody assets* held by the *firm* for *clients* and those of any third parties by whom those *safe custody assets* are held.

[**Note:** article 2(1)(c) of the *MiFID Delegated Directive*]

**6.6.35** R In ■ CASS 6.6.34 R, the third parties whose records and accounts a *firm* is required to reconcile its own internal records and accounts with must include:

(1) the third parties with which the *firm* has deposited *clients' safe custody assets*;

(2) where the *firm* has not deposited a *client's safe custody asset* with a third party:

(a) the third parties responsible for the registration of legal title to that *safe custody asset*; or

(b) a *person* acting as an operator for the purposes of any of the *relevant overseas USRs* if:

(i) the *safe custody asset* is an uncertificated unit of a security governed by any of the *relevant overseas USRs*; and

(ii) the *firm* has reasonable grounds to be satisfied that the records of that *person* take into account all instructions issued by that *person* which require an issuer to register on a register of securities a transfer of title to any uncertificated units.

**6.6.36** G Examples of the sorts of third parties referred to at ■ CASS 6.6.35R (2)(a) include central securities depositaries, *operators* of *collective investment schemes*, and administrators of offshore funds.

**6.6.36A** R ■ CASS 6.6.37R does not apply to a *firm* following its *failure*.

**6.6.36B** G ■ CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure*.

**6.6.37** R A *firm* must conduct *external custody reconciliations*:

(1) as regularly as necessary but allowing no more than one month to pass between each *external custody reconciliation*; and

(2) as soon as reasonably practicable after the date to which the *external custody reconciliation* relates.

**6.6.38** G ■ CASS 6.6.44 R sets out the matters which a *firm* must consider when determining the frequency at which to undertake an *external custody reconciliation*.

**6.6.39** G Where a *firm* holds *clients*' *safe custody assets* electronically with a central securities depositary which is able to provide adequate information to the *firm* on its holdings on a daily basis, it is best practice under ■ CASS 6.6.37R (1) for the *firm* to conduct an *external custody reconciliation* each *business day* in respect of those assets.



**6.6.40** G Where a *firm* deposits *safe custody assets* belonging to a *client* with a third party or where a third party is responsible for the registration of legal title to that asset, in complying with the requirements of ■ CASS 6.6.34 R, the *firm* should seek to ensure that the third party provides the *firm* with adequate information (for example in the form of a statement) as at a date specified by the *firm* which details the description and amounts of all the *safe custody assets* credited to the relevant account(s) and that this information is provided in sufficient time to allow the *firm* to carry out its *external custody reconciliations* under ■ CASS 6.6.37 R.

**6.6.41** G If a *firm acting as trustee or depositary of an AIF* that is an *authorised AIF* deposits *safe custody assets* belonging to a *client* with a third party, under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*, the *firm* should seek to ensure that the third party provides the *firm* with adequate information (for example in the form of a statement) as at a date or dates specified by the *firm* which details the description and amounts of all the *safe custody assets* credited to the account(s) and that this information is provided in adequate time to allow the *firm* to carry out the periodic reconciliations required under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*.

**6.6.41A** G If a *firm acting as trustee or depositary of a UK UCITS* deposits *safe custody assets* belonging to a *client* with a third party, under article 13(1)(c) (Safekeeping duties with regard to assets held in custody) of the *UCITS level 2 regulation*, the *firm* should seek to ensure that:

(1) the third party provides the *firm* with adequate information (for example in the form of a statement):

(a) as at a date or dates specified by the *firm*; and

(b) which details the description and amounts of all the *safe custody assets* credited to the account(s); and

(2) such information is provided in adequate time to allow the *firm* to carry out the periodic reconciliations required under article 13(1)(c) of the *UCITS level 2 regulation*.

**6.6.42** G *External custody reconciliations* must be performed for each *safe custody asset* held by the *firm* for its *clients*, except for *physical safe custody assets*. A reconciliation of transactions involving *safe custody assets*, rather than of the *safe custody assets* themselves, will not satisfy the requirement under ■ CASS 6.6.34 R.

**6.6.43** G A *firm acting as trustee or depositary of an AIF* that is an *authorised AIF* should perform the reconciliation under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*:

(1) as regularly as is necessary having regard to the frequency, number and value of transactions which the *firm* undertakes in respect of *safe custody assets*, but with no more than one month between each reconciliation; and

(2) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal records and accounts against those of third parties by whom *client's safe custody assets* are held.

## Frequency of checks and reconciliations under this section

**6.6.43A** R ■ CASS 6.6.44R to ■ CASS 6.6.46R do not apply to a *firm* following its *failure*.

**6.6.43B** G ■ CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure* in respect of the frequency at which the *firm* undertakes its *internal custody record checks* under ■ CASS 6.6.11R, *physical asset reconciliations* under ■ CASS 6.6.22R, and *external custody reconciliations* under ■ CASS 6.6.37R.

**6.6.44** R When determining the frequency at which it will undertake its *internal custody record checks* under ■ CASS 6.6.11 R, *physical asset reconciliations* under ■ CASS 6.6.22 R, and *external custody reconciliations* under ■ CASS 6.6.37 R, a *firm* must have regard to:

(1) the frequency, number and value of transactions which the *firm* undertakes in respect of *clients*' *safe custody assets*; and

(2) the risks to which *clients*' *safe custody assets* are exposed, such as the nature, volume and complexity of the *firm's* business and where and with whom *safe custody assets* are held.

**6.6.45** R (1) A *firm* must make and retain records sufficient to show and explain any decision it has taken under ■ CASS 6.6.44 R when determining the frequency of its *internal custody record checks*, *physical asset reconciliations* and *external custody reconciliations*. Subject to (2), such records must be retained indefinitely.

(2) If any decision under ■ CASS 6.6.44 R is superseded by a subsequent decision under that *rule* then the record of that earlier decision retained in accordance with (1) need only be retained for a further period of five years from the subsequent decision.

**6.6.46** R

(1) Subject to (3), a *firm* must review the frequency at which it conducts *internal custody record checks*, *physical asset reconciliations* and *external custody reconciliations* at least annually to ensure that it continues to comply with ■ CASS 6.6.11 R, ■ CASS 6.6.22 R and ■ CASS 6.6.37 R, respectively, and has given due consideration to the matters in ■ CASS 6.6.44 R.

(2) For each review a *firm* undertakes under (1), it must record the date and the actions it took in reviewing the frequency of its *internal custody record checks*, *physical asset reconciliations* and *external custody reconciliations*.

(3) A *firm* need not carry out a review under (1) in respect of its *internal custody record checks*, *physical asset reconciliations* and *external custody reconciliations*, if it already conducts the particular process in respect of all relevant *safe custody assets* each *business day*.

6

## Frequency of checks and reconciliations after failure

**6.6.46A** R

(1) This *rule* applies to a *firm* following its *failure*.

(2) A *firm* must perform an *internal custody record check* and a *physical asset reconciliation* that relates to the time of its *failure* as soon as reasonably practicable after its *failure*.

(3) (a) A *firm* must perform an *external custody reconciliation* that relates to the time of its *failure* as soon as reasonably practicable after its *failure*.

(b) If any records and accounts of the relevant third parties under ■ CASS 6.6.35R relating to the time of the *firm's failure* are unavailable, the *firm* must use the next available records and accounts to perform the *external custody reconciliation* under sub-paragraph (a).

(4) A *firm* must perform further *internal custody record checks* and *physical asset reconciliations*:

(a) as regularly as is necessary to ensure that the *firm* remains in compliance with ■ CASS 6.6.2R, ■ CASS 6.6.3R and ■ CASS 6.6.4R (Records and accounts); and

(b) as soon as reasonably practicable after the date to which the *internal custody record check* or *physical asset reconciliation* relates.

(5) A *firm* must perform further *external custody reconciliations* on a regular basis:

(a) as regularly as is necessary; and

(b) as soon as reasonably practicable after the date to which the *external custody reconciliation* relates.

(6) A *firm* must determine the frequency at which it will undertake its *internal custody record checks* and *physical asset reconciliations* under paragraph (4), and its *external custody reconciliations* under paragraph (5) with regard to:

(a) the frequency, number and value of transactions which the *firm* undertakes in respect of *clients' safe custody assets*;

(b) the risks to which *clients' safe custody assets* are exposed, such as the nature, volume and complexity of the *firm's* business, and where and with whom *safe custody assets* are held; and

(c) the need to comply with ■ CASS 6.7.

**6.6.46B** G

(1) The reference point for the *internal custody record check* and *physical asset reconciliation* under ■ CASS 6.6.46A(2) and the *external custody reconciliation* under ■ 6.6.46A(3)(a) should be the precise point in time at which the *firm's* failure occurred.

(2) The reference point for any further *internal custody record checks* and *physical asset reconciliations* under ■ CASS 6.6.46A(4) and any further *external custody reconciliations* under ■ 6.6.46A(5) can be determined by the *firm*.

## Independence of person performing checks and reconciliations

**6.6.47** G

Whenever possible, a *firm* should ensure that checks and reconciliations are carried out by a *person* (for example an *employee* of the *firm*) who is independent of the production or maintenance of the records to be checked and/or reconciled.

## Resolution of discrepancies

**6.6.48** G

In this section, a discrepancy should not be considered to be resolved until it is fully investigated and corrected, and any associated *shortfall* is made good by way of the *firm* ensuring that:

(1) it is holding (under the *custody rules*) each of the *safe custody assets* that the *firm* ought to be holding for each of its *clients*; and

(2) its own records, and the records of any relevant other *person* (such as a third party with whom the *firm* deposited the *safe custody assets*) accurately correspond to the position under (1).

**6.6.49** R

When a *firm* identifies a discrepancy as a result of carrying out an *internal custody record check*, *physical asset reconciliation* or *external custody reconciliation*, the *firm* must:

(1) promptly investigate the reason for the discrepancy and resolve it without undue delay; and

(2) take appropriate steps under ■ CASS 6.6.54 R for the treatment of any *shortfalls* until that discrepancy is resolved.

**6.6.50** R When a *firm* identifies a discrepancy outside of its processes for an *internal custody record check*, *physical asset reconciliation* or *external custody reconciliation*, the *firm* must:

(1) take all reasonable steps both to investigate the reason for the discrepancy and to resolve it; and

(2) take appropriate steps under ■ CASS 6.6.54 R for the treatment of *shortfalls* until that discrepancy is resolved.

**6.6.51** G Where the discrepancy identified under ■ CASS 6.6.49 R or ■ CASS 6.6.50 R has arisen as a result of a breach of the*custody rules*, the *firm* should ensure it takes sufficient steps to avoid a reoccurrence of that breach (see *Principle* 10 (Clients' assets), ■ CASS 6.6.3 R and, as applicable, ■ SYSC 4.1.1R (1) and ■ SYSC 6.1.1 R).



**6.6.52** G Items recorded or held within a suspense or error account fall within the scope of discrepancies in this section.

**6.6.53** G Items recorded in a *firm's* records and accounts that are no longer recorded by relevant third parties (such as 'liquidated stocks') also fall within the scope of discrepancies in this section.

## Treatment of shortfalls

**6.6.54** R

(1) This *rule* applies where a firm identifies a discrepancy as a result of, or that reveals, a *shortfall*, which the *firm* has not yet resolved.

(2) Subject to paragraphs (3) and (4), until the discrepancy is resolved a *firm* must do one of the following:

(a) appropriate a sufficient number of its own *applicable assets* to cover the value of the *shortfall* and hold them for the relevant *clients* under the *custody rules* in such a way that the *applicable assets*, or the proceeds of their liquidation, will be available for distribution for the benefit of the relevant *clients* in the event of the *firm's failure* and, in doing so:

(i) ensure that the *applicable assets* are clearly identifiable as separate from the *firm's* own property and are recorded by the *firm* in its *client-specific safe custody asset record* as being held for the relevant *client*;

(ii) keep a record of the actions the *firm* has taken under this *rule* which includes a description of the *shortfall*, identifies the relevant affected *clients*, and lists the *applicable assets* that the *firm* has appropriated to cover the *shortfall*; and

(iii) update the record made under (ii) whenever the discrepancy is resolved and the *firm* has re-appropriated the *applicable assets*; or

(b) (provided that doing so is consistent with the *firm's permissions* and would result in *money* being held for the relevant *client*) in respect of the *shortfall* under ■ CASS 7.17.2 R (statutory trust) appropriate a sufficient amount of its own *money* to cover the

value of the *shortfall*, hold it for the relevant *client* as *client money* under the *client money rules* and, in doing so:

(i) ensure the *money* is segregated under CASS 7.13 (Segregation of client money) and recorded as being held for the relevant *client* under CASS 7.15 (Records, accounts and reconciliations);

(ii) keep a record of the actions the *firm* has taken under this *rule* which includes a description of the *shortfall*, identifies the relevant affected *clients*, and specifies the amount of *money* that the *firm* has appropriated to cover the *shortfall*; and

(iii) update the record made under (ii) whenever the discrepancy is resolved and the *firm* has re-appropriated the *money*; or

(c) appropriate a number of *applicable assets* in accordance with (a) and an amount of *money* in accordance with (b) which, in aggregate, are sufficient to cover the value of the *shortfall*.

(3) If the *firm*, where justified, concludes that another *person* is responsible for the discrepancy, regardless of any dispute with that other *person*, or that the discrepancy is due to a timing difference between the accounting systems of that other *person* and that of the *firm*, the *firm* must take all reasonable steps to resolve the situation without undue delay with the other *person*. Until the discrepancy is resolved the *firm* must consider whether it would be appropriate to notify the affected *client* of the situation, and may take steps under (2) for the treatment of *shortfalls* until that discrepancy is resolved.

(4) A *firm* that has *failed* is not required to take steps under paragraph (2) in relation to the *firm's* own *applicable assets* or *money* in so far as the legal procedure for the *firm's failure* prevents the *firm* from taking any such steps.

**6.6.55** G In considering whether it should notify affected *clients* under ■ CASS 6.6.54R (3), a *firm* should have regard to its obligations under the *client's best interests rule* to act honestly, fairly and professionally in accordance with the best interests of its *clients*, and to *Principle* 7 (communications with clients).

**6.6.56** G

(1) The value of a *shortfall* for the purposes of ■ CASS 6.6.54 R may be determined by the previous day's closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recently available valuation.

(2) Where a *firm* is taking the measures under ■ CASS 6.6.54R (2) in respect of a particular *shortfall* it should, as regularly as necessary, and having regard to *Principle* 10:

(a) review the value of the *shortfall* in line with (1); and

(b) where the *firm* has found that the value of the *shortfall* has changed, adjust either or both the number of own *applicable assets* or the amount of *money* it has appropriated to ensure that in aggregate the assets and monies set aside are sufficient to cover the changed value of the *shortfall*.

**6.6.56A** G ■ CASS 6.6.54R(4) recognises that a *failed firm* is required to investigate and resolve discrepancies, but the extent to which it is able to address *shortfalls* pending the resolution of discrepancies may be limited by insolvency law, for example.

## Notification requirements

**6.6.57** R A *firm* must inform the *FCA* in writing without delay if:

(1) its internal records and accounts of the *safe custody assets* held by the *firm* for *clients* are materially out of date, or materially inaccurate or invalid, so that the *firm* is no longer able to comply with the requirements in ■ CASS 6.6.2 R to ■ CASS 6.6.4 R; or

(2) it is a *firm acting as trustee or depositary of an AIF* and has not complied with, or is materially unable to comply with, the requirements in ■ CASS 6.6.2 R or in article 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*; or

(2A) it is a *firm acting as trustee or depositary of a UK UCITS* and has not complied with, or is materially unable to comply with, the requirements in:

(a) ■ CASS 6.6.2R; or

(b) article 13(1)(b) or 13(1)(c) (Safekeeping duties with regard to assets held in custody) of the *UCITS level 2 regulation*; or

(3) it will be unable, or materially fails, to take the steps required under ■ CASS 6.6.54 R for the treatment of *shortfalls*; or

(4) it will be unable, or materially fails, to conduct an *internal custody record check* in compliance with ■ CASS 6.6.11 R to ■ CASS 6.6.19 R; or

(5) it will be unable, or materially fails, to conduct a *physical asset reconciliation* in compliance with ■ CASS 6.6.22 R to ■ CASS 6.6.30 R; or

(6) it will be unable, or materially fails, to conduct an *external custody reconciliation* in compliance with ■ CASS 6.6.34 R to ■ CASS 6.6.37 R.

## Annual audit of compliance with the custody rules

**6.6.58** G *Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FCA* under ■ SUP 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *custody rules*.

## 6.7 Treatment of custody assets after a failure

### Application

6.7.1 R This section applies to a *firm* following its *failure*.

### Disposal of safe custody assets

6.7.2 R

(1) Before a *firm* takes any steps to dispose of a *safe custody asset* it must:

(a) (subject to paragraph (2)) attempt to return it to the relevant *client* or transfer it to another *person* for safekeeping on behalf of the *client* in accordance with ■ CASS 6.7.8R; and

(b) (subject to paragraph (3)) take reasonable steps to notify the *client* of the *firm's* proposed course of action for disposing of the *safe custody asset*.

(2) A *firm* is not required to attempt to return or transfer a *safe custody asset* under paragraph (1)(a) where the *client* to whom the *safe custody asset* belongs has confirmed to the *firm* that it disclaims all its interests in the *safe custody asset*.

(3) A *firm* is not required to notify a *client* under paragraph (1)(b) where:

(a) the *firm* is able to return the *safe custody asset* to the relevant *client* or transfer it to another *person* on behalf of the *client* in accordance with ■ CASS 6.7.8R; or

(b) the *client* to whom the *safe custody asset* belongs has confirmed to the *firm* that it disclaims all its interests in the *safe custody asset*.

6.7.3 G

(1) The disposal of a *safe custody asset* referred to under ■ CASS 6.7.2R(1) includes cases where the *firm* is using the procedure under regulation 12B of the *IBSA Regulations* to set a 'hard bar date' by giving a 'hard bar date notice', or is using another similar procedure in accordance with the legal procedure for the *firm's failure*.

(2) In any case, a *firm* should consider whether its obligations under law or any agreement permit it to dispose of a *safe custody asset* in the way in which it proposes to do so.

6.7.4 E

(1) Reasonable steps in ■ CASS 6.7.2R(1)(b) include the following course of conduct:

(a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;

(b) for a *client* for whom the *firm* has evidence that it was a *professional client* for the purposes of the *custody rules* at the time of the *failure*:

(i) writing to the *client* at its last known address either by post or by electronic mail:

(A) to inform it of the *firm's* intention to dispose of the *safe custody asset*;

(B) to inform it of the consequences of the *firm's* proposed course of action in relation to the *client's* ability to assert a claim in respect of that *safe custody asset*; and

(C) to invite the *client* to submit a claim for that *safe custody asset*;

(ii) where the *client* has not responded within 28 *days* of the communication under sub-paragraph (i), attempting to communicate the information in (i) to the *client* on at least one further occasion by any means other than that used in sub-paragraph (i) including by post, electronic mail, telephone or media advertisement; and

(c) for any other *client*:

(i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and

(ii) where the *client* has not responded within 28 *days* of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the *client* on at least one further occasion by any means other than one in respect of which the *firm* has obtained positive confirmation that the *client* is not receiving such communications.

(2) Compliance with paragraph (1) may be relied on as tending to establish compliance with ■ CASS 6.7.2R(1)(b).

(3) Contravention of paragraph (1) may be relied on as tending to establish contravention of ■ CASS 6.7.2R(1)(b).

**6.7.5** G For the purposes of ■ CASS 6.7.4E(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including:

(1) telephoning the *client*;

(2) searching internal and/or public records;

(3) media advertising;

(4) mortality screening; and

(5) using credit reference agencies or tracing agents.

**6.7.6** R If the *firm* undertook a tracing exercise for the purposes of ■ CASS 6.2.10R(4) (Allocated but unclaimed safe custody assets) before its *failure* but had not

made the charity payment under that *rule* by the time of its *failure* then the findings of that exercise may be relied on for the purposes of ■ CASS 6.7.4E(1)(a).

**6.7.7** R

(1) A *firm* must make a record of any *safe custody asset* disposed of in accordance with ■ CASS 6.7.2R at the time of the disposal.

(2) The record under paragraph (1) must state:

(a) the *safe custody asset* that was disposed of;

(b) the value of the consideration received for the *safe custody asset* disposed of;

(c) the name and contact details of the *client* to whom the *safe custody asset* was allocated, according to the *firm's* records at the time of making the record under this *rule*; and

(d) either:

(i) the efforts applied by the *firm* to determine the *client's* correct contact details under ■ CASS 6.7.4E(1)(a); or

(ii) if being relied on under ■ CASS 6.7.6R, the efforts applied by the *firm* to determine the *client's* correct contact details for the purposes of ■ CASS 6.2.10R(4) (Allocated but unclaimed safe custody assets).

(3) A *firm* must keep the record under paragraph (1) indefinitely.

## Transfers of safe custody assets

**6.7.8** R

(1) This *rule* applies where, instead of returning a *safe custody asset* to a *client*, a *firm* (Firm A) is able to transfer the *safe custody asset* to another *person* (Firm B) for safekeeping on behalf of the *client*.

(2) Firm A may only effect such a transfer if, in advance of the transfer, it has obtained a contractual undertaking from Firm B that:

(a) where regulation 10C(3) of the *IBSA Regulations* does not apply, Firm B will return the *safe custody asset* to the *client* at the *client's* request; and

(b) Firm B will notify the *client*, within 14 *days* of the transfer of that *client's safe custody asset* having commenced:

(i) of the applicable regulatory regime under which the *safe custody asset* will be held by Firm B;

(ii) either:

(A) of any relevant compensation scheme limits that may apply in respect of Firm B's handling of the *safe custody asset*; or

(B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and

(iii) where regulation 10C(3) of the *IBSA Regulations* does not apply, that the *client* has the option of having its *safe custody asset* returned to it by Firm B.

**6.7.9** G Where regulation 10C(3) of the *IBSA Regulations* does apply, Firm A should, in advance of the transfer under ■ CASS 6.7.8R, obtain a contractual undertaking from Firm B that:

(1) Firm B will comply with the *client's* request for a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*; and

(2) Firm B will notify the *client*, within 14 *days* of the transfer of that *client's safe custody asset* having commenced, that the *client* can demand a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*.

# Chapter 7

# Client money rules

## 7.10 Application and purpose

**7.10.1** R This chapter applies to a *firm* that receives *money* from or holds *money* for, or on behalf of, a *client* in the course of, or in connection with, its:

(1) *MiFID business*; and/or

(2) *designated investment business*; and/or

(3) *stocks and shares ISA business*; and/or

(4) *innovative finance ISA business*; and/or

*lifetime ISA business*,

unless otherwise specified in this section.

**7.10.2** G A *firm* is reminded that when CASS 7.10.1 R applies it should treat *client money* in an appropriate manner so that, for example:

(1) if it holds *client money* in a *client bank account* that account is held in the *firm's* name in accordance with CASS 7.13.13 R;

(2) if it allows another *person* to hold *client money* this is effected under CASS 7.14; and

(3) its *internal client money reconciliation* takes into account any *client equity balance* relating to its *margined transaction requirements*.

### Opt-in to the client money rules

**7.10.3** R (1) A *firm* that receives or holds *money* to which this chapter applies in relation to:

(a) its *MiFID business*; or

(b) its *MiFID business* and its *designated investment business* which is not *MiFID business*;

and holds *money* in respect of which CASS 5 applies, may elect to comply with the provisions of this chapter in respect of all such *money* and if it does so, this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of, or in connection with, its *MiFID business*.

(2) A *firm* that receives or holds *money* to which this chapter applies solely in relation to its *designated investment business* which is not *MiFID business* and receives or holds *money* in respect of which the *insurance client money chapter* applies, may elect to comply with the

provisions of this chapter in respect of all such *money* and if it does so, this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of or in connection with its *designated investment business*.

(2A) (a) A *firm* may elect to comply with all the provisions of this chapter for *money* that it receives or holds in respect of an *ISA* that only contains a *cash deposit ISA*.

(b) Where a *firm* makes an election under (a), this chapter applies to it in the same way that it applies to a *firm* who receives and holds *money* in the course of or in connection with its *MIFID business*.

(3) A *firm* must make and retain a written record of any election it makes under this *rule*, including the date from which the election is to be effective. The *firm* must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

(4) This *rule* is subject to ■ CASS 1.2.11 R.

**7.10.3A** R Where a *firm* opts into this chapter under ■ CASS 7.10.3 R (2A) it must notify *clients* for whom it holds the opted-in *money* that it is holding their *money* in accordance with the *client money rules*.

**7.10.4** G *Firms* are reminded that, under ■ CASS 1.2.11 R, they must not keep *money* in respect of which the *client money chapter* applies in the same *client bank account* or *client transaction account* as *money* for which the *insurance client money chapter* applies.

**7.10.5** G The opt-in to the *client money rules* under ■ CASS 7.10.3R does not apply in respect of *money* that a *firm* holds outside of either the:

(1) scope of the *insurance client money chapter*; or

(2) relevant *cash deposit ISA* wrapper;

as the case may be.

**7.10.6** G If a *firm* has opted to comply with this chapter under ■ CASS 7.10.3R, the *insurance client money chapter* will have no application to the activities to which the election applies.

**7.10.7** G (1) A *firm* that is only subject to the *insurance client money chapter* may not opt to comply with this chapter under either or both ■ CASS 7.10.3 R (1) and ■ CASS 7.10.3 R (2).

(2) Under ■ CASS 7.10.3 R (2A), a *firm* may opt to comply with this chapter regardless of whether it is otherwise subject to the *client money rules*.

## Loan-based crowdfunding

**7.10.7A** R

(1) If both the conditions in (a) and (b) below are met in respect of a *firm*, or the *firm* reasonably expects that they will all be met in the future, then the *firm* has the option to elect to comply with this chapter for all of the *money* described in those conditions:

(a) the *firm* receives or holds *money* for one or more *persons* in the course of, or in connection with, the *firm's* activity of *operating an electronic system in relation to non-P2P agreements*; and

(b) those *persons* are customers of the *firm* in their capacity as lenders under *non-P2P agreements* or prospective lenders under *non-P2P agreements*.

(2) A *firm* can only make the election under (1) by informing the *FCA* in writing of the election at least one *month* before the date on which it intends to start holding the *money* in accordance with the *client money rules* ("the effective date").

(3) The communication in (2) must specify the effective date.

(4) The *firm* may change the effective date after it has made the communication in (2) provided that:

(a) it informs the *FCA* in writing before the new effective date; and

(b) the new effective date is not less than one *month* after the date of the communication in (2).

**7.10.7B** R

(1) When a *firm* makes an election under ■ CASS 7.10.7AR it must write to any customer ("C") with whom it has agreed to provide *relevant electronic lending services* in C's capacity as a lender or prospective lender, informing C at least one *month* before it will start to hold the *money* in accordance with the *client money rules*:

(a) that all the *money* it holds in the course of, or in connection with, *operating an electronic system in relation to non-P2P agreements* for lenders and prospective lenders under *non-P2P agreements* will be treated in accordance with the *client money rules*; and

(b) of the date on which this will start.

(2) The *firm* must also write to any customer ("C") with whom, following the *firm's* election, it agrees to provide *relevant electronic lending services* in C's capacity as a lender or prospective lender.

(a) The *firm* must make this communication in advance of it receiving any *money* from or on behalf of C.

(b) The communication must inform C that all the *money* the *firm* holds in the course of, or in connection with, *operating an electronic system in relation to non-P2P agreements* for lenders and prospective lenders under *non-P2P agreements* will be treated in accordance with the *client money rules* from the date specified under (1)(b) or, if that date has passed, that this will be the case from the time of the communication onwards.

**7.10.7C** R Once an election made by a *firm* under ■ CASS 7.10.7AR becomes effective, and until it ceases to be effective:

(1) the *firm* must treat all the *money* referred to under ■ CASS 7.10.7AR(1) in accordance with the election; and

(2) for the purposes of (1), this chapter applies to the *firm* in the same way that it applies to a *firm* that receives and holds *money* in the course of or in connection with its *designated investment business*, except that:

(a) ■ CASS 7.10.10R will not apply to the *money* referred to under ■ CASS 7.10.7AR(1); and

(b) "*client*" for the purposes of *CASS* and *rules* and *guidance* related to *CASS* and their application to the *firm* includes customers of the *firm* in their capacity as lenders or prospective lenders under *non-P2P agreements*.

**7.10.7D** R If a *firm* that has made an election under ■ CASS 7.10.7AR subsequently decides to cancel that election:

(1) it can only do so by writing to the *FCA*, at least one *month* before the date the election ceases to be effective;

(2) it must write to any customer with whom, as at the time of the cancellation, it has agreed to *operate an electronic system in relation to non-P2P agreements* in their capacity as a lender or prospective lender, informing them at least one *month* before the date the election ceases to be effective:

(a) of the extent to which it will cease to hold their *money* in accordance with the *client money rules*; and

(b) of the date from which those changes will take effect; and

(3) it must write to any customer ("C") with whom, following the *firm's* decision to cancel the election but before the election ceases to be effective, it agrees to *operate an electronic system in relation to non-P2P agreements* in C's capacity as a lender or prospective lender, in advance of the *firm* receiving any *money* from them or on their behalf, informing them:

(a) of the period during which it will continue to hold all the *money* of lenders and prospective lenders under *non-P2P agreements* in accordance with the *client money rules*;

(b) of the extent to which it will subsequently cease to hold their *money* in accordance with the *client money rules*; and

(c) of the date from which those changes will take effect.

**7.10.7E** R (1) A *firm* must make and retain a written record of any election it makes under ■ CASS 7.10.7AR including:

(a) the date from which the election is to be effective; and

(b) if it cancels the election, the date from which the election is to cease to be effective.

(2) The *firm* must:

(a) make the record on the date it makes the election;

(b) update the record it if it decides to cancel the election or change the effective date; and

(c) keep the record for a period of five years after ceasing to use the election.

**7.10.7F** G

(1) Where a *firm* has made an election under ■ CASS 7.10.7AR:

(a) it should treat *money* held for a *client* as *client money* both in the course of or in connection with:

*(i) operating an electronic system in relation to lending*; and

*(ii) operating an electronic system in relation to non-P2P agreements*;

(b) (a) is regardless of whether, at the time the *firm* is holding the *money*, the *client* could or could not be a lender under a *P2P agreement*; and

(c) under ■ SYSC 4.1.8ER(2) it will be not be able to accept, take, or receive the transfer of full ownership of *money* relating to *non-P2P agreements*.

(2) Where a *firm* has not made an election under ■ CASS 7.10.7AR, or where it has previously made an election but the election has ceased to be effective under ■ CASS 7.10.7DR, any *money* it holds:

(a) in the course of, or in connection with *relevant electronic lending services*, for a *client* who at that time will or could be a lender under a *P2P agreement* in respect of that *money*, should be treated as *client money* (for example because that *client's* contractual investment criteria permit that *money* to be invested in a *P2P agreement*); and

(b) in the course of, or in connection with, *operating an electronic system in relation to non-P2P agreements*, for a customer who at that time could not be a lender under a *P2P agreement* in respect of that *money*, should not be treated as *client money* (for example because that customer's contractual investment criteria only permit that *money* to be invested in a *non-P2P agreement*).

## Money that is not client money: 'opt outs' for any business other than insurance distribution activity

**7.10.8** R

■ CASS 7.10.9 G to ■ CASS 7.10.15 G do not apply to a *firm* in relation to *money* held in connection with its *MiFID business* to which this chapter applies or in relation to *money* for which the *firm* has made an election under ■ CASS 7.10.3 R(1) or ■ CASS 7.10.7AR.

## Professional client opt-out

**7.10.9** G

The 'opt out' provisions provide a *firm* with the option of allowing a *professional client* to choose whether their *money* is subject to the *client money rules* (unless the *firm* is conducting *insurance distribution activity*).

**7.10.10** R Subject to ■ CASS 7.10.12 R, *money* is not *client money* when a *firm* (other than a sole trader) holds that *money* on behalf of, or receives it from, a *professional client*, other than in the course of *insurance distribution activity*, and the *firm* has obtained written acknowledgement from the *professional client* that:

(1) *money* will not be subject to the protections conferred by the *client money rules*;

(2) as a consequence, this *money* will not be segregated from the *money* of the *firm* in accordance with the *client money rules* and will be used by the *firm* in the course of its own business; and

(3) the *professional client* will rank only as a general creditor of the *firm*.

## 'Opt-outs' for non-IDD business

**7.10.11** G For a *firm* whose business is not governed by the *IDD*, it is possible to 'opt out' on a one-way basis. However, in order to maintain a comparable regime to that applying to *MiFID business*, all '*MiFID* type' business undertaken outside the scope of *MiFID* should comply with the *client money rules* or be 'opted out' on a two-way basis.

**7.10.12** R *Money* is not *client money* if a *firm*, in respect of *designated investment business* which is not an *investment service or activity*, an *ancillary service*, a *listed activity* or *insurance distribution activity*:

(1) holds it on behalf of or receives it from a *professional client* who is not an *authorised person*; and

(2) has sent a separate written notice to the *professional client* stating the matters set out in ■ CASS 7.10.10 R (1) to ■ CASS 7.10.10 R (3).

**7.10.13** G When a *firm* undertakes a range of business for a *professional client* and has separate agreements for each type of business undertaken, the *firm* may treat *client money* held on behalf of the *client* differently for different types of business; for example, a *firm* may, under ■ CASS 7.10.10 R or ■ CASS 7.10.12 R, elect to segregate *client money* in connection with *securities* transactions and not segregate (by complying with ■ CASS 7.10.10 R or ■ CASS 7.10.12 R) *money* in connection with contingent liability investments for the same *client*.

**7.10.14** R When a *firm* transfers *client money* to another *person*, the firm must not enter into an agreement under ■ CASS 7.10.10 R or ■ CASS 7.10.12 R with that other person in relation to that client money or represent to that other person that the money is not *client money*.

**7.10.15** G ■ CASS 7.10.14 R prevents a *firm*, when passing *client money* to another person under ■ CASS 7.14.2 R (Transfer of client money to a third party), from making use of the 'opt out' provisions under ■ CASS 7.10.10 R or ■ CASS 7.10.12 R.

## Credit institutions and approved banks

**7.10.16** R In relation to the application of the *client money rules* (and any other *rule* in so far as it relates to matters covered by the *client money rules*) to the firms referred to in (1) and (2), the following is not *client money*:

(1) any deposits within the meaning of the *CRD* held by a *CRD credit institution*; and

[**Note**: article 16(9) of *MiFID* and article 4(1) of the *MiFID Delegated Directive*]

(2) any *money* held by an *approved bank* that is not a *CRD credit institution* in an account with itself in relation to *designated investment business* carried on for its *clients*.

**7.10.17** G A *firm* referred to in ■ CASS 7.10.16 R must comply, as relevant, with ■ CASS 7.10.18 G to ■ CASS 7.10.24 R.



**7.10.18** G The effect of ■ CASS 7.10.16 R is that, unless notified otherwise in accordance with ■ CASS 7.10.20 R or ■ CASS 7.10.22 R, *clients* of *CRD credit institutions* or *approved banks* that are not *CRD credit institutions* should expect that where they pass *money* to such *firms* in connection with *designated investment business* these sums will not be held as *client money*.

**7.10.19** R A *firm* holding *money* in either of the ways described in ■ CASS 7.10.16 R must, before providing *designated investment business* services to the *client* in respect of those sums, notify the *client* that:

(1) the *money* held for that *client* is held by the *firm* as banker and not as a trustee under the *client money rules*; and

(2) if the *firm fails*, the *client money distribution and transfer rules* will not apply to these sums and so the *client* will not be entitled to share in any distribution under the *client money distribution and transfer rules*.

**7.10.20** R A *firm* holding *money* in either of the ways described in ■ CASS 7.10.16 R in respect of a *client* and providing the services to it referred to in ■ CASS 7.10.19 R must:

(1) explain to its *clients* the circumstances, if any, under which it will cease to hold any *money* in respect of those services as banker and will hold the *money* as trustee in accordance with the *client money rules*; and

(2) set out the circumstances in (1), if any, in its terms of business so that they form part of its agreement with the *client*.

**7.10.21** G Where a *firm* receives *money* that would otherwise be held as *client money* but for ■ CASS 7.10.16 R:

(1) it should be able to account to all of its *clients* for sums held for them at all times; and

(2) that *money* should, pursuant to *Principle* 10, be allocated to the relevant *client* promptly. This should be done no later than ten *business days* after the *firm* has received the *money*.

**7.10.22** R If a *CRD credit institution* or an *approved bank* that is not a *CRD credit institution* wishes to hold *client money* for a *client* (rather than hold the *money* in either of the ways described in ■ CASS 7.10.16 R) it must, before providing *designated investment business* services to the *client*, disclose the following information to the *client*:

(1) that the *money* held for that *client* in the course of or in connection with the business described under (2) is being held by the *firm* as *client money* under the *client money rules*;

(2) a description of the relevant business carried on with the *client* in respect of which the *client money rules* apply to the *firm*; and

(3) that, if the *firm fails*, the *client money distribution and transfer rules* will apply to *money* held in relation to the business in question.

**7.10.23** G *Firms* carrying on *MiFID business* are reminded of their obligation to supply investor compensation scheme information to *clients* under ■ COBS 6.1.16 R or ■ COBS 6.1ZA.22R (Compensation Information).

**7.10.24** R A *CRD credit institution* or an *approved bank* that is not a *CRD credit institution* must, in respect of any *client money* held in relation to its *designated investment business* that is not *MiFID business*, comply with the obligations referred to in ■ COBS 6.1.16 R (Compensation information).

## Affiliated companies: MiFID business

**7.10.25** G A *firm* that holds *money* on behalf of, or receives *money* from, an affiliated company in respect of *MiFID business* must treat the affiliated company as any other *client* of the *firm* for the purposes of this chapter.

## Affiliated companies: non-MiFID business

**7.10.26** R A *firm* that holds *money* on behalf of, or receives *money* from, an affiliated company in respect of *designated investment business* which is not *MiFID business* must not treat the *money* as *client money* unless:

(1) the *firm* has been notified by the affiliated company that the *money* belongs to a *client* of the affiliated company; or

(2) the affiliated company is a *client* dealt with at arm's length; or

(3) the affiliated company is a manager of an *occupational pension scheme* or is an overseas company; and

(a) the *money* is given to the *firm* in order to carry on *designated investment business* for or on behalf of the *clients* of the affiliated company; and

(b) the *firm* has been notified by the affiliated company that the *money* is to be treated as *client money*.

## Coins

**7.10.27** R The *client money rules* do not apply with respect to coins held on behalf of a *client* if the *firm* and the client have agreed that the *money* (or *money* of that type) is to be held by the *firm* for the intrinsic value of the metal which constitutes the coin.

## Solicitors

**7.10.28** R

(1) An *authorised professional firm* regulated by the Law Society (of England and Wales), the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its regulated activities, is subject to the following rules of its *designated professional body*, must comply with those rules and, where relevant paragraph (3), and if it does so, it will be deemed to comply with the *client money rules*.

(2) The relevant rules are:

(a) if the *firm* is regulated by the Law Society (of England and Wales), the SRA Accounts Rules 2011;

(b) if the *firm* is regulated by the Law Society of Scotland, the Law Society of Scotland Practice Rules 2011; and

(c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

(3) If the *firm* in (1) is a *MiFID investment firm* that receives or holds *money* for, or on behalf of a *client* in the course of, or in connection with its *MiFID business*, it must also comply with the *MiFID client money (minimum implementing) rules* in relation to that business.

## Long term insurers and friendly societies

**7.10.29** R This chapter does not apply to the *permitted activities* of a *long-term insurer* or a *friendly society*, unless it is a *MiFID investment firm* that receives *money* from or holds *money* for or on behalf of a *client* in the course of, or in connection with, its *MiFID business*.

## Contracts of insurance

**7.10.30** R

(1) Provided it complies with ■ CASS 1.2.11 R, a *firm* that receives or holds *client money* in relation to *contracts of insurance* may elect to comply with the provisions of the *insurance client money chapter*, instead of this chapter, in respect of all such *money*.

(2) This *rule* is subject to ■ CASS 1.2.11 R.

**7.10.31** R A *firm* must make and retain a written record of any election which it makes under ■ CASS 7.10.30 R.

## Life assurance business

**7.10.32** G

(1) A *firm* which receives and holds *client money* in respect of life assurance business in the course of its *designated investment business* that is not *MiFID business* may:

(a) under ■ CASS 7.10.3 R (2) elect to comply with the *client money chapter* in respect of such *client money* and in doing so avoid the need to comply with the *insurance client money chapter* which would otherwise apply to the *firm* in respect of *client money* received in the course of its *insurance distribution activity*; or

(b) under ■ CASS 7.10.30 R, elect to comply with the *insurance client money chapter* in respect of such *client money*.

(2) These options are available to a *firm* irrespective of whether it also receives and holds *client money* in respect of other parts of its *designated investment business*. A *firm* may not however choose to comply with the *insurance client money chapter* in respect of *client money* which it receives and holds in the course of any part of its *designated investment business* which does not involve an *insurance distribution activity*.

## Trustee firms

**7.10.33** R A *trustee firm* which holds *money* in relation to its *designated investment business* which is not *MiFID business* to which this chapter applies, must hold any such *client money* separate from its own *money* at all times.

**7.10.34** R Subject to ■ CASS 7.10.35 R only the *client money rules* listed in the table below apply to a *trustee firm* in connection with *money* that the *firm* receives, or holds for or on behalf of a *client* in the course of or in connection with its *designated investment business* which is not *MiFID business*.

| Reference | Rule |
|---|---|
| CASS 7.10.1 R to CASS 7.10.6 G, and CASS 7.10.16 R to CASS 7.10.27 R | Application |
| CASS 7.10.33 R to CASS 7.10.40 G | Trustee firms |
| CASS 7.10.41 G | General purpose |
| CASS 7.13.3 R to CASS 7.13.4 G | Depositing client money |
| CASS 7.13.8 R to CASS 7.13.11 G | Selection, appointment and review of third parties |
| CASS 7.13.12 R to CASS 7.13.19 G | Client bank accounts |
| CASS 7.13.20 R to CASS 7.13.25 R | Diversification of client money |
| CASS 7.13.26 R to CASS 7.13.29 G | Qualifying money market funds |
| CASS 7.15.5 R (3), CASS 7.15.7 R and CASS 7.15.12 R to CASS 7.15.34 G | Reconciliation of client money balances |
| CASS 7.16 | The standard methods of internal client money reconciliation |
| CASS 7.17.2 R to CASS 7.17.4 G | Requirement |

**7.10.35** R (1) A *trustee firm* to which ■ CASS 7.10.34 R applies may, in addition to the *client money rules* set out at ■ CASS 7.10.34 R, also elect to comply with:

(a) all the *client money rules* in ■ CASS 7.13 (Segregation of client money);

(b) ■ CASS 7.14 (Client money held by a third party);

(c) all the client money rules in ■ CASS 7.15 (Records, accounts and reconciliations); or

(d) ■ CASS 7.18 (Acknowledgement letters).

(2) A *trustee firm* must make a written record of any election it makes under this *rule*, including the date from which the election is to be effective. The *firm* must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

(3) Where a *trustee firm* has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and keep that record from the date the decision is made for a period of five years after the date it is to be effective.



**7.10.36** R A *trustee firm* to which ■ CASS 7.10.34 R applies and which is otherwise subject to the *client money rules* must ensure that any *client money* it holds other than in its capacity as *trustee firm* is segregated from *client money* it holds as a *trustee firm*.

**7.10.37** G A *trustee firm* to which ■ CASS 7.10.34 R applies and which is otherwise subject to the *client money rules* should ensure that in designing its systems and controls it:

(1) takes into account that the *client money distribution rules* will only apply in relation to any *client money* that the *firm* holds other than in its capacity as *trustee firm*; and

(2) has regard to other legislation that may be applicable.

**7.10.38** R (1) A *trustee firm* to which ■ CASS 7.10.34 R applies may elect that:

(a) the applicable provisions of ■ CASS 7.13 (Segregation of client money) and ■ CASS 7.15 (Records, accounts and reconciliations) under ■ CASS 7.10.34 R; and

(b) any further provisions it elects to comply with under ■ CASS 7.10.35 R (1);

will apply separately and concurrently for each distinct trust that the *trustee firm* acts for.

(2) A *trustee firm* must make a written record of any election it makes under this *rule*, including the date from which the election is to be effective. The *firm* must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

(3) Where a *trustee firm* has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and must keep that record from the date the decision is made for a period of five years after the date it is to be effective.

**7.10.39** G A *trustee firm* may wish to make an election under ■ CASS 7.10.38 R if, for example, it acts for a number of distinct trusts which it wishes, or is required, to keep operationally separate. If a *firm* makes such an election then it should:

(1) establish and maintain adequate internal systems and controls to effectively segregate *client money* held for one trust from *client money* held for another trust; and

(2) conduct *internal client money reconciliations* as set out in ■ CASS 7.16 and *external client money reconciliations* under ■ CASS 7.15.20 R for each trust.

**7.10.40** G The provisions in ■ CASS 7.10.34 R to ■ CASS 7.10.39 G do not affect the general application of the *client money rules* regarding *money* that is held by a *firm* other than in its capacity as a *trustee firm*.

## General purpose

**7.10.41** G (1) *Principle* 10 (Clients' assets) requires a *firm* to arrange adequate protection for *clients*' assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and treatment of *client money*. The *client money rules* provide requirements for firms that receive or hold *client money*, in whatever form.

(2) The *client money rules* also, where relevant, implement the provisions of *MiFID* which regulate the obligations of a *firm* when it holds *client money* in the course of its *MiFID business*.

## 7.11 Treatment of client money

### Title transfer collateral arrangements

**7.11.1** R (1) [deleted]

(2) [deleted]

A *firm* must not enter into a *TTCA* in respect of *money* belonging to a *retail client*.

Where a *firm* entered into a *TTCA* in respect of *money* belonging to a *retail client* (or *money* which would belong to a *retail client* but for the arrangement) before 3 January 2018, the *firm* must terminate that *TTCA*.

[**Note:** article 16(10) of *MiFID* and article 5(5) of the *MiFID Delegated Directive*]

*Money* that is subject to a *TTCA* does not amount to *client money*, provided that the *TTCA* is not with a *retail client*.

[**Note:** recital 52 to *MiFID*]

**7.11.2** R [deleted]

**7.11.3** R (1) A *firm* must ensure that any *TTCA* is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.

(2) Regardless of the form of the written agreement in (1) (which may have additional commercial purposes), it must cover the *client's* agreement to:

(a) the terms for the arrangement relating to the transfer of the *client's* full ownership of *money* to the *firm*;

(b) any terms under which the ownership of *money* is to transfer from the *firm* back to the *client*; and

(c) (to the extent not covered by the terms under (b)), any terms for the termination of:

(i) the arrangement under (a); or

(ii) the overall agreement in (1).

(3) A *firm* must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.



**7.11.4** G The terms referred to in ■ CASS 7.11.3 R (2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of *money* to the *firm* is not in effect from time to time, or is contingent on some other condition.

**7.11.4A** R (1) A *firm* must properly consider and document the use of *TTCAs* in the context of the relationship between the *client's* obligation to the *firm* and the *money* subjected to *TTCAs* by the *firm*.

(2) A *firm* must be able to demonstrate that it has complied with the requirement under (1).

(3) When considering, and documenting, the appropriateness of the use of *TTCAs*, a *firm* must take into account the following factors:

(a) whether there is only a very weak connection between the *client's* obligation to the firm and the use of *TTCAs*, including whether the likelihood of a liability arising is low or negligible;

(b) the extent by which the amount of *money* subject to a *TTCA* is in excess of the *client's* obligations (including where the *TTCA* applies to all *money* from the point of receipt by the *firm*) and whether the *client* might have no obligations at all to the *firm*; and

(c) whether all the *client's money* is made subject to *TTCAs*, without consideration of what obligation the *client* has to the *firm*.

(4) Where a *firm* uses a *TTCA*, it must highlight to the client the risks involved and the effect of any *TTCA* on the *client's money*.

[**Note:** article 6 of the *MiFID Delegated Directive*]

**7.11.5** G [deleted]

**7.11.6** G Where a *firm* has received full title or full ownership to *money* under a collateral arrangement, the fact that it has also granted a security interest to

its *client* to secure its obligation to repay that *money* to the *client* would not result in the *money* being *client money*. This can be compared to a situation in which a *firm* takes a charge or other security interest over *money* held in a *client bank account*, where that *money* would still be *client money* as there would be no absolute transfer of title to the *firm*. However, where a *firm* has received *client money* under a security interest and the security interest includes a "right to use arrangement", under which the *client* agrees to transfer all of its rights to *money* in that account to the *firm* upon the exercise of the right to use, the *money* may cease to be *client money*, but only once the right to use is exercised and the *money* is transferred out of the *client bank account* to the *firm*.

**7.11.7** G *Firms* are reminded of the *client's* best interest rule, which requires a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* when structuring its business particularly in respect of the effect of that structure on *firms*' obligations under the *client money rules*.



**7.11.8** G [deleted]

## Termination of title transfer collateral arrangements

**7.11.9** R

(1) If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate a *TTCA*, and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication, which also records the date the communication was received.

(2) A *firm* must keep a *client's* written communication, or a written record of the *client's* communication in (1), for five years starting from the date the communication was received by the *firm*.

(3) (a) If a *firm* agrees to the termination of a *TTCA*, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's money* will be treated as *client money* by the *firm* thereafter.

(b) If a *firm* does not agree to terminate a *TTCA*, it must notify the *client* of its disagreement in writing.

(4) A *firm* must keep a written record of any notification it makes to a *client* under (3) for a period of five years, starting from the date the notification was made.

**7.11.10** G ■ CASS 7.11.9 R (3)(a) refers only to a *firm's* agreement to terminate an existing *TTCA*. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.

**7.11.11** G When a *firm* notifies a *client* under ■ CASS 7.11.9 R (3)(a) of when the termination of a *TTCA* is to take effect, it should take into account:

(1) any relevant terms relating to such a termination that have been agreed with the *client*; and

(2) the period of time it reasonably requires to return the *money* to the *client*, or to update its records under ■ CASS 7.15 (Records, accounts and reconciliations) and to segregate the *money* as *client money* under ■ CASS 7.13 (Segregation of client money).

**7.11.12** R If a *TTCA* is terminated then, unless otherwise permitted under the *client money rules* and notified to the *client* under ■ CASS 7.11.9R(3)(a), the *firm* must treat that *money* as *client money* from the start of the next business day following the date of termination as set out in the *firm's* notification under ■ CASS 7.11.9R (3)(a).

Where the *firm's* notification under ■ CASS 7.11.9R(3)(a) does not state when the termination of the arrangement will take effect, the *firm* must treat that *money* as *client money* from the start of the next *business day* following the date on which the *firm's* notification is made.

**7.11.13** G A *firm* to which ■ CASS 7.11.12 R applies should, for example, update its records under ■ CASS 7.15 (Records, accounts and reconciliations) and segregate the *money* as *client money* under ■ CASS 7.13 (Segregation of client money), from the relevant time at which the *firm* is required to treat the *money* as *client money*.

## Delivery versus payment transaction exemption

**7.11.14** R (1) Subject to (2) and ■ CASS 7.11.16 R and with the agreement of the relevant *client*, *money* need not be treated as *client money* in respect of a delivery versus payment transaction through a *commercial settlement system* if:

(a) in respect of a *client's* purchase the *firm* intends for the *money* from the *client* to be due to it within one *business day* following the *firm's* fulfilment of its delivery obligation to the *client*; or

(b) in respect of a *client's* sale, the *firm* intends for the *money* in question to be due to the *client* within one *business day* following the *client's* fulfilment of its delivery obligation to the *firm*.

(2) If the payment or delivery by the *firm* to the *client* has not occurred by the close of business on the third *business day* following the date on which the *firm* makes use of the exemption under (1), the *firm* must stop using that exemption for the transaction.

**7.11.15** G [deleted]

**7.11.16** R A *firm* cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under ■ CASS 7.11.14 R in either or both of the following circumstances:

(1) it is not a direct member or participant of the relevant *commercial settlement system*, nor is it sponsored by such a member or

participant, in accordance with the terms and conditions of that *commercial settlement system*;

(2) the transaction in question is being settled by another *person* on behalf of the *firm* through an account held at the relevant *commercial settlement system* by that other *person*.

**7.11.17** R Where a *firm* does not meet the requirements in ■ CASS 7.11.14 R or ■ CASS 7.11.16 R for the use of the exemption in ■ CASS 7.11.14 R , the *firm* is subject to the *client money rules* in respect of any *money* it holds in connection with the delivery versus payment transaction in question.

**7.11.18** G

(1) In line with ■ CASS 7.11.14 R, where a *firm* receives *money* from the *client* in fulfilment of the *client's* payment obligation in respect of a delivery versus payment transaction the *firm* is carrying out through a *commercial settlement system* in respect of a *client's* purchase, and the *firm* has not fulfilled its delivery obligation to the *client* by close of business on the third *business day* following the date of the *client's* fulfilment of its payment obligation to the *firm*, the *firm* must treat the *client money* in accordance with the *client money rules* until delivery by the *firm* to the *client* occurs.

(2) Upon settlement of a delivery versus payment transaction a *firm* is carrying out through a *commercial settlement system* (including when it is settled within the three *business day* period referred to in ■ CASS 7.11.14 R (2)) then, in respect of:

(a) a *client's* purchase, the *custody rules* apply to the relevant *safe custody asset* the *firm* receives upon settlement; and

(b) a *client's* sale, the *client money rules* will apply to the relevant *money* received on settlement.

**7.11.19** R A *firm* will not be in breach of the requirement under ■ CASS 7.13.6 R to receive *client money* directly into a *client bank account* if it:

(1) receives the *money* in question:

(a) in accordance with ■ CASS 7.11.14 R (1)(a) but it is subsequently required under ■ CASS 7.11.14 R (2) to hold that *money* in accordance with the *client money rules*; or

(b) in the circumstances referred to in ■ CASS 7.11.18 G (2)(b); and

(2) pays the *money* in question into a *client bank account* promptly, and in any event by close of business on the *business day* following:

(a) the expiration of the relevant period referred to in ■ CASS 7.11.14 R (2); or

(b) receipt of the *money* in the circumstances referred to in ■ CASS 7.11.18 G (2)(b).

**7.11.20** R

(1) If a *firm* makes use of the exemption under ■ CASS 7.11.14 R, it must obtain the *client's* written agreement to the *firm's* use of the exemption.

(2) In respect of each *client*, the record created in (1) must be retained during the time that the *firm* makes use, or intends to make use, of the exemption under ■ CASS 7.11.14 R in respect of that *client's* monies.

**7.11.21** R

(1) Subject to (2)(a), *money* need not be treated as *client money*:

(a) in respect of a delivery versus payment transaction for the purpose of settling a transaction in relation to *units* in a *regulated collective investment scheme* in either of the following circumstances:

(i) the *authorised fund manager* receives the *money* from a *client* in relation to the *authorised fund manager's* obligation to issue units, in an *AUT* or *ACS*, or to arrange for the issue of *units* in an *ICVC*, in accordance with *COLL*; or

(ii) the *money* is held in the course of redeeming *units* where the proceeds of that redemption are paid to a client within the time specified in *COLL*.

(2) (a) Where, in respect of *money* received in any of the circumstances set out in (1), the *authorised fund manager* has not, by close of business on the *business day* following the date of receipt of the *money*, paid this *money* to the *depositary* of an *AUT* or *ACS*, the *ICVC* or to the *client* as the case may be, the *authorised fund manager* must stop using the exemption under (1) for that transaction.

(b) Paragraph (2)(a) does not prevent a *firm* transferring *client money* segregated under (2)(a) into the *firm's* own account, provided this is done only for the purpose of making a payment on the same day from that account in accordance with ■ CASS 7.11.34R(1) to ■ CASS 7.11.34R(3) (Discharge of fiduciary duty).

**7.11.22** R

An *authorised fund manager* will not be in breach of the requirement under ■ CASS 7.13.6R to receive *client money* directly into a *client bank account* if it received the *money* in accordance with ■ CASS 7.11.21 R (1) and is subsequently required under ■ CASS 7.11.21 R (2) to hold that *money* in accordance with the *client money rules*.

**7.11.23** G

Where proceeds of redemption paid to the *client* in accordance with ■ CASS 7.11.21 R (1)(a)(ii) are paid by cheque, the cheque should be issued from the relevant *client bank account*.

**7.11.24** R

(1) If a *firm* makes use of the exemption under ■ CASS 7.11.21 R, it must obtain the *client's* written agreement to the *firm's* use of the exemption.

(2) In respect of each *client*, the record created in (1) must be retained for the duration of the time that the *firm* makes use of the exemption under ■ CASS 7.11.21 R in respect of that *client's money*.

## Money due and payable to the firm

**7.11.25** R

(1) *Money* is not *client money* when it becomes properly due and payable to the *firm* for its own account.

(2) For these purposes, 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 from a client bank account for reimbursement will become due and payable to the *firm*.

**7.11.26** G

*Money* will not become properly due and payable to the *firm* merely through the *firm* holding that *money* for a specified period of time. If a *firm* wishes to cease to hold *client money* for a *client* it must comply with ■ CASS 7.11.34 R (Discharge of fiduciary duty) or, if the balance is allocated but unclaimed *client money*, ■ CASS 7.11.50 R (Allocated but unclaimed client money) or ■ CASS 7.11.57 R (De minimis amounts of unclaimed client money).



**7.11.27** G

*Money* held as *client money* becomes due and payable to the *firm* or for the *firm's* own account, for example, because the *firm* acted as *principal* in the contract or the *firm*, acting as agent, has itself paid for *securities* in advance of receiving the purchase *money* from its *client*. The circumstances in which it is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

**7.11.28** G

*Firms* are reminded that, notwithstanding that *money* may be due and payable to them, they have a continuing obligation to segregate *client money* in accordance with the *client money rules*. In particular, in accordance with ■ CASS 7.15.2 R, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out *internal client money reconciliations* either in accordance with the standard methods of *internal client money reconciliation* or the requirements for a *non-standard method of internal client money reconciliation*.

**7.11.29** G

When a *client's* obligation or liability, which is secured by that *client's* asset, crystallises, and the *firm* realises the asset in accordance with an agreement entered into between the *client* and the *firm*, the part of the proceeds of the asset to cover such liability that is due and payable to the *firm* is not *client* money. However, any proceeds of sale in excess of the amount owed by the *client* to the *firm* should be paid over to the *client* immediately or be held in accordance with the *client money rules*.

## Commission rebate

**7.11.30** G

When a *firm* has entered into an arrangement under which *commission* is rebated to a *client*, those rebates need not be treated as *client money* until they become due and payable to the *client* in accordance with the terms of the contractual arrangements between the parties.

**7.11.31** G

When *commission* rebate becomes due and payable to the *client*, the *firm* should:

(1) treat it as *client money*; or

(2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.11.34 R);

unless the *firm* and the *client* have entered into an arrangement under which the *client* has agreed to transfer full ownership of this *money* to the *firm* as collateral against payment of future professional fees (see ■ CASS 7.11 (Title transfer collateral arrangements)).

## Interest

**7.11.32** R A *firm* must pay a *retail client* any interest earned on *client money* held for that *client* unless it has otherwise notified him in writing.

**7.11.33** G

(1) The *firm* may, under the terms of its agreement with the *client*, pay some, none, or all interest earned to the relevant *client*.

(2) Where interest is payable on *client money* by a *firm* to *clients*:

(a) such sums are *client money* and so, if not paid to, or to the order of the clients, are required to be segregated in accordance with ■ CASS 7.13 (Segregation of client money);

(b) the interest should be paid to *clients* in accordance with the *firm's* agreement with each *client*; and

(c) if the *firm's* agreement with the *client* is silent as to when interest should be paid to the *client* the *firm* should follow ■ CASS 7.13.36 R (Allocation of client money receipts);

irrespective of whether the *client* is a *retail client* or otherwise.

## Discharge of fiduciary duty

**7.11.33A** R

(1) ■ CASS 7.11.34R(2)(c), ■ CASS 7.11.34R(2)(d) and ■ CASS 7.11.34R(10) do not apply to a *firm* following a *primary pooling event*.

(2) ■ CASS 7.11.34R(2)(e) only applies to a *firm* following a *primary pooling event*.

**7.11.34** R *Money* ceases to be *client money* (having regard to ■ CASS 7.11.40 R where applicable) if:

(1) it is paid to the *client*, or a duly authorised representative of the client; or

(2) it is:

(a) paid to a third party on the instruction of, or with the specific consent of, the *client* unless it is transferred to a third party in the course of effecting a transaction under ■ CASS 7.14.2 R (Transfer of client money to a third party); or

(b) paid to a third party pursuant to an obligation on the *firm* where:

(i) that obligation arises under an enactment; and

(ii) the obligation under that enactment is applicable to the *firm* as a result of the nature of the business being undertaken by the *firm* for its *client*; or

(c) transferred in accordance with ■ CASS 7.11.42 R; or

(d) transferred in accordance with ■ CASS 7.11.44 R; or

(e) transferred in accordance with ■ CASS 7A.2.4R(4); or

(3) subject to ■ CASS 7.11.39R, it is paid into a bank account of the *client* (not being an account which is also in the name of the *firm*); or

(4) it is due and payable to the *firm* in accordance with ■ CASS 7.11.25 R (Money due and payable to the firm); or

(5) it is paid to the *firm* as an excess in the *client bank account* (see ■ CASS 7.15.29 R (2) (Reconciliation discrepancies)); or

(6) it is paid by an *authorised central counterparty* to a clearing member other than the *firm* in connection with a *porting* arrangement in accordance with ■ CASS 7.11.35 R; or

(7) it is paid by an *authorised central counterparty* directly to the *client* in accordance with ■ CASS 7.11.36 R; or

(8) it is transferred by the *firm* to a *clearing member* in connection with a *regulated clearing arrangement* and the *clearing member* remits payment to another *firm* or to another *clearing member* in accordance with ■ CASS 7.11.37 R (1); or

(9) it is transferred by the *firm* to a *clearing member* in connection with a *regulated clearing arrangement* and the *clearing member* remits payment directly to the *indirect clients* of the *firm* in accordance with ■ CASS 7.11.37 R (2); or

(10) it is paid to charity under ■ CASS 7.11.50 R or ■ CASS 7.11.57 R.

**7.11.35** R *Client money* which the *firm* places at an *authorised central counterparty* in connection with a *regulated clearing arrangement* ceases to be *client money* for that *firm* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is ported by the *authorised central counterparty* in accordance with article 48 of *EMIR*.

**7.11.36** R *Client money* which the *firm* places at an *authorised central counterparty* in connection with a *regulated clearing arrangement* ceases to be *client money* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is paid directly to the *client* by the *authorised central counterparty* in accordance with the procedure described in article 48(7) of *EMIR*.

**7.11.37** R *Client money* received or held by the *firm* and transferred to a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement* ceases to be *client money* for that *firm* and, if applicable, the *clearing member*, if the *clearing member* in accordance with the *EMIR indirect clearing default management obligations* or the *MiFIR indirect clearing default management obligations* (as applicable):

(1) remits payment to another *firm* or to another *clearing member*; or

(2) remits payment to the *indirect clients* of the *firm*.

**7.11.38** R *Client money* received or held by the *firm* for a *sub-pool* ceases to be *client money* for that *firm* to the extent that such *client money* is transferred by the *firm* to an *authorised central counterparty* or a *clearing member* as a result of *porting*.

**7.11.39** R A *firm* must not pay *client money* into a bank account of the *client* that has been opened without the consent of that *client*.

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



## Transfer of business

**7.11.40A** R ■ CASS 7.11.41G to ■ CASS 7.11.47R do not apply to a *firm* following a *primary pooling event*.

**7.11.40B** G ■ CASS 7A.2.4R(4) (Pooling and distribution or transfer) applies to a *firm* in respect of transfers of *client money* to another *person* following a *primary pooling event*.

**7.11.41** G A *firm* may transfer *client money* to a third party as part of transferring all or part of its business if, in respect of each *client* with an interest in the *client money* that is sought to be transferred, it:

(1) obtains the consent or instruction of that *client* at the time of the transfer of business (see ■ CASS 7.11.34 R (2)(a); or

(2) complies with ■ CASS 7.11.42 R (see ■ CASS 7.11.34 R (2)(c); or

(3) complies with ■ CASS 7.11.44 R (see ■ CASS 7.11.34 R (2)(d)).

**7.11.42** R Subject to ■ CASS 7.11.44 R, money ceases to be *client money* for a *firm* if:

(1) it is transferred by the *firm* to another *person* as part of a transfer of business to that person where the *client money* relates to the business being transferred;

(2) it is transferred on terms which require the other *person* to return a *client's* transferred sums to the *client* as soon as practicable at the *client's* request;

(3) a written agreement between the *firm* and the relevant *client* provides that:

(a) the *firm* may transfer the *client's client money* to another *person*; and

(b) (i) the sums transferred will be held by the *person* to whom they are transferred in accordance with the *client money rules* for the *clients*; or

(ii) if not held in accordance with (i), the *firm* will exercise all due skill, care and diligence in assessing whether the *person* to whom the *client money* is transferred will apply adequate measures to protect these sums; and

(4) the *firm* complies with the requirements in (3)(b)(ii) (if applicable).

**7.11.43** G In considering how and whether to introduce the written agreement referred to in ■ CASS 7.11.42 R (3), *firms* should have regard to any relevant obligations to *clients*, including requirements under the *Unfair Terms Regulations*.

## Transfer of business: de minimis sums



**7.11.44** R (1) *Client money* belonging to those categories of *clients* set out in (2) and in respect of those amounts set out in (2) ceases to be *client money* of the *firm* if it is transferred by the *firm* to another *person*:

(a) as part of a transfer of business to that other person where these sums relate to the business being transferred; and

(b) on terms which require the other *person* to return a *client's* transferred sums as soon as practicable at the *client's* request.

(2) (a) For *retail clients* the amount is £25.

(b) For all other *clients* the amount is £100.

**7.11.45** G For the avoidance of doubt, sums transferred under ■ CASS 7.11.44 R do not, for the purposes of that *rule*, require the instruction or specific consent of each *client* at the time of the transfer or a written agreement as set out in ■ CASS 7.11.42 R (3).

## Transfer of business: client notifications

**7.11.46** R Where a *firm* transfers *client money* belonging to its *clients* under either or both of ■ CASS 7.11.42 R and ■ CASS 7.11.44 R it must ensure that those *clients* are notified no later than seven *days* after the transfer taking place:

(1) whether or not the sums will be held by the person to whom they have been transferred in accordance with the *client money rules* and if not how the sums being transferred will be held by that *person*;

(2) the extent to which the sums transferred will be protected under a compensation scheme; and

(3) that the *client* may opt to have the *client's* transferred sum returned to it as soon as practicable at the *client's* request.

**7.11.47** R The *firm* must notify the *FCA* of its intention to effect any transfer of *client money* under either or both of ■ CASS 7.11.42 R and ■ CASS 7.11.44 R at least seven *days* before it transfers the *client money* in question.

## Allocated but unclaimed client money

**7.11.47A** R ■ CASS 7.11.48G to ■ CASS 7.11.58G do not apply to a *firm* following a *primary pooling event*.

**7.11.47B** G ■ CASS 7A.2.6AR (Closing a client money pool) applies to a *firm* following a *primary pooling event* in respect of allocated but unclaimed *client money*.

**7.11.48** G The purpose of ■ CASS 7.11.50 R is to set out the requirements *firms* must comply with in order to cease to treat as *client money* any unclaimed balance which is allocated to an individual *client*.

**7.11.49** G Before acting in accordance with ■ CASS 7.11.50 R to ■ CASS 7.11.58 G, a *firm* should consider whether its actions are permitted by law and consistent with the arrangements under which the *client money* is held. For the avoidance of doubt, these provisions relate to a *firm's* obligations as an *authorised person* and to the treatment of *client money* under the *client money rules*.

**7.11.50** R A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under ■ CASS 7.11.34 R (10), provided:

(1) this is permitted by law and consistent with the arrangements under which the *client money* is held;

(2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);

(3) it can demonstrate that it has taken reasonable steps to trace the *client* concerned and to return the balance; and

(4) the *firm* complies with ■ CASS 7.11.54 R.

**7.11.51** G Where the *client money* balance held by a *firm* is, in aggregate, £100 or less for a *client* other than a *retail client* or, for a *retail client*, £25 or less, the *firm* may comply with ■ CASS 7.11.57 R instead of ■ CASS 7.11.50 R.

**7.11.52** E (1) Taking reasonable steps in ■ CASS 7.11.50 R (3) includes following this course of conduct:

(a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;

(b) writing to the *client* at the last known address either by post or by electronic mail to inform it of the *firm's* intention to no longer treat the *client money* balance as *client money* and to pay the sums concerned to charity if the *firm* does not receive instructions from the *client* within 28 *days*;

(c) where the *client* has not responded after the 28 *days* referred to in (b), attempting to communicate the information set out in (b) to the *client* on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;

(d) subject to (e) and (f), where the *client* has not responded within 28 *days* following the most recent communication, writing again to the *client* at the last known address either by post or by electronic mail to inform them that:

(i) as the *firm* did not receive a claim for the relevant *client money* balance, it will in 28 *days* pay the balance to a registered charity; and

(ii) an undertaking will be provided by the *firm* or a member of its *group* to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future;

(e) if the *firm* has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the *client* is no longer at a particular address, the *firm* should not use that address for the purposes of (d);

(f) if, after carrying out the steps in (a), (b) and (c), the *firm* has obtained positive confirmation that none of the contact details it holds for the relevant *client* are accurate or, if utilised, the communication is unlikely to reach the *client*, the *firm* does not have to comply with (d); and

(g) waiting a further 28 *days* following the most recent communication under this *rule* before paying the balance to a registered charity.

(2) Compliance with (1) may be relied on as tending to establish compliance with ■ CASS 7.11.50 R.

(3) Contravention of (1) may be relied on as tending to establish contravention of ■ CASS 7.11.50 R.

**7.11.53** G For the purpose of ■ CASS 7.11.52 E (1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including telephoning the *client*, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.

**7.11.54** R (1) Where a *firm* wishes to release a balance allocated to an individual *client* under ■ CASS 7.11.50 R it must comply with either (a) or (b) and, in either case, (2):

(a) the *firm* must unconditionally undertake to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future;

or

(b) the *firm* must ensure that an unconditional undertaking in the terms set out in (a) is made by a member of its *group* and there is suitable information available for relevant *clients* to identify the member of the *group* granting the undertaking.

(2) The undertakings in this *rule* must be:

(a) authorised by the *firm's governing body* where (1)(a) applies or by the *governing body* of the *group* member where (1)(b) applies;

(b) legally enforceable by any *person* who had a legally enforceable claim to the balance in question at the time it was released by the *firm*, or by an assign or successor in title to such claim; and

(c) retained by the *firm*, and where (1)(b) applies, by the group member indefinitely.

**7.11.55** R

(1) If a *firm* pays away *client money* under ■ CASS 7.11.50 R (4) it must make and retain, or where the *firm* already has such records, retain:

(a) records of all balances released from *client bank* accounts under ■ CASS 7.11.50 R (including details of the amounts and the identity of the *client* to whom the *money* was allocated);

(b) all relevant documentation (including charity receipts); and

(c) details of the communications the *firm* had or attempted to make with the *client* concerned pursuant to ■ CASS 7.11.50 R (3).

(2) The records in (1) must be retained indefinitely.

(3) If a member of the *firm's group* has provided an undertaking under ■ CASS 7.11.54 R (2) then the records in (1) must be readily accessible to that *group* member.

## De minimis amounts of unclaimed client money

**7.11.56** G

The purpose of ■ CASS 7.11.57 R is to allow a *firm* to pay away to charity *client money* balances of (i) £25 or less for *retail client*s or (ii) £100 or less for other *clients* when those balances remain unclaimed. If a *firm* follows this process, the *money* will cease to be *client money* (see ■ CASS 7.11.34 R (10).

**7.11.57** R

A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under ■ CASS 7.11.34 R (10):

(1) the balance in question is (i) for a *retail client*, in aggregate, £25 or less, or (ii) for a *professional client*, in aggregate, £100 or less;

(2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);

(3) the *firm* has made at least one attempt to contact the *client* to return the balance using the most up-to-date contact details the *firm* has for

the *client*, and the *client* has not responded to such communication within 28 days of the communication having been made; and

(4) the *firm* makes and/or retains records of all balances released from *client bank* accounts in according with this *rule*. Such records must include the information in ■ CASS 7.11.55 R (1)(a) and ■ CASS 7.11.55 R (1)(b).

## Costs associated with paying away allocated but unclaimed client money

**7.11.58** G Any costs associated with the *firm* ceasing to treat unclaimed *client money* balances as *client money* pursuant to ■ CASS 7.11.50 R to ■ CASS 7.11.57 R should be paid for from the *firm's* own funds, including:

(1) any costs associated with the *firm* carrying out the steps in ■ CASS 7.11.50 R (3), ■ CASS 7.11.51 G or ■ CASS 7.11.57 R (3); and

(2) the cost of any insurance purchased by a *firm* or the relevant member of its *group* to cover any legally enforceable claim in respect of the *client money* paid away.

## 7.12 Organisational requirements: client money

### Requirement to protect client money

**7.12.1** R A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

[**Note**: article 16(9) of *MiFID*]

### Requirement to have adequate organisational arrangements

**7.12.2** R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

[**Note**: article 2(1)(f) of the *MiFID Delegated Directive*]

**7.12.3** G The risk of loss or diminution of rights in connection with *client money* can arise where a *firm's* organisational arrangements give rise to the possibility that *client money* held by the *firm* may be paid for the account of a *client* whose *money* is yet to be received by the *firm*. Consistent with the requirement to hold *client money* as trustee (see CASS 7.17.5 G), a *firm* should ensure its organisational arrangements are adequate to minimise such a risk. This may include, for example, allowing for sufficient periods of time for payments of *client money* to the *firm* to become available for use (including automated payments, credit card payments and payments by cheque), and setting up safeguards to ensure that payments out of *client bank accounts* do not take effect before the relevant amount of *client money* has become available for use by the *firm*.

# 7.13 Segregation of client money

## Application and purpose

**7.13.1** G The segregation of *client money* from a *firm's* own *money* is an important safeguard for its protection.



**7.13.2** R Where a *firm* establishes one or more *sub-pools*, the provisions of ■ CASS 7.13 (Segregation of client money) shall be read as applying separately to the *firm's general pool* and each *sub-pool* in line with ■ CASS 7.19.3 R and ■ CASS 7.19.12 R.

## Depositing client money

**7.13.3** R A *firm*, on receiving any *client money*, must promptly place this *money* into one or more accounts opened with any of the following:

(1) a central bank;

(2) a *CRD credit institution*;

(3) a bank authorised in a *third country*;

(4) a *qualifying money market fund*.

[**Note**: article 4(1) of the *MiFID Delegated Directive*]

**7.13.4** G A *firm* should ensure that any *money* other than *client money* that is deposited in a *client bank account* is promptly paid out of that account unless such *money* is a minimum sum required to open the account, or to keep the account open.

## Approaches for the segregation of client money

**7.13.5** G The two approaches that a *firm* can adopt in discharging its obligations under this section are:

(1) the 'normal approach'; or

(2) the 'alternative approach' (see ■ CASS 7.13.54 G to ■ CASS 7.13.69 G).

## The normal approach

**7.13.6** R Unless otherwise permitted by any other *rule* in this chapter, a *firm* using the normal approach must ensure that all *client money* it receives is paid directly into a *client bank account* at an institution referred to in ■ CASS 7.13.3 R (1) to ■ CASS 7.13.3 R (3), rather than being first received into the *firm's* own account and then segregated.

**7.13.7** G *Firms* should ensure that *clients* and third parties make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.

## Selection, appointment and review of third parties

**7.13.8** R

(1) A *firm* that does not deposit *client money* with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the *CRD credit institution*, bank or *qualifying money market fund* where the *money* is deposited and the arrangements for the holding of this *money*.

(2) The *firm* must consider the need for diversification as part of its due diligence under (1).

[**Note**: article 4(2) first sub-paragraph of the *MiFID Delegated Directive*]

**7.13.9** G *Firms* should ensure that their consideration of a *CRD credit institution*, bank or *qualifying money market fund* under ■ CASS 7.13.8 R focuses on the specific legal entity in question and not simply that *person's* group as a whole.

**7.13.10** R When a *firm* makes the selection, appointment and conducts the periodic review of a *CRD credit institution*, a bank or a *qualifying money market fund*, it must take into account:

(1) the expertise and market reputation of the third party with a view to ensuring the protection of *clients'* rights; and

(2) any legal or regulatory requirements or market practices related to the holding of *client money* that could adversely affect *clients*' rights.

[**Note**: article 4(2) second sub-paragraph of the *MiFID Delegated Directive*]

**7.13.11** G In complying with ■ CASS 7.13.8 R and ■ CASS 7.13.10 R, a firm should consider, as appropriate, together with any other relevant matters:

(1) the capital of the *CRD credit institution* or bank;

(2) the amount of *client money* placed, as a proportion of the *CRD credit institution* or bank's capital and deposits, and, in the case of a *qualifying money market fund*, compared to any limit the fund may place on the volume of redemptions in any period;

(3) the extent to which *client money* that the *firm* deposits or holds with any *CRD credit institution* or bank incorporated outside the *UK* would

be protected under a deposit protection scheme in the relevant jurisdiction;

(4) the credit-worthiness of the *CRD credit institution* or bank; and

(5) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the *CRD credit institution* or bank and *affiliated companies*.

## Client bank accounts

**7.13.12** R A *firm* must take the necessary steps to ensure that *client money* deposited, in accordance with ■ CASS 7.13.3 R, in a central bank, a *credit institution*, a bank authorised in a *third country* or a *qualifying money market fund* is held in an account or accounts identified separately from any accounts used to hold *money* belonging to the *firm*.

[**Note**: article 2(1)(e) of the *MiFID Delegated Directive*]



**7.13.13** R

(1) An account which the *firm* uses to deposit *client money* under ■ CASS 7.13.3 R (1) to ■ CASS 7.13.3 R (3) must be a *client bank account*.

(2) In respect of each *client bank account* used by a *firm* to satisfy its obligation under ■ CASS 7.13.3R(1) to (3):

(a) the relevant bank's contractual counterparty must be the *firm* itself; and

(b) ) subject to paragraph (3A), the *firm* must be able to make withdrawals of *client money* promptly and, in any event, within one *business day* of a request for withdrawal.

Transitional provision ■ CASS TP 1.1.10AR applies to (2).

(3) [deleted]

(3A) Where the requirement under sub-paragraph (2)(b) is not satisfied and provided that the *client bank account* is not included in a *sub-pool*, a *firm* may use a *client bank account* from which it will be unable to make a withdrawal of *client money* until the expiry of a period lasting:

(a) up to 30 *days*; or

(b) provided the *firm* complies with ■ CASS 7.13.14AR, from 31 to 95 *days*.

(4) Paragraphs (2)(b) and (3A) do not apply in respect of *client money* received by a *firm* in its capacity as a *trustee firm*.

**7.13.14** G ■ CASS 7.13.13 R (2)(b) and ■ CASS 7.13.13R(3A) do not prevent a *firm* from depositing *client money* on terms under which a withdrawal may be made before the expiry of a fixed term or a notice period (whatever the duration), including where such withdrawal would incur a penalty charge to the *firm*.

**7.13.14A** R A *firm* may only use one or more *client bank accounts* under ■ CASS 7.13.13R(3A)(b) if:

(1) prior to using any such *client bank accounts*, it:

(a) produces a written policy that sets out:

(i) for each of its business lines, the maximum proportion of the *client money* held by the *firm* that the *firm* considers would be appropriate to hold in such *client bank accounts* having regard to the need to manage the risk of the *firm* being unable to access *client money* when required;

(ii) the *firm's* rationale for reaching its conclusion(s) under (i); and

(iii) the measures that it will put into place to comply with sub-paragraph (2)(a) of this *rule*, having regard to ■ CASS 7.13.14CE; and

(b) provides each of its *clients* with a written explanation of the risks that arise as a result of the longer notice period for withdrawals that:

(i) is clear, fair and not misleading; and

(ii) in respect of the medium of the explanation, satisfies whichever of ■ COBS 6.1.13R (Medium of disclosure) or ■ COBS 6.1ZA.19EU (Medium of disclosure) applies to the *firm* in respect of its obligations to provide information to the *client*; and

(2) while the *firm* uses any such *client bank accounts*, it:

(a) takes appropriate measures to manage the risk of the *firm* being unable to access *client money* when required;

(b) keeps its written policy under sub-paragraph (1)(a) under review, amending it where necessary; and

(c) provides any of its *clients* to whom it has not previously provided the explanation under sub-paragraph (1)(b) with such a written explanation before it starts to hold or receive *client money* for them.

**7.13.14B** R

(1) A *firm* must make and retain a written record of:

(a) the written policy it produces under ■ CASS 7.13.14AR(1)(a); and

(b) each subsequent version of the written policy it produces as a result of ■ CASS 7.13.14AR(2)(b).

(2) The *firm* must make the record:

(a) under sub-paragraph (1)(a) on the date it produces the written policy; and

(b) under sub-paragraph (1)(b) on the date it produces the new version of the written policy.

(3) The *firm* must keep each record under this *rule* for a period of five years after the earlier of:

(a) the date on which the version of the policy to which the record relates was superseded; and

(b) the date on which the *firm* ceased to use *client bank accounts* under ■ CASS 7.13.13R(3A)(b).

**7.13.14C** E

(1) Appropriate measures under ■ CASS 7.13.14AR(2)(a) include the *firm* considering the need to make, and making where appropriate, quarterly or more frequent adjustments to the amount of *client money* held in *client bank accounts* under ■ CASS 7.13.13R(3A)(b), taking into consideration the following factors:

(a) historic and expected future *client money* receipts and payments;

(b) the *firm's* own analysis of its exposure to the risk of being unable to meet instructions from its *clients* in relation to *client money* that it holds, applying an appropriate set of time horizons and stress scenarios; and

(c) the content of the *firm's* written policy under ■ CASS 7.13.14AR(1)(a)(i) and (ii).

(2) Compliance with (1) may be relied on as tending to establish compliance with ■ CASS 7.13.14AR(2)(a).

(3) Contravention of (1) may be relied on as tending to establish contravention of ■ CASS 7.13.14AR(2)(a).



**7.13.14D** G

(1) Under ■ CASS 7.13.14AR(2)(b) a *firm* should consider whether amendments to its written policy under ■ CASS 7.13.14AR(1)(a) are needed for any reason, including in light of the *firm's* analysis in the course of its measures under ■ CASS 7.13.14AR(2)(a).

(2) Each time a *firm* amends its written policy under ■ CASS 7.13.14AR(1)(a), it should also update the rationale for the amended policy under ■ CASS 7.13.14AR(1)(a)(ii).

(3) The stress scenarios under ■ CASS 7.13.14CE(1)(b) should include a variety of severe yet plausible institution-specific and market-wide liquidity shocks.

**7.13.14E** G

(1) If a fixed term or notice period for a withdrawal from a *client bank account* is scheduled to expire on a *day* on which a *firm* would expect to be unable to make the withdrawal, and the result is that the total period for which the withdrawal is prevented is longer than that permitted under ■ CASS 7.13.13R(3A)(a) or (b), then the *firm* would be in breach of that *rule*.

(2) Such a situation could arise because the fixed term or notice period expires on a *day* which is not a *business day* for the relevant bank.

*(3)* *Firms* should therefore schedule their withdrawals from *client bank accounts* under ■ CASS 7.13.13R(3A)(a) and (b) to avoid such breaches.

**7.13.14F** G

*Firms* that hold *client money* using a *client bank account* under ■ CASS 7.13.13R(3A)(b) and to which ■ SUP 16.14 (Client money and asset return) applies may need to fill in their *CMARs* in the way set out at ■ SUP 16.14.7R (Reporting of 'unbreakable' client money deposits).

**7.13.15** G ■ CASS 7.13.13 R does not prevent a *firm* from depositing *client money* in overnight money market deposits which are clearly identified as being *client money* (for example, in the *client bank account* acknowledgment letter).

**7.13.16** G *Firms* are reminded of their obligations under ■ CASS 7.18 (Acknowledgment letters) for *client bank accounts*. *Firms* should also ensure that *client bank accounts* meet the requirements in the relevant *Glossary* definitions, including regarding the titles given to the accounts.

**7.13.17** G A *firm* may open one or more *client bank accounts* in the form of a general *client bank account*, a *designated client bank account* or a *designated client fund account*. The requirements of ■ CASS 7.13.13 R (2) and ■ CASS 7.13.13 R (3) apply for each type of *client bank account*.

**7.13.18** G A *designated client bank account* may be used for a *client* only where that *client* has consented to the use of that account. If a *firm* deposits *client money* into a *designated client bank account* then, in the event of a *secondary pooling event* in respect of the relevant bank, the account will not be pooled with any *general client bank account* or *designated client fund account*.

**7.13.19** G A *designated client fund account* may be used for a *client* only where that *client* has consented to the use of that account and all other *designated client fund accounts* which may be pooled with it. For example, a *client* who consents to the use of bank A and bank B should have his *money* held in a different *designated client fund account* at bank B from a *client* who has consented to the use of banks B and C. If a *firm* deposits *client money* into a *designated client fund account* then, in the event of a *secondary pooling event* in respect of the relevant bank, the account will not be pooled with any *general client bank account* or *designated client bank account*.

## Diversification of client money

**7.13.20-A** G

(1) In ■ CASS 7.13.20R to ■ CASS 7.13.25R *client money* means *money* deposited under ■ CASS 7.13.3R and therefore includes *money* deposited under ■ CASS 7.13.3R:

(a) in an account opened with a *qualifying money market fund*; or

(b) invested in units or shares of a *qualifying money market fund*.

(2) But *client money* held under ■ CASS 7.14.2R does not fall within the scope of the diversification provisions at ■ CASS 7.13.20R to ■ CASS 7.13.25R.

**7.13.20** R Notwithstanding the requirement at ■ CASS 7.13.22 R a *firm* must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that the value of those funds do not at any point in time exceed 20 per cent of the total of all the *client money* held by the *firm* under ■ CASS 7.13.3R.

[**Note:** article 4(3) first sub-paragraph of the *MiFID Delegated Directive*]

**7.13.21** R For the purpose of ■ CASS 7.13.20 R an entity is a relevant group entity if it is:

(1) (a) a *CRD credit institution*; or

a bank authorised in a *third country*; or

a *qualifying money market fund*; or

the entity operating or managing the *qualifying money market fund*; and

(2) a member of the same *group* as that *firm*.

[**Note:** article 4(3) first sub-paragraph of the *MiFID Delegated Directive*]

**7.13.21A** R

(1) A *firm* need not comply with ■ CASS 7.13.20R if, following an assessment, it is able to demonstrate that the requirement under that *rule* is not proportionate, in view of:

(a) the small balance of *client money* that it holds;

(b) the nature, scale and complexity of its business; and

(a) the safety offered by the relevant third parties referred to under ■ CASS 7.13.20R.

(2) A *firm* must review any assessment it makes under (1) periodically.

(3) A *firm* must notify its assessment under (1) and its reviewed assessments under (2) to the *FCA* in accordance with ■ CASS 7.13.21CR.

[**Note:** article 4(3) second sub-paragraph of the *MiFID Delegated Directive*]

**7.13.21B** G

(1) In relation to the requirement to take account of a *firm's* "small balance" of *client money* at ■ CASS 7.13.21AR(1)(a):

(a) the *FCA* expects a *firm* that would not qualify to be a *CASS small firm* under the *rules* in ■ CASS 1A.2, ignoring any *safe custody assets* that it holds, to have difficulty in justifying using the approach in ■ CASS 7.13.21AR(1);

(b) a *firm* should calculate its *client money* balance for these purposes in the same way required under ■ CASS 1A.2.3R, and base its assessment under ■ CASS 7.13.21AR(1)(a) on either:

(i) the highest total amount of *client money* that it held during the year ending on the date of the assessment; or

(ii) if it did not hold *client money* in the previous calendar year, the highest total amount of *client money* that the *firm* projects it will hold during the year starting on the date of the assessment;

(c) this means that it may be possible for a *CASS medium firm* or a *CASS large firm* to justify using the approach in ■ CASS 7.13.21AR(1) on the basis of small *client money* balances; and

(d) in any case, a *firm* seeking to take that approach should also consider the points at ■ CASS 7.13.21AR(1)(b) and (c) as part of its assessment.

(2) In relation to the requirement under ■ CASS 7.13.21AR(2) to review the assessment under ■ CASS 7.13.21AR(1):

(a) a *firm* should undertake a review and, where appropriate, consider whether to cease to use the approach in ■ CASS 7.13.21AR(1) when it becomes aware of a change in the circumstances that might have led the *firm* to a different conclusion on its previous assessment; and

(b) in any case a *firm* should undertake a review at least one year after its previous assessment until it ceases to use the approach in ■ CASS 7.13.21AR(1).

(3) A *firm* may, subject to paragraph (2)(a), wish to perform the assessment and any periodic reviews under ■ CASS 7.13.21AR when the obligations under ■ CASS 1A.2.9R arise.

*(4)* *Firms* are reminded that, independent of ■ CASS 7.13.21AR, each *firm* is required by ■ CASS 1A.2.2R to determine once every year whether it is a *CASS large firm*, *CASS medium firm* or *CASS small firm*.



**7.13.21C** R

Where a *firm* decides following an assessment under ■ CASS 7.13.21AR(1) that it intends to use the approach under that *rule*, the *firm* must give the *FCA* notice of this upon reaching that decision and before it starts to use that approach.

Where, following a review under ■ CASS 7.13.21AR(2) a *firm* decides that it will either cease to use the approach under ■ CASS 7.13.21AR(1) or continue to use it, it must give the *FCA* notice of this upon reaching that decision.

**7.13.22** R

Subject to the requirement at ■ CASS 7.13.20 R, and in accordance with *Principle* 10 and ■ CASS 7.12.1 R, a *firm* must:

(1) periodically review whether it is appropriate to diversify (or further diversify) the third parties with which it deposits some or all of the *client money* that the *firm* holds; and

(2) whenever it concludes that it is appropriate to do so, it must make adjustments accordingly to the third parties it uses and to the amounts of *client money* deposited with them.

[**Note:** article 4(2) first sub-paragraph of the *MiFID Delegated Directive*]

**7.13.23** G

In complying with the requirement in ■ CASS 7.13.22 R to periodically review whether diversification (or further diversification) is appropriate, a *firm* should have regard to:

(1) whether it would be appropriate to deposit *client money* in *client bank accounts* opened at a number of different third parties;

(2) whether it would be appropriate to limit the amount of *client money* the *firm* holds with third parties that are in the same *group* as each other;

(3) whether risks arising from the *firm's* business models create any need for diversification (or further diversification);

(4) the market conditions at the time of the assessment; and

(5) the outcome of any due diligence carried out in accordance with ■ CASS 7.13.8 R and ■ CASS 7.13.10 R.

**7.13.24** G The rules in ■ SUP 16.14 provide that *CASS large firms* and *CASS medium firms* must report to the *FCA* in relation to the identity of the entities with which they deposit *client money* and the amounts of *client money* deposited with those entities. The *FCA* will use that information to monitor compliance with the diversification *rule* in ■ CASS 7.13.20 R.

**7.13.25** R

(1) A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a bank or a *qualifying money market fund* under ■ CASS 7.13.8 R. The *firm* must make the record on the date it makes the selection or appointment and must keep it from that date until five years after the *firm* ceases to use that particular *person* for the purposes of depositing *client money* under ■ CASS 7.13.3 R.

(2) A *firm* must make a record of each periodic review of its selection and appointment of a bank or a *qualifying money market fund* that it conducts under ■ CASS 7.13.8 R, its considerations and conclusions. The *firm* must make the record on the date it completes the review and must keep it from that date until five years after the *firm* ceases to use that particular *person* for the purposes of depositing *client money* under ■ CASS 7.13.3 R.

(3) A *firm* must make a record of each periodic review that it conducts under ■ CASS 7.13.22 R, its considerations and conclusions. The *firm* must make the record on the date it completes out the review and must keep it for five years from that date.

## Qualifying money market funds

**7.13.26** R Where a *firm* deposits *client money* with a *qualifying money market fund*, the *firm's* holding of those units or shares in that fund will be subject to any applicable requirements of the *custody rules*.

[**Note:** recital 4 to the *MiFID Delegated Directive*]

**7.13.27** G A *firm* that places *client money* in a *qualifying money market fund* should ensure that it has the *permissions* required to invest in and hold units in that fund and must comply with the *rules* that are relevant for those activities.

**7.13.28** R

(1) A *firm* must inform a *client* that *money* placed with a *qualifying money market fund* will not be held in accordance with the requirements for holding *client money*.

(2) A *firm* must ensure that, having provided the information to the *client* under (1), the *client* gives its explicit consent to the placement of their *money* in a *qualifying money market fund*.

[**Note:** article 4(2) third sub-paragraph to the *MiFID Delegated Directive*]

**7.13.29** G [deleted]

**7.13.29A** G A *firm* may comply with ■ CASS 7.13.28 R(1) by informing the *client* that the units or shares in the *qualifying money market fund* will be held as *safe custody assets*.

## Segregation in different currency

**7.13.30** R A *firm* may segregate *client money* in a different currency from that in which it was received or in which the *firm* is liable to the relevant *client*. If it does so the *firm* must ensure that the amount held is adjusted each *day* 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.

## Mixed remittance

**7.13.31** R Except in the circumstances described in ■ CASS 7.13.72 R (1)(a), where a *firm* using the normal approach receives a *mixed remittance* it should:

(1) in accordance with ■ CASS 7.13.6 R, take necessary steps to ensure the *mixed remittance* is paid directly into a *client bank account*; and

(2) promptly and, in any event no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the *money* that is not *client money* out of the *client bank account*.

## Physical receipts of client money

**7.13.32** R Where a *firm* receives *client money* in the form of cash, a cheque or other payable order, it must:

(1) pay the *money* in accordance with ■ CASS 7.13.6 R, promptly, and no later than on the *business day* after it receives the *money* into a *client bank account*, unless either:

(a) the *money* is received by a business line for which the *firm* uses the alternative approach, in which case the *money* must be paid into the *firm's* own bank account promptly, and no later than on the *business day* after it receives the *money*; or

(b) the *firm* is unable to meet the requirement in (1) because of restrictions under the *regulatory system* or law regarding the receipt and processing of *money*, in which case the *money* must be paid in accordance with ■ CASS 7.13.6 R as soon as possible;

(2) if the *firm* holds the *money* in the meantime before paying it in accordance with ■ CASS 7.13.6 R (or in the case of (1)(a), into its own

bank account), hold it in a secure location in line with *Principle* 10; and

(3) in any case, record the receipt of the *money* in the *firm's* books and records in line with ■ CASS 7.15 (Records, accounts and reconciliations).

**7.13.33** R Where a *firm* receives *client money* in the form of a cheque that is dated with a future date, unless the *firm* returns the cheque it must:

(1) pay the *money* in accordance with ■ CASS 7.13.6 R, promptly, and no later than the date on the cheque if the date is a *business day* or the next *business day* after the date on the cheque;

(2) in the meantime, hold it in a secure location in accordance with *Principle* 10; and

(3) record the receipt of the *money* in the *firm's* books and records in accordance with ■ CASS 7.15 (Records, accounts and reconciliations).



## Appointed representatives, tied agents, field representatives and other agents

**7.13.34** R A *firm* must ensure that *client money* received by its *appointed representatives*, *tied agents*, *field representatives* or other agents is:

(1) received directly into a *client bank account* of the *firm*, where this would have been required if such client money had been received by the *firm* otherwise than through its *appointed representatives*, *tied agents*, *field representatives* or other agents (see ■ CASS 7.13.6 R and ■ CASS 7.13.7 G); or

(2) if it is received in the form of a cheque or other payable order:

(a) paid into a *client bank account* of the *firm* promptly and, in any event, no later than the next *business day* after receipt; or

(b) forwarded to the *firm* or, in the case of a *field representative*, forwarded to a specified business address of the *firm*, to ensure that the *money* arrives at the specified business address promptly and, in any event, no later than the close of the third *business day*.

**7.13.35** G Under ■ CASS 7.13.34 R (2)(b), *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* promptly and, in any event, 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* in the form of a cheque to be sent to the *firm* or the specified business address of the *firm* by first class post and, in any event, no later than the next *business day* after receipt, would fulfil ■ CASS 7.13.34 R (2)(b).

## Allocation of client money receipts

**7.13.36** R (1) A *firm* must allocate any *client money* it receives to an individual *client* promptly and, in any case, no later than ten *business days* following the receipt (or where subsequent to the receipt of *money* it

has identified that the *money*, or part of it, is *client money* under ■ CASS 7.13.37 R, no later than ten *business days* following that identification).

(2) Pending a *firm's* allocation of a *client money* receipt to an individual *client* under (1), it must record the received *client money* in its books and records as "unallocated client money".

**7.13.37** R If a *firm* receives money (either in a *client bank account* or an account of its own) which it is unable to immediately identify as *client money* or its own *money*, it must:

(1) take all necessary steps to identify the *money* as either *client money* or its own *money*;

(2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as "unidentified client money" while it performs the necessary steps under (1).

**7.13.38** G If a *firm* is unable to identify *money* that it has received as either *client money* or its own *money* under ■ CASS 7.13.37 R, it should consider whether it would be appropriate to return the *money* to the person who sent it or to the source from where it was received (for example, the banking institution).

## Money due to a client from a firm

**7.13.38A** R ■ CASS 7.13.39R and ■ CASS 7.13.40G do not apply to a *firm* following a *primary pooling event*.

**7.13.38B** G ■ CASS 7A.2.10AR and ■ CASS 7A.2.10BG (Money due to a client from a firm after a primary pooling event) apply to a *firm* following a *primary pooling event* in respect of *money* due to a *client* from a *firm*.

**7.13.39** R Pursuant to the *client money segregation requirements*, a *firm* that is operating the normal approach and is liable to pay *money* to a *client* must promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

(1) to, or to the order of, the *client*; or

(2) into a *client bank account*.

**7.13.40** G Where the *firm* has payment instructions from the *client* the *firm* should pay the *money* to the order of the *client*, rather than into a *client bank account*.

## Prudent segregation

**7.13.40A** R (1) Subject to paragraph (2), ■ CASS 7.13.41R to ■ CASS 7.13.49R do not apply to a *firm* following a *primary pooling event*.

(2) If, at the time of a *primary pooling event*, a *firm* has retained *money* in a *client bank account* for the purposes of ■ CASS 7.13.41R, that *money* remains *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.

**7.13.41** R If it is prudent to do so to prevent a *shortfall* in *client money* on the occurrence of a *primary pooling event*, a *firm* may pay *money* of its own into a *client bank account* and subsequently retain that *money* in the *client bank account* (*prudent segregation*). *Money* that the *firm* retains in a *client bank account* under this *rule* is *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.

**7.13.42** G A *firm* must make and retain an up-to-date record of all payments made under ■ CASS 7.13.41 R. (See further ■ CASS 7.13.50 R to ■ CASS 7.13.53 R: the prudent segregation record.)



**7.13.43** R If a *firm* intends to pays its own *money* into a *client bank account* under ■ CASS 7.13.41 R it must establish a written policy that is approved by its *governing body* (and retain such policy for a period of at least five years after the date it ceases to retain such *money* in a *client bank account* under ■ CASS 7.13.41 R) detailing:

(1) the specific anticipated risks in relation to which it would be prudent for the *firm* to make such payments into a *client bank account*;

(2) why the *firm* considers that the use of such a payment is a reasonable means of protecting *client money* against each of the risks set out in the policy; and

(3) the method that the *firm* will use to calculate the amount required to address each risk set out in the policy.

**7.13.44** R The *firm* may amend its written policy to reflect changes in the specific anticipated risks in relation to which it would be prudent for the *firm* to make payments into a *client bank account* under ■ CASS 7.13.41 R.

**7.13.45** R The *firm's* written policy must not conflict with the *client money rules* or the *client money distribution and transfer rules*. If there is a conflict, the *client money rules* and the *client money distribution and transfer rules* will prevail.

**7.13.46** G In the event the *firm* faces a risk not contemplated under its current policy it will not be prevented from prudently segregating *money* as *client money* in accordance with these *rules* but the policy must be created or amended, as applicable, as soon as reasonably practicable.

**7.13.47** G Examples of the types of risks that a *firm* may wish to provide protection for under ■ CASS 7.13.41 R include systems failures and business that is conducted on non-*business days* where the *firm* would be unable to pay any anticipated *shortfall* into its *client bank accounts*.

**7.13.48** R To the extent that the *firm* no longer considers it prudent to retain *money* in its *client bank account* pursuant to ■ CASS 7.13.41 R in order to ensure that *client money* is protected, the *firm* may cease to treat that *money* as *client money*.

**7.13.49** R Any *money* that the *firm* ceases to treat as client money pursuant to ■ CASS 7.13.48 R must be withdrawn from its *client bank account* as an excess under ■ CASS 7.15.29 R as part of its next reconciliation.

## Prudent segregation record

**7.13.49A** R

(1) Subject to paragraph (2), ■ CASS 7.13.50R to ■ CASS 7.13.52G do not apply to a *firm* following a *primary pooling event*.

(2) Where a *firm* holds a *prudent segregation record* under ■ CASS 7.13.53R following a *primary pooling event*, the *prudent segregation record* must continue to satisfy the requirements set out in ■ CASS 7.13.51R.

**7.13.50** R A *firm* must create and keep up-to-date records so that the amount of *money* paid into *client bank accounts* and retained as *client money* pursuant to ■ CASS 7.13.41 R or withdrawn pursuant to ■ CASS 7.13.49 R, and the reasons for such payment, retention and withdrawal can be easily ascertained (the *prudent segregation record*).

**7.13.51** R The *prudent segregation record* must record:

(1) the outcome of the *firm's* calculation of its *prudent segregation*;

(2) the amounts paid into or withdrawn from a *client bank account* pursuant to ■ CASS 7.13.41 R or ■ CASS 7.13.49 R;

(3) why each payment or withdrawal is made;

(4) in respect of the *firm's* written policy required by ■ CASS 7.13.43 R the *firm* must record, as applicable, either:

(a) that the payment or withdrawal is made in accordance with that policy; or

(b) that the policy will be created or amended to include the reasons for this payment or withdrawal;

(5) that the *money* was paid by the *firm* in accordance with ■ CASS 7.13.41 R or withdrawn by the *firm* in accordance with ■ CASS 7.13.49 R; and

(6) the up-to-date total amount of *client money* held pursuant to ■ CASS 7.13.41 R.

**7.13.52** G *Firms* are reminded that payments and records made in accordance with ■ CASS 7.13.51 R should not be used as a substitute for a *firm* keeping accurate and timely records in accordance with ■ CASS 7.15 (Records, accounts and

reconciliations) and requirements under ■ SYSC 4.1.1 R (General requirements) and ■ SYSC 6.1.1 R (Compliance).

**7.13.53** R The *prudent segregation record* must be retained for five years after the *firm* ceases to retain *money* as *client money* pursuant to ■ CASS 7.13.41 R.

## The alternative approach to client money segregation

**7.13.53A** R

(1) Subject to paragraphs (2) and (3), ■ CASS 7.13.59R, ■ CASS 7.13.62R(3), ■ CASS 7.13.62R(4) and ■ CASS 7.13.63R to ■ CASS 7.13.67R do not apply to a *firm* following its *failure*.

(2) If, at the time of a *primary pooling event*, a *firm* has retained money in a *client bank account* for the purposes of *alternative approach mandatory prudent segregation* under ■ CASS 7.13.65R, that *money* remains *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.

(3) Where a *firm* holds an *alternative approach mandatory prudent segregation record* under ■ CASS 7.13.68R following a *primary pooling event*, the *alternative approach mandatory prudent segregation record* must continue to satisfy the requirements set out in ■ CASS 7.13.67R.

**7.13.54** G

(1) In certain circumstances, use of the normal approach for a particular business line of a *firm* could lead to significant operational risks to *client money* protection. These may include a business line under which *clients*' transactions are complex, numerous, closely related to the *firm's* proprietary business and/or involve a number of currencies and time zones. In such circumstances, subject to meeting the relevant criteria and fulfilling the relevant notification and audit requirements, a *firm* may use the alternative approach to segregating *client money* for that business line.

(2) Under the alternative approach, *client money* is received into and paid out of a *firm's* own bank account. A *firm* that adopts the alternative approach to segregating *client money* should (in line with ■ CASS 7.15.16 R (2)) carry out an *internal client money reconciliation* on each *business day* ('T0') and calculate how much *money* it either needs to withdraw from, or place in from its own bank account or its *client bank account* as a result of any discrepancy arising between its *client money requirement* and its *client money resource* as at the close of business on the previous *business day* ('T-1').

(3) The *alternative approach mandatory prudent segregation* required under ■ CASS 7.13.65 R is designed to address the risks that:

*(a)* *client money* in a *firm's* own bank account may not be available to be pooled for distribution to *clients* on the occurrence of a *primary pooling event*; and

(b) at the time of a *primary pooling event* the *firm* may not have segregated in its *client bank account* a sufficient amount of *client money* to meet its *client money requirement*.

**7.13.55** R A *firm* that wishes to adopt the alternative approach for a particular business line must first establish, and document in writing, its reasons for concluding, that:

(1) adopting the normal approach would lead to greater operational risks to *client money* protection compared to the alternative approach;

(2) adopting the alternative approach (including complying with the requirements for *alternative approach mandatory prudent segregation* under ■ CASS 7.13.65 R), would not result in undue operational risk to *client money* protection; and

(3) the *firm* has systems and controls that are adequate to enable it to operate the alternative approach effectively and in compliance with *Principle* 10 (Clients' assets).

**7.13.56** R A *firm* must retain any documents created under ■ CASS 7.13.55 R in relation to a particular business line for a period of at least five years after the date it ceases to use the alternative approach in connection with that business line.

**7.13.57** R At least three *months* before adopting the alternative approach for a particular business line, a *firm* must:

(1) inform the *FCA* in writing that it intends to adopt the alternative approach for that particular business line; and

(2) if requested by the *FCA*, make any documents it created under ■ CASS 7.13.55 R available to the *FCA* for inspection.

**7.13.58** R

(1) In addition to the requirement under ■ CASS 7.13.57 R, before adopting the alternative approach, a *firm* must send a written report to the *FCA* prepared by an independent auditor of the *firm* in line with a *reasonable assurance engagement*, stating the matters set out in (2).

(2) The written report in (1) must state whether, in the auditor's opinion:

(a) the *firm's* systems and controls are suitably designed to enable it to comply with ■ CASS 7.13.62 R to ■ CASS 7.13.65 R; and

(b) the *firm's* calculation of its *alternative approach mandatory prudent segregation* amount under ■ CASS 7.13.65 R is suitably designed to enable the *firm* to comply with ■ CASS 7.13.65 R.

**7.13.59** R

(1) A *firm* that uses the alternative approach must review, at least on an annual basis and with no more than one year between each review, whether its reasons for adopting the alternative approach for a particular business line, as documented under ■ CASS 7.13.55 R, continue to be valid.

(2) If, following the review in (1), a *firm* finds that its reasons for adopting the alternative approach are no longer valid for a particular business line, it must stop using the alternative approach for that

business line as soon as reasonably practicable, and in any event within six months of the conclusion of its review in (1).

**7.13.60** R A *firm* that uses the alternative approach must not materially change how it will calculate and maintain the *alternative approach mandatory prudent segregation* amount under ■ CASS 7.13.65 R unless:

(1) an auditor of the *firm* has prepared a report that complies with the requirements in ■ CASS 7.13.58 R (2)(b) in respect of the *firm's* proposed changes; and

(2) the *firm* provides a copy of the report prepared by the auditor under (a) to the *FCA* before implementing the change.

**7.13.61** G A *firm* is reminded that, under ■ SUP 3.4.2 R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.



**7.13.62** R A *firm* that uses the alternative approach for a particular business line must, on each *business day* ('T0'):

(1) receive any *money* from and pay any *money* to (or, in either case, on behalf of) *clients* into and out of its own bank accounts;

(2) perform the necessary reconciliations of records and accounts required under ■ CASS 7.15 (Records, accounts and reconciliations);

(3) adjust the balances held in its *client bank account* (by effecting transfers between its own bank account and its *client bank account*) to address any difference arising between its *client money requirement* and its *client money resource* as at the close of business on the previous *business day* ('T-1'), so that the correct amount reflected in the reconciliations under (2) is segregated in its *client bank account*; and

(4) subject to CASS 7.13.63R below, keep segregated in its *client bank account* the balance held under (3) until it has performed a reconciliation on the following *business day* ('T+1') and as a result of that reconciliation is undertaking further adjustments under (3).

**7.13.63** R During the period between the adjustment in ■ CASS 7.13.62 R (3) and the completion of the next reconciliations in ■ CASS 7.13.62 R (2), a *firm* that uses the alternative approach for a particular business line may:

(1) increase the balance held in its *client bank account* by making intra-day transfers (during T0) from its own bank account to its *client bank account* before the completion of the internal client money reconciliation under ■ CASS 7.13.62 R (2) (that is expected sometime later on T0) only if:

(a) the *firm* reasonably expects that the *client money requirement* for the previous *business day* (T-1) will increase above the *client money resource* currently (during T0) held in its *client bank account*; and

(b) such reasonable expectations are based on the working calculation of the *client money requirement* relating to the previous *business day* (T-1) that the firm has already determined on that *business day* (during T0) (as part of the process of completing its internal *client money* reconciliation); or

(2) decrease the balance held in its *client bank account* by making intra-day transfers (during T0) from its *client bank account* to its own bank account before the completion of the internal *client money* reconciliation under ■ CASS 7.13.62 R (2) (that is expected sometime later on T0) only if:

(a) the *firm* reasonably expects that the *client money requirement* for the previous *business day* (T-1) will decrease below the *client money resource* currently held (during T0) in its *client bank account*; and

(b) such reasonable expectations are based on the working calculation of the *client money requirement* relating to the previous *business day* (T-1) that the *firm* has already determined on that *business day* (during T0) (as part of the process of completing its *internal client money reconciliation*).

However, in doing so, a *firm* must act prudently and should take appropriate steps to manage the risk of not having segregated an amount that appropriately reflects its actual *client money requirement* at any given time.

**7.13.64** G It is anticipated that ■ CASS 7.13.63 R may be used by *firms* which maintain *client bank accounts* in a number of different time zones and making adjustments to the balances of those *client bank accounts* is dependent on meeting cut off times for money transfers in those time zones.

**7.13.65** R (1) A *firm* that uses the alternative approach must, in addition to ■ CASS 7.13.62 R, pay an amount (determined in accordance with this *rule*) of its own *money* into its *client bank account* and subsequently retain that *money* in its *client bank account* (*alternative approach mandatory prudent segregation*). The amount segregated by a *firm* in its *client bank account* under this *rule* is *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.

(2) The amount required to be segregated under this *rule* must be an amount that a *firm* reasonably determines would be sufficient, at the time it makes the determination, to protect *client money* against the risk that at any time in the following three months the following categories of *client money* may not have been fully segregated in its *client bank account* or may not be (or become) available for pooling under ■ CASS 7A.2.4R (1), were a *primary pooling event* to occur:

*(a)* *client money* that is received and held by the *firm* in its own bank account during the period between:

(i) the *firm's* adjustment of *client bank account* balances under ■ CASS 7.13.62 R (3) on a particular *business day*; and

(ii) the *firm's* subsequent adjustments under ■ CASS 7.13.62 R (3) on the following *business day*; and

(b) *money* received and held by the *firm* in its own bank account which the *firm* does not initially identify as part of its *client money requirement*, but which subsequently does become part of its *client money requirement*;

with the effect that the *firm's alternative approach mandatory prudent segregation* under this *rule* will reduce, as far as possible, any *shortfall* that might have been produced as a result of (a) or (b) on the occurrence of a *primary pooling event*.

(3) (a) Subject to (c), in reaching its determination under (2) of the amount of *money* that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a *firm* must take into account the following in respect of each business line for which it uses the alternative approach, and for at least the previous three months:

(i) the *firm's client money requirement* over the course of that prior period (excluding any amount that was required to be segregated under this *rule* during that prior period for the purposes of *alternative approach mandatory prudent segregation*);

(ii) the daily adjustment payments that the *firm* made into its *client bank account* under ■ CASS 7.13.62 R (3) during that prior period; and

(iii) the amount of *money* received by the *firm* in its own bank account which it did not initially identify as part of its *client money requirement*, but which subsequently, and during that prior period, became part of its *client money requirement*;

as shown in its internal records.

(b) In reaching its determination under (2) a *firm* must also take into account, but at all times having regard to the requirement under (2), any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business lines may have on:

(i) the *firm's client money requirement* during the forthcoming three months for which the amount of *alternative approach mandatory prudent segregation* required under this *rule* is being determined;

(ii) the daily adjustment payments that the *firm* is likely to make into its *client bank account* under ■ CASS 7.13.62 R (3) in that same period; and

(iii) the amount of unidentified receipts of *money* that the *firm* is likely to receive into its own bank account and which will subsequently, in that same period, become part of its *client money requirement*.

(c) If, at the time of its determination under (2), the *firm* has not been trading for three months in a business line for which it is using the alternative approach, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to establish a three-month reference period.

(4) (a) A *firm* must, at regular intervals that are at least quarterly, repeat and complete the combined process of:

(i) determining the amount that it is required to segregate for the purposes of *alternative approach mandatory prudent segregation* under (2) and (3);

(ii) making necessary adjustments to its records to reflect any changes to its *client money requirement* (in accordance with ■ CASS 7.16.16 R (3) and ■ CASS 7.16.17 R (2)); and

(iii) paying any additional amounts of its own *money* into its *client bank account* to increase the *firm's alternative approach mandatory prudent segregation* or withdrawing any excess amounts from its *client bank account* to decrease the *firm's alternative approach mandatory prudent segregation* after it has adjusted its records under (ii).

(b) The combined process of (a)(i) to (iii) must take no longer than ten *business days*.

(c) To the extent that a *firm's* compliance with (a)(i) and (ii) results in there being an excess in the *firm's client bank account*, the *firm* may cease to treat that *money* as client money.

(5) A *firm* must ensure that the individual responsible for *CASS* oversight under ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or ■ CASS 1A.3.1C R (as appropriate) reviews the adequacy of the amount of the *firm's alternative approach mandatory prudent segregation* maintained under this *rule* at least annually.

**7.13.66** R A *firm* must create and keep up-to-date records so that any amount of *money* that is, pursuant to ■ CASS 7.13.65 R:

(1) paid into a *client bank account* and retained as *client money*; or

(2) withdrawn from a *client bank account*;

can be easily ascertained (the *alternative approach mandatory prudent segregation record*).

**7.13.67** R The *alternative approach mandatory prudent segregation record* under ■ CASS 7.13.66 R must record:

(1) the date of the first determination under ■ CASS 7.13.65 R (2) and each subsequent review undertaken under ■ CASS 7.13.65 R (4), and the total amount that the *firm* determined was required to be segregated under ■ CASS 7.13.65 R (2) as at that date;

(2) the date of any payment of the *firm's* own *money* into a *client bank account*, or withdrawal of any excess from a *client bank account* under ■ CASS 7.13.65 R, and for each such occasion:

(a) the amount of the payment or withdrawal;

(b) the fact that the *money* was paid or withdrawn by the firm in accordance with ■ CASS 7.13.65 R; and

(c) as at that date, the total amount actually segregated by the *firm* under ■ CASS 7.13.65 R.

**7.13.68** R The *alternative approach mandatory prudent segregation record* must be retained for five years after the *firm* ceases to segregate any *money* in accordance with ■ CASS 7.13.65 R.

**7.13.69** G Nothing in ■ CASS 7.13.54 G to ■ CASS 7.13.68 R prevents a *firm* from also making use of the *prudent segregation* rule in ■ CASS 7.13.41 R.

## Use of the normal approach in relation to certain regulated clearing arrangements

**7.13.70** G ■ CASS 7.13.72 R sets out the circumstances under which a *firm*, that would otherwise be required to comply with the requirement in ■ CASS 7.13.6 R to receive *client money* directly into a *client bank account*, must receive (or is permitted to receive) *client money* into its own bank account.



**7.13.71** R A *firm* that is also a *clearing member* that is using the normal approach in connection with *regulated clearing arrangements* must use reasonable endeavours to ensure it is not required under its arrangements with an *authorised central counterparty* to receive *mixed remittances* from or pay *mixed remittances* to the *authorised central counterparty* through a single bank account.

**7.13.72** R

(1) If, notwithstanding its reasonable endeavours in accordance with ■ CASS 7.13.71 R, the *firm* is required under its arrangements with an *authorised central counterparty* to:

(a) receive *mixed remittances* from the *authorised central counterparty* into a single bank account and pay *mixed remittances* to the *authorised central counterparty* from that bank account; or

(b) pay *mixed remittances* to the *authorised central counterparty* using a single bank account;

then such arrangements for *client money* are permitted if the *firm* complies, as applicable, with (2) and ■ CASS 7.13.73 R.

(2) (a) In either or both of the circumstances described in (1):

(i) the *firm* must pay any *mixed remittances* to the *authorised central counterparty* from its own bank account; and

(ii) the *firm* is permitted to pay any remittances to the *authorised central counterparty* that consist only of *client money* from that same bank account.

(aa) In the circumstances described in (1)(a), the *firm* is permitted to receive any remittances that consist only of *client money* from the *authorised central counterparty* into the same bank account that it uses under (2)(a), if it complies with (b).

(b) Where, in the circumstances described in (1)(a), a *mixed remittance* or a remittance that consists only of *client money* from an *authorised central counterparty* is received into a *firm's* own account, the *firm* must transfer any *client money* element of the remittance to its *client bank account* promptly and, in any event, no later than the next *business day* after receipt.

**7.13.72A** R

(1) Subject to paragraphs (2) and (3), ■ CASS 7.13.73R to ■ CASS 7.13.75R do not apply to a *firm* following a *primary pooling event*.

(2) If, at the time of a *primary pooling event*, a *firm* has retained *money* in a *client bank account* for the purposes of *clearing arrangement mandatory prudent segregation* under ■ CASS 7.13.73R, that *money* remains *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.

(3) Where a *firm* holds a *clearing arrangement mandatory prudent segregation record* under ■ CASS 7.13.76R following a *primary pooling event*, the *clearing arrangement mandatory prudent segregation record* must continue to satisfy the requirements set out in ■ CASS 7.13.75R.

**7.13.73** R

(1) Where the circumstances described in ■ CASS 7.13.72 R (1)(a) apply to a *firm* it must pay an amount (determined in accordance with this *rule*) of its own *money* into its *client bank account* and retain that *money* in its *client bank account* (*clearing arrangement mandatory prudent segregation*). The amount segregated by a *firm* in its *client bank account* under this *rule* will be *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.

(2) The amount required to be segregated under this *rule* must be an amount that a *firm* reasonably determines would be sufficient, at the time it makes the determination, to protect *client money* against the risk that at any time in the following three months *client money* received from the *authorised central counterparty* and held by the *firm* in its own bank account following receipt of these monies under■ CASS 7.13.72 R (1)(a) and until their transfer in accordance with ■ CASS 7.13.72 R (2)(b) may not have been fully segregated in its *client bank account* or may not be (or become) available for pooling under ■ CASS 7A.2.4R (1), were a *primary pooling event* to occur with the effect that the *firm's clearing arrangement mandatory prudent segregation* under this *rule* will reduce, as far as possible, any *shortfall* that might have been produced as a result of this risk on the occurrence of a *primary pooling event*.

(3) (a) Subject to (c), in reaching its determination under (2) of the amount of *money* that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a *firm* must take into account the following for at least the previous three months:

(i) the *firm's client money requirement* over the course of that prior period (excluding any amount that was required to be segregated under this *rule* during that prior period for the purposes of *clearing arrangement mandatory prudent segregation*); and

(ii) the payments that the firm made into its *client bank account* under ■ CASS 7.13.72 R (2)(b) during that prior period;

as shown in its internal records.

(b) In reaching its determination under (2) a *firm* must also take into account, at all times having regard to the requirement under (2),

any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business line(s) may have on:

(i) the *firm's client money requirement* during the forthcoming three months for which the amount of *clearing arrangement mandatory prudent segregation* required under this *rule* is being determined; and

(ii) the payments that the *firm* is likely to make into its *client bank account* under ■ CASS 7.13.72 R (2)(b).

(c) If, at the time of its determination under (2), the *firm* has not been trading for three months in a business line for which it is using the normal approach in connection with *regulated clearing arrangements*, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to make up a three-month reference period.

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(4) (a) A *firm* must, at regular intervals that are at least quarterly, repeat and complete the combined process of:

(i) determining the amount that it is required to segregate for the purposes of *clearing arrangement mandatory prudent segregation* under (2) and (3);

(ii) making necessary adjustments to its records to reflect any changes to its *client money requirement* in accordance with ■ CASS 7.16.16 R (3) and ■ CASS 7.16.17 R (1); and

(iii) paying any additional amounts of its own *money* into its *client bank account* to increase the *firm's clearing arrangement mandatory prudent segregation* or withdrawing any excess amounts from its *client bank account* to decrease the *firm's clearing arrangement mandatory prudent segregation* after it has adjusted its records under (ii).

(b) The combined process of (a)(i) to (iii) must take no longer than ten *business days*.

(c) To the extent that a *firm's* compliance with (a)(i) and (ii) results in there being an excess in the *firm's client bank account*, the *firm* may cease to treat that *money* as *client money*.

(5) A *firm* must ensure that the individual responsible for *CASS* oversight under ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or ■ CASS 1A.3.1C R (as appropriate) reviews the adequacy of the amount of the *firm's clearing arrangement mandatory prudent segregation* maintained under this *rule* at least annually.

## Clearing arrangement mandatory prudent segregation record

**7.13.74** R A *firm* must create and keep up-to-date records so that any amount of *money* that is, pursuant to ■ CASS 7.13.73 R:

(1) paid into a *client bank account* and retained as *client money*; or

(2) withdrawn from a *client bank account*;

can be easily ascertained (the *clearing arrangement mandatory prudent segregation record*).

**7.13.75** R The *clearing arrangement mandatory prudent segregation record* under ■ CASS 7.13.74 R must record:

(1) the date of the first determination under ■ CASS 7.13.73 R (2) and each subsequent review undertaken under ■ CASS 7.13.73 R (4), and the total amount that the *firm* determined was required to be segregated under ■ CASS 7.13.73 R (2) as at that date;

(2) the date of any payment of the *firm's* own *money* into a *client bank account*, or withdrawal of any excess from a *client bank account* under ■ CASS 7.13.73 R (4)(a)(iii), and for each such occasion:

(a) the amount of the payment or withdrawal;

(b) the fact that the *money* was paid or withdrawn by the *firm* in accordance with ■ CASS 7.13.73 R; and

(c) as at that date, the total amount actually segregated by the *firm* under ■ CASS 7.13.73 R.

**7.13.76** R The *clearing arrangement mandatory prudent segregation record* must be retained for five years after the *firm* ceases to segregate any *money* in accordance with ■ CASS 7.13.73 R.

**7.13.77** G Nothing in ■ CASS 7.13.73 R to ■ CASS 7.13.76 R prevents a *firm* from making use of the prudent segregation rule in ■ CASS 7.13.41 R.

**7.13.78** G The obligation to use reasonable endeavours referred to in ■ CASS 7.13.71 R is a continuing obligation. *Firms* should at least on an annual basis, whether it is possible for payments of *client money* between the *firm* and the *authorised central counterparties* to be made separately from house monies and for such payments to be received into and made from its *client bank accounts*.

**7.13.79** G Where a *firm* operates a sub-pool in accordance with ■ CASS 7.19 (Clearing member client money sub-pools), the references to *client bank accounts* in ■ CASS 7.13.70 G to ■ CASS 7.13.78 G should be read as *client bank accounts* pertaining to the relevant *sub-pool*.

## 7.14 Client money held by a third party

**7.14.1** G This section sets out the requirements a *firm* must comply with when it allows another *person* to hold *client money*, other than under ■ CASS 7.13.3 R, without discharging its fiduciary duty to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to a *clearing house* in the form of margin for the *firm's* obligations to the *clearing house* that are referable to transactions undertaken by the *firm* for the relevant clients. They may also arise when a *firm* passes *client money* to an *intermediate broker* for *contingent liability investments* in the form of initial or variation margin on behalf of a *client*. In these circumstances, the *firm* remains responsible for that *client equity balance* held at the *intermediate broker* until the contract is terminated and all of that *client's* positions at that *broker* closed. Similarly, this section applies where a *firm* allows a *broker* to hold *client money* in respect of the *firm's client's non-margined transactions*, again without the *firm* discharging its fiduciary duty to that *client*. In all cases, if a *firm* wishes to discharge itself from its fiduciary duty, it should do so in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (■ CASS 7.11.34 R).

**7.14.2** R A *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold *client money*, but only if:

(1) the *firm* allows that *person* to hold the *client money*:

(a) for the purpose of one or more transactions for a *client* through or with that *person*; or

(b) to meet a *client's* obligation to provide collateral for a transaction (for example, an *initial margin* requirement for a *contingent liability investment*); and

(2) in the case of a *retail client*, that *client* has been notified that the *firm* may allow the other *person* to hold its *client money*.

**7.14.3** G *Client money* that a *firm* allows another person to hold under ■ CASS 7.14.2 R:

(1) should only be held for transactions which are likely to occur (and for which the other *person* needs to receive *client money*) or have recently settled (and such that the other *person* has received *client money*); and

(2) should be recorded in *client transaction accounts* by that other *person*.

**7.14.4** G Apart from *client money* held by a *firm* in an *individual client account* or an *omnibus client account* at an *authorised central counterparty*, a *firm* should not hold excess *client money* in its *client transaction accounts*.

## Client money arising from, or in connection with, safe custody assets

**7.14.5** G

(1) *Money* arising from, or in connection with, the holding of a *safe custody assets* by a *firm* which is due to *clients* should, unless treated otherwise under the *client money rules*, be treated as *client money* by the *firm*.

*(2)* *Firms* are reminded of the *guidance* in ■ CASS 6.1.2 G.

**7.14.6** R If a *firm* has deposited *safe custody assets* with a third party under ■ CASS 6.3 and *client money* arises from, or in connection with, those *safe custody assets* then the *firm* must ensure that the third party either deposits the money in a *client bank account* of the *firm* or records it in a *client transaction account* for the benefit of the *firm clients* as appropriate.

**7.14.7** G *Firms* are reminded of the *guidance* in ■ CASS 7.14.4 G which is applicable to *client transaction accounts*.

**7.14.8** G If the third party holding the *safe custody assets* under ■ CASS 7.14.6 R is a bank with which the *firm* is permitted to deposit *client money* under ■ CASS 7.13.3 R, then the *client bank account* referred to in ■ CASS 7.14.6 R may be an account with that bank.

**7.14.9** G *Firms* are reminded of the requirements under ■ CASS 7.18 for *acknowledgement letters*, which must be complied with before using *client bank accounts* and *client transaction accounts*.

## 7.15 Records, accounts and reconciliations

**7.15.1** G

(1) This section sets out the requirements a *firm* must meet when keeping records and accounts of the *client money* it holds.

(2) Where a *firm* establishes one or more *sub-pools*, the provisions of ■ CASS 7.15 (Records, accounts and reconciliations) shall be read as applying separately to the *firm's general pool* and each *sub-pool* in line with ■ CASS 7.19.3 R and ■ CASS 7.19.4 R.

**7.15.2** R

A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own money.

[**Note:** article 2(1)(a) of the *MiFID Delegated Directive*]

**7.15.3** R

A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *client money* held for *clients* and that they may be used as an audit trail.

[**Note:** article 2(1)(b) of the *MiFID Delegated Directive*]

**7.15.4** G

(1) The requirements in ■ CASS 7.15.2R to ■ CASS 7.15.3R are for a *firm* to keep internal records and accounts of *client money*. Therefore, any records falling under those requirements should be maintained by the *firm* and should be separate to any records the *firm* may have obtained from any third parties, such as those with or through whom it may have deposited, or otherwise allowed to hold, *client money*.

(2) Where a *firm* complies with ■ CASS 7.15 as a whole (to the extent applicable to that *firm*) this will be sufficient to comply with the specific duty in ■ CASS 7.15.3R to maintain its records and accounts in a way that ensures that they can be used as an audit trail.

### Record keeping

**7.15.5** R

(1) A *firm* must maintain records so that it is able to promptly determine the total amount of *client money* it should be holding for each of its *clients*.

(2) A *firm* must ensure that its records are sufficient to show and explain its transactions and commitments for its *client money*.

(3) Unless otherwise stated, a *firm* must ensure that any record made under the this chapter is retained for a period of five years starting from the later of:

(a) the date it was created; and

(b) (if it has been modified since the date it was created), the date it was most recently modified.

**7.15.6** G Unless required sooner under another *rule* in this chapter, in complying with ■ CASS 7.15.5 R (1) a *firm* should ensure it is able to determine the total amount of *client money* it should be holding for each *client* within two *business days* of having taken a decision to do so or at the request of the *FCA*.

**7.15.7** R For each *internal client money reconciliation* and *external client money reconciliation* the *firm* conducts, it must ensure that it records:

(1) the date it carried out the relevant process;

(2) the actions the *firm* took in carrying out the relevant process; and

(3) the outcome of its calculation of its *client money requirement* and *client money resource*.

## Policies and procedures

**7.15.8** G *Firms* are reminded that they must, under ■ SYSC 6.1.1 R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* under this chapter. This should include, for example, establishing and maintaining policies and procedures concerning:

(1) the frequency and method of the reconciliations the *firm* is required to carry out under this section;

(2) the resolution of reconciliation discrepancies under this section; and

(3) the frequency at which the *firm* is required to review its arrangements in compliance with this chapter.

## Receipts of client money

**7.15.9** R A *firm* must maintain appropriate records that account for all receipts of *client money* in the form of cash, cheque or other payable order that are not yet deposited in a *client bank account* (see ■ CASS 7.13.32 R and ■ CASS 7.13.33 R).

**7.15.10** G *Firms* following one of the standard methods of internal client money reconciliation in ■ CASS 7.16 are also reminded that they must, as part of their *internal client money reconciliation*, take into account all receipts of *client money* in the form of cash, cheque or other payable order that are not yet deposited in a *client bank account* (see ■ CASS 7.13.32 R and ■ CASS 7.13.33 R).

## Payments made to discharge fiduciary duty

**7.15.11** R If a *firm* draws a cheque, or other payable order, to discharge its fiduciary duty to its *clients* (see ■ CASS 7.11.40 R), it must continue to record its obligation to its *clients* until the cheque, or other payable order, is presented and paid by the bank.

## Internal client money reconciliations

**7.15.12** R An *internal client money reconciliation* requires a *firm* to carry out a reconciliation of its internal records and accounts of the amount of *client money* that the *firm* holds for each *client* with its internal records and accounts of the *client money* the *firm* should hold in *client bank accounts* or has placed in *client transaction accounts*.

**7.15.13** R In carrying out an *internal client money reconciliation*, a *firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records) rather than the values contained in the records it has obtained from banks and other third parties with whom it has placed *client money* (for example, bank statements).



**7.15.14** G An *internal client money reconciliation* should:

(1) be one of the steps a *firm* takes to arrange adequate protection for *clients*' assets when the *firm* is responsible for them (see *Principle* 10 (Clients' assets), as it relates to *client money*);

(2) be one of the steps a *firm* takes to satisfy its obligations under ■ CASS 7.12.2 R and ■ CASS 7.15.3 R and, where relevant, ■ SYSC 4.1.1R (1) and ■ SYSC 6.1.1 R, to ensure the accuracy of the *firm's* records and accounts;

(3) for the normal approach to segregating *client money* (■ CASS 7.13.6 R), check whether the amount of *client money* recorded in the *firm's* records as being segregated in *client bank accounts* meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis; and

(4) for the alternative approach to segregating *client money* (■ CASS 7.13.62 R), calculate the amount of *client money* to be segregated in *client bank accounts* which meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis.

**7.15.15** R

(1) Subject to paragraph (4), a *firm* must perform an *internal client money reconciliation*:

(a) each *business day*; and

(b) based on the records of the *firm* as at the close of business on the previous *business day*.

(2) When performing an *internal client money reconciliation*, a *firm* must, subject to (3), follow one of the *standard methods of internal client money reconciliation* in ■ CASS 7.16.

(3) A *firm* proposing to follow a *non-standard method of internal client money reconciliation* must comply with the requirements in ■ CASS 7.15.17 R to ■ CASS 7.15.19 G.

(4) Following a *primary pooling event*, and in addition to any obligations of a special administrator under regulation 10H of the *IBSA Regulations*:

(a) a *firm* must perform an *internal client money reconciliation* that relates to the time of the *primary pooling event* as soon as reasonably practicable after the *primary pooling event*; and

(b) the *firm* must perform further *internal client money reconciliations* as regularly as required under paragraph (5), based on the records of the *firm* as at the close of business on the *business day* before the day on which the reconciliation takes place.

(5) A *firm* must determine when and how often to perform an *internal client money reconciliation* under paragraph (4)(b) so as to ensure that:

(a) the *firm* remains in compliance with ■ CASS 7.15.2R, ■ CASS 7.15.3R and ■ CASS 7.15.5R(1) and (2) (Record keeping); and

(b) the correct amounts of *client money* are returned to *clients* or transferred on behalf of *clients* under the *client money distribution and transfer rules*.

**7.15.15A** G

(1) The reference point for the *internal client money reconciliation* under ■ CASS 7.15.15R(4)(a) should be the precise point in time at which the *primary pooling event* occurred.

(2) When a *firm* decides whether it is necessary at any particular point in time to perform an *internal client money reconciliation* under ■ CASS 7.15.15R(4)(b), it should have particular regard to the need to maintain its books and accounts in order to ensure that:

(a) each notional *pool* of *client money* formed under ■ CASS 7A.2.4R(1) and (1A) (Pooling and distribution or transfer) is correctly composed and maintained, and is treated separately;

*(b)* *client money* that is required under ■ CASS 7A.2.4R(3) (Pooling and distribution or transfer) and ■ CASS 7A.2.7-AR (Client money received after a primary pooling event) to be treated as outside of any notional *pool* is treated accordingly; and

(c) where applicable, *clients'* entitlements to their *client money* are calculated in accordance with ■ CASS 7A.2.5R(-2)(b) (Client money entitlements).

(4) Depending on the circumstances of the *firm* and the scale, frequency and nature of activity after a *primary pooling event* that affects *client money*, a *firm* may conclude that it is necessary to continue performing *internal client money reconciliations* each *business day* for a period of time after the *primary pooling event*.

**7.15.16** R

(1) A *firm* which has adopted the normal approach to segregating *client money* (see ■ CASS 7.13.6 R) must use the *internal client money*

*reconciliation* to check whether its *client money resource*, as at the close of business on the previous *business day*, was equal to its *client money requirement* at the close of business on that previous day.

(2) A *firm* that adopts the alternative approach to segregating *client money* (see ■ CASS 7.13.54 G) must use the *internal client money reconciliation* to ensure that its *client money resource* as at the close of business on any *day* it carries out an *internal client money reconciliation* is equal to its *client money requirement* at the close of business on the previous day.

## Non-standard method of internal client money reconciliation

**7.15.17** R A *non-standard method of internal client money reconciliation* is a method of *internal client money reconciliation* which does not meet the requirements in ■ CASS 7.16 (The standard methods of internal client money reconciliation).



**7.15.18** R (1) Before using a *non-standard method of internal client money reconciliation*, a *firm* must:

(a) establish and document in writing its reasons for concluding that the method of *internal client money reconciliation* it proposes to use will:

(i) (for the normal approach to segregating *client money*) check whether the amount of *client money* recorded in the *firm's* records as being segregated in *client bank accounts* meets the *firm's* obligation to its *clients* under the *client money rules* on a daily basis; or

(ii) (for the alternative approach to segregating *client money*) calculate the amount of *client money* to be segregated in *client bank accounts* which meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis;

(b) notify the *FCA* of its intentions to use a *non-standard method of internal client money reconciliation*; and

(c) send a written report to the *FCA* prepared by an independent auditor of the *firm* in line with a *reasonable assurance engagement* and stating the matters set out in (2).

(2) The written report in (1)(c) must state whether in the auditor's opinion:

(a) the method of *internal client money reconciliation* which the *firm* will use is suitably designed to enable it to (as applicable):

(i) (for the normal approach to segregating *client money*) check whether the amount of *client money* recorded in the *firm's* records as being segregated in *client bank accounts* meets the *firm's* obligation to its *clients* under the *client money rules* on a daily basis; or

(ii) (for the alternative approach to segregating *client money*) calculate the amount of *client money* to be segregated in *client bank accounts* which meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis; and

(b) the *firm's* systems and controls are suitably designed to enable it to carry out the method of *internal client money reconciliation* the *firm* will use.

(3) A *firm* using a *non-standard method of internal client money reconciliation* must not materially change its method of undertaking *internal client money reconciliations* unless:

(a) the *firm* has established and documented in writing it reasons for concluding that the changed methodology will meet the requirements in (1)(a)(i) and (ii), as applicable;

(b) an auditor of the *firm* has prepared a report that complies with the requirements in (1)(c) and (2) in respect of the *firm's* proposed changes; and

(c) the *firm* provides a copy of the report prepared by the auditor under (2) to the *FCA* before implementing the change .

**7.15.19** G A *firm* is reminded that, under ■ SUP 3.4.2 R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.

## External client money reconciliations

**7.15.20** R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts and those of any third parties which hold *client money*.

[**Note**: article 2(1)(c) of the *MiFID Delegated Directive*]

**7.15.21** G The purpose of an *external client money reconciliation* is to ensure the accuracy of a *firm's* internal records and accounts against those of any third parties by whom *client money* is held.

## Frequency of external client money reconciliations

**7.15.21A** R ■ CASS 7.15.22R to ■ 7.15.26R do not apply to a *firm* following a *primary pooling event*.

**7.15.21B** G ■ CASS 7.15.26AR applies to a *firm* following a *primary pooling event*.

**7.15.22** R A *firm* must perform an *external client money reconciliation*:

(1) as regularly as is necessary but without allowing more than one month to pass between each *external client money reconciliation*; and

(2) as soon as reasonably practicable after the date to which the *external client money reconciliation* relates.

**7.15.23** R When determining the frequency at which it will undertake *external client money reconciliations*, a *firm* must have regard to:

(1) the frequency, number and value of transactions which the *firm* undertakes in respect of *client money*; and

(2) the risks to which the *client money* is exposed, such as the nature, volume and complexity of the *firm's* business and where and with whom *client money* is held.

**7.15.24** R

(1) A *firm* must make and retain records sufficient to show and explain any decision it has taken under ■ CASS 7.15.23 R when determining the frequency of its *external client money reconciliation*. Subject to (2), any such records must be retained indefinitely.

(2) If any decision under ■ CASS 7.15.23 R is superseded by a subsequent decision under that rule then the record of that earlier decision retained in accordance with (1) need only be retained for a further period of five years from the subsequent decision.



**7.15.25** G

In most circumstances, *firms* which undertake transactions on a daily basis should conduct an *external client money reconciliation* each *business day*.

**7.15.26** R

(1) Subject to (3), a *firm* must review the frequency it conducts its *external client money reconciliations* at least annually to ensure that it continues to comply with ■ CASS 7.15.22 R and has given due consideration to the matters in ■ CASS 7.15.23 R.

(2) For each review a *firm* undertakes under (1), it must record the date and the actions it took in reviewing the frequency of its *external client money reconciliations*.

(3) A *firm* need not carry out a review under (1) if it is conducting *external client money reconciliations* each *business day*.

## Frequency of external reconciliations after a primary pooling event

**7.15.26A** R

Following a *primary pooling event*, and in addition to any obligations of a special administrator under regulation 10H of the *IBSA Regulations*:

(1) a *firm* must perform an *external client money reconciliation* that relates to the time of the *primary pooling event* as soon as reasonably practicable after the *primary pooling event*, based on the next available statements or other form of confirmation after the *primary pooling event* from:

(a) the banks with which the *firm* holds a *client bank account*; and

(b) the *persons* with which the *firm* holds a *client transaction account*; and

(2) the *firm* must perform further *external client money reconciliations* on a regular basis:

(a) with a suitable frequency to ensure that the correct amounts of *client money* are returned to *clients* or transferred on behalf of *clients* under the *client money distribution and transfer rules*; and

(b) as soon as reasonably practicable after the date to which the *external client money reconciliation* relates.

**7.15.26B** G The reference point for the *external client money reconciliation* under ■ CASS 7.15.26AR(1) should be the precise point in time at which the *primary pooling event* occurred.

**7.15.26C** R When determining the frequency with which it will undertake *external client money reconciliations* under ■ CASS 7.15.26AR(2) after a *primary pooling event*, a *firm* must have regard to:

(1) the frequency, number and value of transactions which the *firm* undertakes in respect of *client money*;

(2) the risks to which the *client money* is exposed, such as the nature, volume and complexity of the *firm's* business and where and with whom *client money* is held; and

(3) the need to be able to verify that:

*client money* within each notional *pool* formed under ■ CASS 7A.2.4R(1) and (1A) (Pooling and distribution or transfer), and *client money* that is required under ■ CASS 7A.2.4R(3) (Pooling and distribution or transfer) and ■ CASS 7A.2.7-AR (Client money received after a primary pooling event) to be treated as outside of any notional *pool*, has not been incorrectly distributed, transferred or dissipated; and

the proceeds of any payments and transactions that settle after the *primary pooling event* and which involve *client money*, including interest payments and other amounts included in the *client money resource*, have been received correctly.

## Method of external client money reconciliations

**7.15.27** R An *external client money reconciliation* requires a *firm* to:

(1) compare:

(a) the balance, currency by currency, on each *client bank account* recorded by the *firm*, as set out in the most recent statement or other form of confirmation issued by the bank with which those accounts are held; and

(b) the balance, currency by currency, on each *client transaction account* as recorded by the *firm*, as set out in the most recent statement or other form of confirmation issued by the *person* with whom the account is held; and

(2) promptly identify and resolve any discrepancies between those balances under ■ CASS 7.15.31 R and ■ CASS 7.15.32 R.

**7.15.28** R A *firm* must ensure it includes the following items within its *external client money reconciliation*:

(1) any *client's approved collateral* a *firm* holds which secures an individual negative *client equity balance* (see ■ CASS 7.16.32 R); and

(2) any of its own *approved collateral* a *firm* holds which is used to meet the total margin transaction requirement in ■ CASS 7.16.33 R.

## Reconciliation discrepancies

**7.15.29** R When a discrepancy arises between a *firm's client money resource* and its *client money requirement* identified by a *firm's internal client money reconciliations*, the *firm* must determine the reason for the discrepancy and, subject to ■ CASS 7.15.29AR, ensure that:

(1) any *shortfall* is paid into a *client bank account* by the close of business on the day that the reconciliation is performed; or

(2) any excess is withdrawn from a *client bank account* within the same time period.



**7.15.29A** R A *firm* that has *failed* is not required to make a payment or withdrawal under ■ CASS 7.15.29R(1) or ■ CASS 7.15.29R(2) respectively in so far as the legal procedure for the *firm's failure* restricts the *firm* from doing so.

**7.15.30** G Where the discrepancy identified under ■ CASS 7.15.29 R has arisen as a result of a breach of the *client money segregation requirements*, the *firm* should ensure it takes sufficient steps to avoid a reoccurrence of that breach (see *Principle* 10 (Clients' assets), as it relates to *client money*, ■ CASS 7.15.3 R and, where relevant, ■ SYSC 4.1.1R (1) and ■ SYSC 6.1.1 R).

**7.15.31** R If any discrepancy is identified by an *external client money reconciliation*, the *firm* must investigate the reason for the discrepancy and take all reasonable steps to resolve it without undue delay, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.

**7.15.32** R While a *firm* is unable to immediately resolve a discrepancy identified by an *external client money reconciliation*, and one record or set of records examined by the *firm* during its *external client money reconciliation* indicates that there is a need to have a greater amount of *client money* or, if appropriate, *approved collateral* than is the case, the *firm* must assume, until the matter is finally resolved, that that record or set of records is accurate and, subject to ■ CASS 7.15.32AR, pay its own *money* into a relevant account.

**7.15.32A** R A *firm* that has *failed* is not required to pay its own *money* into a relevant account under ■ CASS 7.15.32R in so far as the legal procedure for the *firm's failure* restricts the *firm* from doing so.

**7.15.32B** G (1) ■ CASS 7.15.29AR and ■ CASS 7.15.32AR recognise that a *failed firm* is required to investigate discrepancies, but the extent to which it is able to resolve discrepancies may be limited by insolvency law, for example.

(2) ■ CASS 7.15.29AR and ■ CASS 7.15.32AR would not prevent a *failed firm* from making any transfers required under regulation 10H(3) or (4) of the *IBSA Regulations*.

## Notification requirements

**7.15.33** R A *firm* must inform the *FCA* in writing without delay if:

(1) its internal records and accounts of *client money* are materially out of date, inaccurate or invalid so that the *firm* is no longer able to comply with the requirements in ■ CASS 7.15.2 R, ■ CASS 7.15.3 R or ■ CASS 7.15.5 R (1);

(2) it will be unable to, or materially fails to, pay any *shortfall* into a *client bank account* or withdraw any excess from a *client bank account* so that the *firm* is unable to comply with ■ CASS 7.15.29 R after having carried out an *internal client money reconciliation*;

(3) it will be unable to, or materially fails to, identify and resolve any discrepancies under ■ CASS 7.15.31 R to ■ CASS 7.15.32 R after having carried out an *external client money reconciliation*;

(4) it will be unable to, or materially fails to, conduct an *internal client money reconciliation* in compliance with ■ CASS 7.15.12 R and ■ CASS 7.15.15 R;

(5) it will be unable to, or materially fails to, conduct an *external client money reconciliation* in compliance with ■ CASS 7.15.20 R to ■ CASS 7.15.28 R; and

(6) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* under the *client money segregation requirements*.

## Annual audit of compliance with the client money rules

**7.15.34** G *Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FCA* under ■ SUP 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *client money rules*.

## 7.16 The standard methods of internal client money reconciliation

**7.16.1** G

(1) *Firms* are required to carry out an *internal client money reconciliation* each *business day* (■ CASS 7.15.12 R and ■ CASS 7.15.15R(1)) or as required by ■ CASS 7.15.15R(4) after a *primary pooling event*. This section sets out methods of reconciliation that are appropriate for these purposes (the *standard methods of internal client money reconciliation*).

(2) Where a *firm* establishes one or more *sub-pools*, the provisions of ■ CASS 7.16 (The standard methods of internal client money reconciliation) shall be read as applying to the *firm's general pool* and each *sub-pool* individually, in line with ■ CASS 7.19.3 R and ■ CASS 7.19.4 R.

**7.16.2** G

(1) A *non-standard method of internal client money reconciliation* is a method of *internal client money reconciliation* which does not meet the requirements of this section.

(2) Where a *firm* uses a *non-standard method of internal client money reconciliation* it is reminded that it must comply with the requirements in ■ CASS 7.15.18 R.

**7.16.3** G

Regardless of whether a *firm* is following one of the *standard methods of internal client money reconciliation* or a *non-standard method of internal client money reconciliation*, it is reminded that it must maintain its records so that it is able to promptly calculate the total amount of *client money* it should be holding for each *client* (see ■ CASS 7.15.15 R (1)).

**7.16.4** G

*Firms* are reminded that the *internal client money reconciliation* should achieve the purposes set out in ■ CASS 7.15.14 G.

**7.16.5** G

(1) A *firm* that adopts the normal approach to segregating *client money* (■ CASS 7.13.6 R) will be using the methods in this section to check whether it has correctly segregated *client money* in its *client bank accounts*.

(2) A *firm* that adopts the alternative approach to segregating *client money* (■ CASS 7.13.54 G) will be using the methods in this section to calculate how much *money* it needs to withdraw from, or place in, *client bank accounts* as a result of any discrepancy arising between its

*client money requirement* and its *client money resource* at the close of business on the previous *business day*.

**7.16.6** G Unless otherwise stated, *firms* are reminded that they are required to receive all *client money* receipts directly into a *client bank account* (see ■ CASS 7.13.6 R).

**7.16.7** G A *firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* (eg, into a *client bank account*) no later than on the *business day* after it receives the *money* (see ■ CASS 7.13.32 R). Once deposited into a *client bank account*, that receipt of *client money* should form part of the *firm's client money resource* (see ■ CASS 7.16.8 R). In calculating its *client money requirement*, a *firm* will need to take into account any *client money* received as cash, cheques or payment orders but not yet deposited into a *client bank account* (see ■ CASS 7.16.25 R (3) and ■ CASS 7.16.26 G).

## Client money resource

**7.16.8** R The *client money resource* is the aggregate balance on the *firm's client bank accounts*.

**7.16.9** G

(1) A *firm* should ensure that the amount it reflects in its *internal client money reconciliation* as its *client money resource* is equal to the aggregate balance on its *client bank accounts*. For example, if:

(a) a *firm* holds *client money* received as cash, cheques or payment orders but not yet deposited in a *client bank account* (in accordance with ■ CASS 7.13.32 R); and

(b) that *firm* records all receipts from *clients*, whether or not yet deposited with a bank, in its cashbook (see ■ CASS 7.16.26 G (1)(a));

its *client money resource* should not include the cash, cheques or payment orders received but not yet deposited in a *client bank account*.

(2) The *guidance* in (1) is consistent with a *firm's* obligations to maintain its internal records in an accurate way, particularly their correspondence to the *client money* held for *clients*.

## Client money requirement

**7.16.10** R Subject to ■ CASS 7.16.12 R, the *client money requirement* must be calculated by one, but not both, of the following of two methods:

(1) the *individual client balance method* (■ CASS 7.16.16 R); or

(2) the *net negative add-back method* (■ CASS 7.16.17 R).

**7.16.11** R The *net negative add-back method* may only be used, under this section, by a *CASS 7 asset management firm* or a *CASS 7 loan-based crowdfunding firm* and only if such *firms* do not undertake any *margined transactions* for, or on behalf of, their *clients*.

**7.16.12** R A *CASS 7 loan-based crowdfunding firm* must not use the *individual client balance method* under this section.

**7.16.13** G

(1) The *client money requirement* should represent the total amount of *client money* a *firm* is required to have segregated in *client bank accounts* under the *client money rules*.

(2) ■ CASS 7.16.11 R does not prevent a *firm* from adopting a *net negative add-back method* as part of a *non-standard method of internal client money reconciliation*.

(3) ■ CASS 7.16.12 R does not prevent a CASS loan-based crowdfunding firm from adopting the *individual client balance method* as part of a *non-standard method of internal client money reconciliation*.

(4) If a *firm* uses the *individual client balance method* in respect of some of its business lines and the *net negative add-back method* in respect of others it will be conducting a *non-standard method of internal client money reconciliation*.



**7.16.14** G

(1) The *individual client balance method* (■ CASS 7.16.16 R) may be applied by any *firm* except a *CASS 7 loan-based crowdfunding firm*. This method requires a *firm* to calculate the total amount of *client money* it should be segregating in *client bank accounts* by reference to how much the *firm* should be holding in total (ie, across all its *client bank accounts* and businesses) for each of its individual *clients* for:

*(a)* *non-margined transactions* (■ CASS 7.16.16 R (1) and ■ CASS 7.16.21 R);

*(b)* *margined transactions* (■ CASS 7.16.16 R (2) and ■ CASS 7.16.32 R); and

(c) certain other matters (■ CASS 7.16.16 R (3) and ■ CASS 7.16.25 R).

(2) (a) ■ CASS 7.16.22 E is an *evidential provision* which sets out a method *firms* should use for calculating how much they should be holding in total for each individual *client* for *non-margined transactions*.

(b) The calculation in ■ CASS 7.16.22 E permits a *firm* to calculate either one *individual client balance* across all its products and business lines for each *client* or a number of *individual client balances* for each *client* equal to the number of products or business lines operated by the *firm* in connection with that *client* (see ■ CASS 7.16.22 E (1)).

(c) The calculation referred to in (2)(b) may also be applied by different types of *firms* and, as a result, each *firm* will need to apply the calculation in way which recognises the business model under which that *firm* operates.

**7.16.15** G The *net negative add-back method* (■ CASS 7.16.17 R) is available to *CASS 7 asset management firms* and *CASS 7 loan-based crowdfunding firms*, many of whom may operate internal ledger systems on a bank account by bank account, not *client*-by-*client*, basis. This method allows a *firm* to calculate the

total amount of *client money* it is required to have segregated in *client bank accounts* by reference to:

(1) the balances in each *client bank account* (see ■ CASS 7.16.17 R (1) and ■ CASS 7.16.18 G (2));

(2) whether any individual *client's* net position in a specific *client bank account* is negative (see ■ CASS 7.16.17 R (2) and ■ CASS 7.16.18 G (2)); and

(3) certain other matters (see ■ CASS 7.16.17 R (2) and ■ CASS 7.16.25 R).

## Client money requirement calculation: individual client balance method

**7.16.16** R Subject to ■ CASS 7.16.25 R and ■ CASS 7.16.37 R, under this method the *client money requirement* must be calculated by taking the sum of, for all *clients* and across all products and accounts:

(1) the *individual client balances* calculated under ■ CASS 7.16.21 R, excluding:

*(a) individual client balances* which are negative (ie, debtors); and

*(b) clients' equity balances*;

(2) the total *margined transaction requirement* (calculated under ■ CASS 7.16.32 R); and

(3) any amounts that have been segregated as *client money* according to the *firm's* records under any of the following: ■ CASS 7.13.51 R (1) (*prudent segregation record*), ■ CASS 7.13.66 R (*alternative approach mandatory prudent segregation record*) and/or ■ CASS 7.13.74 R (*clearing arrangement mandatory prudent segregation record*).

## Client money requirement calculation: net negative add-back method

**7.16.17** R Subject to ■ CASS 7.16.25 R, under this method the *client money requirement* must be calculated by taking the sum of, for each *client bank account*:

(1) the amount which the *firm's* internal records show as held on that account; and

(2) an amount that offsets each negative net amount which the *firm's* internal records show attributed to that account for an individual *client*.

**7.16.18** G (1) A *firm* which utilises the *net negative add-back method* is reminded that it must do so in a way which allows it to maintain its records so that, at any time, the *firm* is able to promptly determine the total amount of *client money* it should be holding for each *client* (see ■ CASS 7.15.5 R (1)).

(2) For the purposes of ■ CASS 7.16.17 R, a *firm* should be able to readily use the figures previously recorded in its internal records and ledgers (for example, its cashbook or other internal accounting records) as at

the close of business on the previous *business day* without undertaking any additional steps to determine the balances in the *firm's client bank accounts*.

**7.16.19** G

(1) A *firm* which utilises the *net negative add-back method* may calculate its *client money requirement* and *client money resource* on a bank account by bank account basis;

(2) For the purposes of ■ CASS 7.16.17 R, a *firm* should take into account any amounts that have been segregated as *client money* according to the *firm's* records under either or both ■ CASS 7.13.50 R (*prudent segregation record*) and ■ CASS 7.13.66 R (*alternative approach mandatory prudent segregation record*).

## Non-margined transactions (eg, securities): individual client balance



**7.16.20** G

The sum of positive *individual client balances* for each *client* should represent the total amount of all *money* the *firm* holds, has received or is obligated to have received or be holding as *client money* in a *client bank account* for that *client* for *non-margined transactions*.

**7.16.21** R

A *firm* must calculate a *client's individual client balances* in a way which captures the total amount of all *money* the *firm* should be holding as *client money* in a *client bank account* for that *client* for *non-margined transactions* under the *client money rules*.

**7.16.22** E

(1) A *firm* may calculate either:

(a) one *individual client balance* for each *client*, based on the total of the *firm's* holdings for that *client*; or

(b) a number of *individual client balances* for each *client*, equal to the number of products or business lines the *firm* operates for that *client* and each balance based on the total of the *firm's* holdings for that *client* in respect of the particular product or business line.

(2) Each *individual client balance* for a *client* should be calculated in accordance with this table:

| Individual client balance calculation | |
|---|---|
| Free *money* (sums held for a *client* free of sale or purchase (eg, see (3)(a)) and | A |
| sale proceeds due to the *client*: | |
| (a) for principal deals when the *client* has delivered the *designated investments*; and | B |
| (b) for agency *deals*, when: | |
| (i) the sale proceeds have been received by the *firm* and the *client* has delivered the *designated investments*; or | C1 |
| (ii) the *firm* holds the *designated investments* for the *client*; and | C2 |
| the cost of purchases: | |

| | | |
|---|---|---|
| (c) | for principal deals, paid for by the *client* when the *firm* has not delivered the *designated investments* to the client; and | D |
| (d) | for agency *deals*, paid for by the *client* when: | |
| (i) | the *firm* has not remitted the *money* to, or to the order of, the counterparty; or | E1 |
| (ii) | the *designated investments* have been received by the firm but have not been delivered to the *client*; | E2 |
| Less | | |
| | *money* owed by the *client* for unpaid purchases by, or for, the *client* if delivery of those *designated investments* has been made to the *client*; and | F |
| | proceeds remitted to the *client* for sales transactions by, or for, the *client* if the *client* has not delivered the *designated investments*. | G |
| *Individual client balance* 'X' = (A+B+C1+C2+D+E1+E2)-F-G | | X |

(3) When calculating an *individual client balance* for each *client*, a *firm* should also:

(a) ensure it includes:

*(i)* *client money* consisting of dividends received and interest earned and allocated (see ■ CASS 7.11.32 R);

*(ii)* *client money* consisting of dividends (actual or payments in lieu), stock lending fees and other payments received and allocated (see ■ CASS 6.1.2 G);

*(iii)* *money* the *firm* appropriates and segregates as *client money* to cover an unresolved *shortfall* in *safe custody assets* it identifies in its internal records which is attributable to an individual *client* (see ■ CASS 6.6.54R (2)); and

*(iv)* *money* the *firm* segregates as *client money* instead of an individual *client's safe custody asset* until such time as the relevant delivery versus payment transaction settles under ■ CASS 6.1.12R (2); and

(b) deduct any amounts due and payable by the *client* to the *firm* (see ■ CASS 7.11.25 R).

(4) Compliance with (1), (2) and (3) may be relied on as tending to establish compliance with ■ CASS 7.16.21 R.

**7.16.23** R A *firm* must calculate an *individual client balance* using the contract value of any *client* purchases or sales, being the value to which the *client* would be contractual entitled to receive or contractually obligated to pay.

**7.16.24** G If a *firm* calculates each *individual client balance* on a product-by-product or business line-by-business line basis under ■ CASS 7.16.22 E (1)(b), the result should be that the *firm* does not net *client* positions across all products and accounts.

## Other requirements for calculating the client money requirement

**7.16.25** R When calculating the *client money requirement* under either of the methods in ■ CASS 7.16.10 R, a *firm* must:

(1) include any unallocated *client money* (see ■ CASS 7.13.36 R) and unidentified receipts of *money* it considers prudent to segregate as *client money* (see ■ CASS 7.13.37 R);

(2) include any money the *firm* appropriates and holds as *client money* to cover an unresolved *shortfall* in *safe custody assets* identified in its internal records which is not attributable, or cannot be attributed to, an individual *client* (see ■ CASS 6.6.49 R, ■ CASS 6.6.50 R and ■ CASS 6.6.54 R);

(3) take into account any *client money* received as cash, cheques or payment orders but not yet deposited into a *client bank account* under ■ CASS 7.13.32 R (see also ■ CASS 7.15.9 R);

(4) if it has drawn any cheques or other payable orders, to discharge its fiduciary duty to its *clients* and continue to treat the sum concerned as forming part of its *client money requirement* until the cheque or order is presented and paid by the bank (see ■ CASS 7.11.40 R); and

(5) ensure it has taken into account all *client money* the *firm* should be holding in connection with *clients*' *non-margined transactions*.

**7.16.26** G (1) Under ■ CASS 7.16.25 R (3), where a *firm* holds *client money* received as cash, cheques or payment orders but not yet deposited in a *client bank account* under ■ CASS 7.13.32 R, it may:

(a) include these balances when calculating its *client money requirement* (eg, where the *firm* records all receipts from clients, whether or not yet deposited with a bank, in its cashbook); or

(b) exclude these balances when calculating its *client money requirement* (eg, where the *firm* only records client receipts to its cashbook once deposited with a bank).

(2) In line with (1)(a), the *firm* will need to ensure that, before finalising the calculation of its *client money requirement* within this section, it deducts these balances, to ensure that they do not give rise to a discrepancy between the *firm's client money requirement* and *client money resource* (see ■ CASS 7.15.29 R).

(3) In line with (1)(b), although the balances concerned do not form part of the *firm's client money requirement*, the *firm* must continue to account for all receipts of *client money* as cash, cheques or payment orders but not yet deposited in a *client bank account* in its records and accounts (see ■ CASS 7.13.32 R and ■ CASS 7.15.9 R).

**7.16.27** G (1) In accordance with ■ CASS 7.16.25 R (5), where a *firm* has allowed another *person* to hold *client money* in connection with a *client's non-margined transaction* (eg, in a *client transaction account* under ■ CASS 7.14 (Client money held by a third party)), the *firm* should include these balances when calculating its *client money requirement*.

(2) If a *firm* is utilising the *individual client balance method* (■ CASS 7.16.16 R) to calculate its *client money requirement*, ■ CASS 7.16.21 R requires the *firm* to include the sums its holds for each *client* that are placed with another *person* in connection with a *client's non-margined transaction* when calculating a *client's individual client balance* (eg, see ■ CASS 7.16.22 E and items C1 and E2).

(3) Under (1) and (2), the *firm* will need to ensure that, before finalising the calculation of its *client money requirement* within this section, it deducts positive balances held for *clients* adding back negative balances attributable to *clients'* *non-margined transactions* in *client transaction accounts*, to ensure that they do not give rise to a discrepancy between the *firm's client money requirement* and *client money resource* (see ■ CASS 7.15.29 R).

(4) Under (1), (2) and (3), in determining the balances of *client money* a *firm* has allowed another person to hold in connection with a *client's non-margined transaction* or the balances held for *clients'* *non-margined transactions* in *client transaction accounts*, a *firm* should use the values contained in its internal records and ledgers (see ■ CASS 7.15.13 R).

## Margined transactions (eg, derivatives): equity balances

**7.16.28** R Subject to ■ CASS 7.16.30 R, a *client's equity balance* is the amount which the *firm* would be liable to pay to the *client* (or the *client* to the *firm*) under the *client money rules* for *margined transactions* if each of the open positions were liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the account with the *firm* were closed. This notional balance should include any unrealised losses or profits associated with that *client's* open positions, and any margin the *firm* has received from the *client* in connection with those positions.

**7.16.29** R Subject to ■ CASS 7.16.30 R, a *firm's equity balance* is the amount which the *firm* would be liable to pay to the exchange, *clearing house*, *intermediate broker* or *OTC* counterparty (or vice-versa) for the *firm's margined transactions* if each of the open positions of those of the *firm's clients* that are entitled to protection under the *client money rules* were liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the *firm's client transaction accounts* with that exchange, *clearing house*, *intermediate broker* or *OTC* counterparty were closed. This notional balance should include any unrealised losses or profits associated with the open positions the *firm* holds for *clients* and any margin the *firm* holds for *clients* in the relevant *client transaction accounts*.

**7.16.30** R The terms '*client's equity balance*' and '*firm's equity balance*' refer to cash values and do not include non-cash *collateral* or other *designated investments* (including *approved collateral*) the *firm* holds for a *margined transaction*.

## Margined transactions (eg, derivatives): margined transaction requirement

**7.16.31** G The *margined transaction requirement* should represent the total amount of *client money* a *firm* is required under the *client money rules* to segregate in

*client bank accounts* for *margined transactions*. The calculation in ■ CASS 7.16.33 R is designed to ensure that an amount of *client money* is held in *client bank accounts* which equals at least the difference between the equity the *firm* holds at exchanges, *clearing houses*, *intermediate brokers* and *OTC* counterparties for *margined transactions* for *clients* entitled to protection under the *client money rules*, and the amount due to *clients* under the *client money rules* for those same *margined transactions*. With this calculation, a *firm's margined transaction requirement* should represent, if positions were unwound, the *firm's* gross liabilities to *clients* entitled to protection under the *client money rules* for *margined transactions*.

**7.16.32** R The total *margined transaction requirement* is:

(1) the sum of each of the *client's equity balances* which are positive; less

(2) the proportion of any individual negative *client equity balance* which is secured by *client approved collateral*; and

(3) the net aggregate of the *firm's equity balance* (negative balances being deducted from positive balances) on *client transaction accounts* for *customers* with exchanges, *clearing houses*, *intermediate brokers* and *OTC* counterparties.

**7.16.33** R

(1) To meet the total *margin transaction requirement*, a *firm* may appropriate and use its own *approved collateral*, provided it meets the requirements in (2).

(2) The *firm* must hold the *approved collateral* in a way which ensures that, in accordance with ■ CASS 7A.2.3A R, the *approved collateral* will be liquidated on the occurrence of a *primary pooling event* and the proceeds paid into a *client bank account*, and in so doing:

(a) ensure the *approved collateral* is clearly identifiable as separate from the *firm's* own property and is recorded by the *firm* in its records as being held for its *clients*;

(b) keep a record of the actions the *firm* has taken under this *rule* which includes a description of the terms on which the *firm* holds the *approved collateral*, identifies that the *approved collateral* is held for the benefit of its *clients* and specifies the *approved collateral* that the *firm* has appropriated for the purposes of this *rule*; and

(c) update the record made under (b) whenever the *firm* ceases to appropriate and use *approved collateral* under this *rule*.

**7.16.34** G Where ■ CASS 7.16.33 R applies, the *firm* will be reducing the requirement arising from ■ CASS 7.16.16 R (2) and, as such, simultaneously reducing its overall *client money requirement* (ie, the amount of money the *firm* is required to segregate in *client bank accounts*).

**7.16.35** R If a *firm's* total *margined transaction requirement* is negative, the *firm* must treat it as zero for the purposes of calculating its *client money requirement*.

## LME bond arrangements

**7.16.36** R A *firm* with a *Part 30 exemption order* which also operates an *LME bond arrangement* for the benefit of US-resident investors must exclude the *client equity balances* for transactions undertaken on the *LME* on behalf of those US-resident investors from the calculation of the *margined transaction requirement*, to the extent those transactions are provided for by an *LME bond arrangement* (see ■ CASS 12.2.3 G).

## Reduced client money requirement option

**7.16.37** R Where appropriate, a *firm* may:

(1) when, in respect of a *client*, there is a positive *individual client balance* and a negative *client equity balance*, offset the credit against the debit and, therefore, have a reduced *individual client balance* in ■ CASS 7.16.21 R for that *client*; and

(2) when, in respect of a *client*, there is a negative *individual client balance* and a positive *client equity balance*, offset the credit against the debit and, therefore, have a reduced *client equity balance* (■ CASS 7.16.28 R) for that *client*.

**7.16.38** G The effect of ■ CASS 7.16.37 R is to allow a *firm* to offset, on a *client*-by-*client* basis, a negative amount with a positive amount arising out of the calculations in ■ CASS 7.16.21 R and ■ CASS 7.16.28 R and, therefore, reduce its overall *client money requirement*.

## 7.17 Statutory trust

**7.17.1** G Section 137B(1) of the *Act* (Miscellaneous ancillary matters) provides that rules may make provision which result in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). This section creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of failure of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.



### Requirement

**7.17.2** R Subject to ■ CASS 7.17.3 R in respect of a *trustee firm*, a *firm* receives and holds *client money* as trustee on the following terms:

(1) for the purposes of, and on the terms of, the *client money rules* and the *client money distribution and transfer rules*;

(2) (a) where a *firm* maintains only a *general pool* of *client money*, subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such with respect to *client money* received in the course of *insurance distribution activity* and that was opted in to this chapter) for whom that *money* is held, according to their respective interests in it;

(b) where a *firm* has established one or more pools of *client money*, subject to (4):

(i) the *general pool* is held for all the *clients* of the *firm* for whom the *firm* receives or holds *client money* (other than *clients* which are *insurance undertakings* when acting in regard to *client money* received during *insurance distribution activity* and that was opted in to this chapter) according to their respective interests; and

(ii) each *sub-pool* is for the *clients* of the *firm* who are identified as beneficiaries of the *sub-pool* in question, in accordance with ■ CASS 7.19.6 R (2), according to their respective interests in it;

(3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* with respect of *client money* received in the course of *insurance distribution activity* according to their respective interests in it;

(4) for the payment of the costs properly attributable to the distribution of the *client money* in (2) if such distribution takes place following the *failure* of the *firm*; and

(5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

**7.17.3** R A *trustee firm* which is subject to the *client money rules* by virtue of CASS 7.10.1 R (2) receives and holds *client money* as trustee on the terms in CASS 7.17.2 R, subject to its obligations to hold *client money* as trustee under the relevant instrument of trust.

**7.17.4** G If a *trustee firm* holds *client money*, the *firm* should follow the provisions in CASS 7.10.33 R to CASS 7.10.40 G.

**7.17.5** G The statutory trust under CASS 7.17.2 R does not permit a *firm*, in its capacity as trustee, to use *client money* to advance credit to the *firm's clients*, itself, or any other *person*. For example, if a *firm* wishes to undertake a transaction for a *client* in advance of receiving *client money* from that *client* to fund that transaction, it should not advance credit to that *client* or itself using other *clients*' *client money* (ie, it should not 'pre-fund' the transaction using other *clients*' *client money*).

# 7.18 Acknowledgment letters

## Purpose

7.18.1 G The main purposes of an *acknowledgement letter* are:

(1) to put the bank, exchange, *clearing house*, *intermediate broker*, OTC counterparty or other *person* (as the case may be) on notice of a *firm's clients*' interests in *client money* that has been deposited with, or has been allowed to be held by, such *person*;

(2) to ensure that the *client bank account* or *client transaction account* has been opened in the correct form (eg, whether the *client bank account* is being correctly opened as a *general client bank account*, a *designated client bank account* or a *designated client fund account*), and is distinguished from any account containing *money* that belongs to the *firm*; and

(3) to ensure that the bank, exchange, *clearing house*, *intermediate broker*, OTC counterparty or other *person* (as the case may be) understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account* or *client transaction account*, in respect of any sum owed to such *person*, or to any other third *person*, on any other account.

## Client bank account acknowledgment letters

7.18.2 R (1) For each *client bank account*, a *firm* must, in accordance with ■ CASS 7.18.6 R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the bank with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.

(2) Subject to ■ CASS 7.18.14 R and ■ CASS 7.18.15 R, a *firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the relevant bank that has not been inappropriately redrafted (see ■ CASS 7.18.8 R) and clearly identifies the *client bank account*.

## Client transaction account acknowledgement letters

**7.18.3** R

(1) This *rule* does not apply to a *firm* to which ■ CASS 7.18.4 R (1) applies.

(2) For each *client transaction account*, a *firm* must, in accordance with ■ CASS 7.18.6 R, complete and sign a *client transaction account acknowledgement letter* clearly identifying the *client transaction account*. That letter must be sent to the *person* with whom the *client transaction account* is, or will be, opened, requesting such *person* to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.

(3) Subject to ■ CASS 7.18.14 R and ■ CASS 7.18.15 R, a *firm* must not allow the relevant *person* to hold any *client money* in a *client transaction account* maintained by that *person* for the *firm*, unless the firm has received a duly countersigned *client transaction account acknowledgement letter* from that *person* that has not been inappropriately redrafted (see ■ CASS 7.18.8 R) and that clearly identifies the *client transaction account*.



## Authorised central counterparty acknowledgment letters

**7.18.4** R

(1) A *firm* which places *client money* at an *authorised central counterparty* in connection with a *regulated clearing arrangement* must, in accordance with ■ CASS 7.18.6 R, complete and sign an *authorised central counterparty acknowledgement letter* clearly identifying the relevant *client transaction account*. That letter must be sent to the *authorised central counterparty* with whom the *client transaction account* is, or will be, opened, requesting such *authorised central counterparty* to acknowledge receipt of the letter by countersigning it and returning it to the *firm*.

(2) A *firm* which has complied with ■ CASS 7.18.4 R (1) may allow the *authorised central counterparty* to hold *client money* on the relevant *client transaction account*, whether or not the *authorised central counterparty* has countersigned and returned the *authorised central counterparty acknowledgement letter* it received from the *firm*.

## Acknowledgement letters in general

**7.18.5** G

In drafting *acknowledgement letters* under ■ CASS 7.18.2 R, ■ CASS 7.18.3 R or ■ CASS 7.18.4 R, a *firm* is required to use the relevant template in ■ CASS 7 Annex 2 R, ■ CASS 7 Annex 3 R or ■ CASS 7 Annex 4 R, respectively.

**7.18.6** R

When completing an *acknowledgment letter* under ■ CASS 7.18.2 R (1), ■ CASS 7.18.3 R (1) or ■ CASS 7.18.4 R (1), a firm:

(1) must not amend any of the *acknowledgement letter fixed text*;

(2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and

(3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.

**7.18.7** G ■ CASS 7 Annex 5 G contains *guidance* on using the template *acknowledgment letters*, including when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.

**7.18.8** R

(1) If, on countersigning and returning the *acknowledgement letter* to a *firm*, the relevant *person* has also:

(a) made amendments to any of the *acknowledgement letter fixed text*; or

(b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;

the *acknowledgement letter* will have been inappropriately redrafted for the purposes of ■ CASS 7.18.2 R (2) or ■ CASS 7.18.3 R (3) (as applicable).

(2) For the purposes of ■ CASS 7.18.2 R (2) or ■ CASS 7.18.3 R (3), amendments made to the *acknowledgement letter variable text* in the *acknowledgement letter* returned to a *firm* by the relevant *person*, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the *acknowledgement letter fixed text*, have been specifically agreed with the *firm* and do not cause the *acknowledgement letter* to be inaccurate.

**7.18.9** R A *firm* must use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *person*.

**7.18.10** R

(1) A *firm* must retain each countersigned *client bank account acknowledgement letter* and *client transaction account acknowledgement letter* it receives, from the date of receipt until the expiry of five years from the date on which the last *client bank account* or *client transaction account* to which the *acknowledgement letter* relates is closed.

(2) A *firm* must retain a copy of each *authorised central counterparty acknowledgment letter* it sends to an *authorised central counterparty* under ■ CASS 7.18.4 R (1), from the date it was sent until the expiry of five years from the date the last *client transaction account* to which the *acknowledgement letter* relates is closed.

**7.18.11** R A *firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an *acknowledgment letter* returned to the firm was authorised to countersign the letter on behalf of the relevant *person*).

**7.18.12** R

(1) This rule applies to:

(a) any countersigned *client bank account acknowledgement letter* or *client transaction account acknowledgement letter* received by a *firm* under ■ CASS 7.18.2 R (2) or ■ CASS 7.18.3 R (3) respectively; and

(b) any *authorised central counterparty acknowledgement letter* sent by a *firm* under ■ CASS 7.18.4 R (1), whether or not it has been countersigned by the relevant *authorised central counterparty* and received by the *firm*.

(2) A *firm* must, periodically (at least annually, and whenever it is aware that something referred to in an *acknowledgement letter* has changed) review each of its *acknowledgement letters* to ensure that they all remain accurate.

(3) Whenever a firm finds an inaccuracy in an *acknowledgement letter*, it must promptly draw up a replacement *acknowledgement letter* under ■ CASS 7.18.2 R or ■ CASS 7.18.3 R or ■ CASS 7.18.4 R, as applicable, and, if it is an *acknowledgement letter* required to be sent under ■ CASS 7.18.2 R, ■ CASS 7.18.3 R, ensure that the new *acknowledgement letter* is duly countersigned and returned by the relevant *person*.

**7.18.13** G

Under ■ CASS 7.18.12 R, a *firm* should draw up and send out a replacement *acknowledgement letter* whenever:

(1) there has been a change in any of the parties' names or addresses as set out in the letter; or

(2) the *firm* becomes aware of an error or misspelling in the drafting of the letter.

**7.18.14** R

If a *firm's client bank account* or *client transaction account* is transferred to another *person*, the *firm* must promptly draw up a new *acknowledgement letter* under ■ CASS 7.18.2 R, ■ CASS 7.18.3 R or ■ CASS 7.18.4 R, as applicable, and, if it is an *acknowledgement letter* required to be sent under ■ CASS 7.18.2 R or ■ CASS 7.18.3 R, ensure that the new *acknowledgement letter* is duly countersigned and returned by the relevant *person* within 20 *business days* of the *firm* sending it to that *person*.

**7.18.15** R

If a *firm* opens a *client bank account* after a *primary pooling event*, the *firm* must:

(1) promptly draw up and send out a new *acknowledgement letter* under ■ CASS 7.18.2 R;

(2) not hold or receive any *client money* in or into the *client bank account* unless it has sent the *acknowledgement letter* to the relevant *person*; and

(3) if the *firm* has not received a duly countersigned acknowledgement letter that has not been inappropriately redrafted (see ■ CASS 7.18.8 R) within 20 *business days* of the *firm* sending the *acknowledgement letter*, 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.

## 7.19 Clearing member client money sub-pools

**7.19.1** G

(1) Under ■ CASS 7.17.2R(2), a *firm* acts as *trustee* for all *client money* received or held by it for the benefit of the *clients* for whom that *client money* is held, according to their respective interests in it.

(2) A *firm* that is also a *clearing member* of an *authorised central counterparty* may wish to segregate *client money* specifically for the benefit of a group of *clients* who have chosen to clear positions through a *net margined omnibus client account* maintained by the *firm* with that *authorised central counterparty*, where that segregation might facilitate the *porting* of *client* positions recorded in that *net margined omnibus client account*. To segregate *client money* (that would otherwise be held in the *general pool*) for a specific group of *clients* clearing positions through a particular *net margined omnibus client account*, a *clearing member firm* may, in accordance with these rules, create a *sub-pool* of *client money*.

(3) Upon the occurrence of a *primary pooling event*, the *client money* for:

(a) the *general pool*, should be distributed in accordance with ■ CASS 7A to the *clients* for whom the *firm* receives or holds *client money* in that *general pool*; and

(b) a *sub-pool*, should either be:

(i) transferred to facilitate *porting*; or

(ii) distributed to the *clients* who are beneficiaries of that *sub-pool*, according to their respective interests under ■ CASS 7A.2.4R (2)(a).

(4) All *client money* is received or held by the *firm* as *trustee* for the *clients* of the *firm*. However, a *clearing member* of an *authorised central counterparty* who clears *client* positions through a *net margined omnibus client account* may organise its affairs (with the consent of the relevant *clients*) in such a way that those *clients* need not share in the *general pool* of *client money* following a *primary pooling event*, save to the extent that such *clients* otherwise have an interest in the *general pool*.

**7.19.2** R

Where a *firm* creates a *sub-pool* for a particular *net margined omnibus client account*, it must not clear positions through that *omnibus client account* for *clients* who are not beneficiaries of that *sub-pool*.

## Internal controls

**7.19.3** R A *firm* wishing to establish a *sub-pool* must establish and maintain adequate *internal controls* necessary to comply with the *firm's* obligations under ■ CASS 7 for the *general pool* and each *sub-pool* that it may establish.

## Records

**7.19.4** R Where a *firm* establishes one or more *sub-pools*, ■ CASS 7.15 (Records, accounts and reconciliations) shall be read as applying separately to the *firm's general pool* and each *sub-pool*.

**7.19.5** G A *firm* that establishes one or more *sub-pools* must establish and maintain adequate internal controls and records in accordance with ■ CASS 7.15 (Records, accounts and reconciliations) to conduct internal and external reconciliations for each *sub-pool* and the *general pool* individually.

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**7.19.6** R

(1) The records maintained for a *sub-pool* under ■ CASS 7.19.4 R must identify all the *client* beneficiaries of that *sub-pool*.

(2) The beneficiaries of each *sub-pool* are those *clients*:

(a) from whom the *firm* has received a signed *sub-pool disclosure document* in accordance with ■ CASS 7.19.11 R;

(b) for whom the *firm* maintains, previously maintained or is in the process of establishing a *margined transaction(s)* in the relevant *net margined omnibus client account* at the *authorised central counterparty*; and

(c) to whom any *client equity balance* or other *client money* is required to be segregated for the *client* by the *firm* in respect of the *margined transactions* under (2)(b) from that *sub-pool*.

**7.19.7** R

(1) For each *sub-pool* that the *firm* establishes, it must maintain a record of:

(a) the name of the *sub-pool*;

(b) the particular *net margined omnibus client account* at an *authorised central counterparty* to which the *sub-pool* relates;

(c) each *client bank account* and each *client transaction account* (other than the *net margined omnibus client account*) maintained for the *sub-pool*, including the unique identifying reference or descriptor under ■ CASS 7.19.13 R (2); and

(d) the applicable *sub-pool disclosure document* for the *sub-pool*.

**7.19.8** R The *firm* must maintain an up-to-date list of all the *sub-pools* it has created.

## Sub-pool disclosure document

**7.19.9** R

(1) A *firm* wishing to establish a *sub-pool* must prepare a *sub-pool disclosure document* for each *sub-pool*.

(2) The *sub-pool disclosure document* for each *sub-pool* must:

(a) identify the *sub-pool* by name, as stated in its records under ■ CASS 7.19.7 R, the *net margined omnibus client account* and the *authorised central counterparty* to which the *sub-pool disclosure document* relates;

(b) contain a statement that the *client* consents to the *firm* receiving and holding the *client's client money* in the *sub-pool*;

(c) contain a statement that, in the event of the *failure* of the *firm*, the *firm* is directed by the *client* to use any *client money* held by the *firm* in the *sub-pool* to facilitate the *porting* of the positions recorded in that *net margined omnibus client account*; and

(d) a statement reminding the *client* that, in the event of the *failure* of the *firm*, if *porting* is not effected or if *porting* is effected but any money in the sub-pool is not used to facilitate *porting*, the *client* beneficiaries of the *sub-pool* will be entitled to a distribution of any *client money* held for that *sub-pool* in line with ■ CASS 7A. However, the *client* beneficiaries will not have a claim on any other *pool* of *client money*, except to the extent that the *client* is a beneficiary of another *pool*.

7

**7.19.10** G In preparing a *sub-pool disclosure document* under ■ CASS 7.19.9 R (1), a *firm* may use the template in ■ CASS 7 Annex 6.

**7.19.11** R (1) Before receiving or holding *client money* for a *client* for a *sub-pool*, a *firm* must:

(a) provide to the *client* a copy of the *sub-pool disclosure document* applicable to that *sub-pool*; and

(b) obtain a signed copy of that *sub-pool disclosure document* from the *client*.

(2) A *firm* must provide the beneficiary of a *sub-pool* with a copy of its signed *sub-pool disclosure document* applicable to that *sub-pool* upon the beneficiary's request.

## Segregation and operation of sub-pools

**7.19.12** R Where a *firm* establishes one or more *sub-pools*, ■ CASS 7.13 (Segregation of client money) is to be read as applying separately to the *firm's general pool* and each *sub-pool*.

**7.19.13** R (1) A *firm* must not hold *client money* for a *sub-pool* in a *client bank account* or a *client transaction account* used for holding *client money* for any other *sub-pool* or the *general pool*.

(2) A *firm* that establishes a *sub-pool* must ensure that the name of each *client bank account* and each *client transaction account* (other than the *net margined omnibus client account*) maintained for that *sub-pool* includes a unique identifying reference or descriptor that enables the account to be identified with that *sub-pool*.

(3) Where a *client* of the *firm* is a beneficiary of the *general pool* and wishes to become a beneficiary of a *sub-pool*, the *client* in question shall become a beneficiary of the relevant *sub-pool* when :

(a) the *firm* has obtained the signed *sub-pool disclosure document* from that *client* in accordance with ■ CASS 7.19.11 R (1); and

(b) the *firm* has either:

(i) transferred the relevant amount of *client money* for that *client* from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for the relevant *sub-pool*; or

(ii) if the *firm* is not making a transfer of *client money* from the *general pool*, when it has received that *client's money* in a *client bank account* maintained for the relevant *sub-pool*.

(4) Where a *client* of the *firm* is a beneficiary of the *general pool* and wishes to become a beneficiary of a *sub-pool*, the *firm* must ensure that it does not transfer *client money* from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for a *sub-pool* in accordance with ■ CASS 7.19.13 R (3)(b)(i), unless the amount of *client money* held for the *general pool* is sufficient, immediately after that transfer, to satisfy the *firm's client money* obligations to the remaining beneficiaries of the *general pool*.

(5) A *client* of the *firm* who is a beneficiary of a *sub-pool* ceases to be a beneficiary of that *sub-pool* when:

(a) the *firm* has settled the amount owing to that *client* for all of the *margined transactions* cleared through the related *net margined omnibus client account* and no longer holds any *client money* for that *client* in that *sub-pool*, and so ■ CASS 7.19.6 R (2)(b) and ■ CASS 7.19.6 R (2)(c) no longer apply for that *client*; or

(b) the *firm* has complied with (i) or (ii), and in either case (iii):

(i) the *firm* has received a written instruction from the *client* stating that the *client* no longer wishes to have its positions cleared through the *net margined omnibus client account* or its *client money* held in that *sub-pool*, or the *firm* has notified the *client* under ■ CASS 7.19.18 R that it is making a material change to a *sub-pool*; or

(ii) the *firm* has closed or moved that *client's* positions to an account other than the *net margined omnibus client account* referable to that *sub-pool*; and

(iii) the *firm* has either transferred the relevant amount of *client money* for that *client* from a *client bank account* maintained for the relevant *sub-pool* to a *client bank account* maintained by the *firm* for the *general pool* (or, if applicable, another *sub-pool*), or transferred the amount owing to that *client* for all of the *margined transactions* cleared through the related *net margined omnibus client account* and no longer holds any *client money* for that *client* in that *sub-pool*.

(6) In relation to the transfer of *client money* under ■ CASS 7.19.13 R (5)(b)(iii), a *firm* must ensure that it does not transfer *client money* from a *client bank account* maintained for a *sub-pool*, unless the amount of *client money* held for the *sub-pool* is sufficient, immediately after that transfer, to satisfy the *firm's client money* obligations to the remaining beneficiaries of that *sub-pool*.

**7.19.14** R Save to the extent permitted under ■ CASS 7.13.70 G a *firm* that receives *client money* to be credited in part to the *general pool* or one *sub-pool* and in part to another *sub-pool* must:

(1) take the necessary steps to ensure that the full sum is paid directly into a *client bank account* maintained for the *general pool*; and

(2) promptly, and in any event no later than one *business day* after receipt, pay the *money* that is not *client money* for the *general pool* out of that *client bank account* and into a *client bank account* maintained for the appropriate *sub-pool*.

**7.19.15** G

(1) If a *primary pooling event* occurs before *client money* is transferred from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for the appropriate *sub-pool* in accordance with ■ CASS 7.19.14 R (2), the amount in question will not form part of that *sub-pool*, including for the purposes of ■ CASS 7A.2.4R (1).

(2) If a *primary pooling event* occurs before *client money* is transferred from a *client bank account* maintained for a *sub-pool* to a *client bank account* maintained for the *general pool* or another *sub-pool* in accordance with ■ CASS 7.19.13 R (5), the amount in question will not form part of the *general pool* or that other *sub-pool*, including for the purposes of ■ CASS 7A.2.4R (1), but will remain part of the original *sub-pool*.

**7.19.16** R A *client* for whom a *firm* receives or holds *client money* for a *sub-pool* has no claim to or interest in *client money* received or held for the *general pool* or any other *sub-pool* unless:

(1) that client is a beneficiary of that other *sub-pool*; or

(2) the *firm* receives or holds *client money* for that *client* for other business which does not relate to any *sub-pool* (and thus the *client* is a beneficiary of the *firm's general pool*).

**7.19.17** R A *client* for whom a *firm* receives or holds *client money* in more than one *pool* as described in ■ CASS 7.19.16 R (1) and/or ■ CASS 7.19.16 R (2) has an interest in a distribution from each such *pool*, and each interest is separate and distinct.

## Material changes to sub-pools

**7.19.18** R Before making a material change to a *sub-pool*, a *firm* must:

(1) notify the then current beneficiaries of that *sub-pool* in writing, not less than two months before the date on which the *firm* intends the change to take effect; and

(2) include in the notification an explanation of the consequences for the beneficiaries of the proposed change and the options available to them, such as the option of a beneficiary of the affected *sub-pool* to cease to be a beneficiary of that *sub-pool* and to become a

beneficiary of the *firm's general pool* or, if applicable, another *sub-pool*.

**7.19.19** G A *firm* should keep in mind its obligations under ■ CASS 7.19.11 R (1)(b) (before receiving or holding *client money* for a *client* in a *sub-pool*, a *firm* must obtain a signed copy of the *sub-pool disclosure document* from the client) when making a material change to a *sub-pool*. A *firm* is also reminded of the conditions under ■ CASS 7.19.13 R (5)(b) (when a *client* of the *firm* who is a beneficiary of a *sub-pool* ceases to be a beneficiary of that *sub-pool*) if a material change proposed to a *sub-pool* results in a *client* ceasing to be a beneficiary of that *sub-pool*.

**7.19.20** G The *FCA* would normally consider the dissolution of a *sub-pool*, such that the *firm* no longer operates the *sub-pool* or no longer uses the relevant *net margined omnibus client account* or transfers the business to another *authorised central counterparty*, to be examples of material changes to a *sub-pool*.



**7.19.21** R Before materially changing a *sub-pool*, a *firm* must provide a copy of the notice provided to clients under ■ CASS 7.19.18 R R to the *FCA* not less than two months before the date on which the *firm* intends the change to take place.

## Notifications

**7.19.22** R A *firm* that wishes to establish a *sub-pool* of *client money* must notify the *FCA* in writing not less than two months before the date on which the *firm* intends to receive or hold *client money* for that *sub-pool*.

**7.19.23** R Upon request, a *firm* must deliver to the *FCA* a copy of the *sub-pool disclosure document* for any *sub-pool* established by the *firm*.

**7.19.24** R A *firm* must inform the *FCA* in writing, without delay, if it has not complied, or is unable to comply with the requirements in ■ CASS 7.19.11 R or the requirements in ■ CASS 7.19.18 R.

## Record-keeping

**7.19.25** R The records maintained under this section, including the *sub-pool disclosure documents*, are a record of the *firm* that must be kept in a *durable medium* for at least five years following the date on which *client money* was last held by the *firm* for a *sub-pool* to which those records or the *sub-pool disclosure document* applied.

## Client bank account acknowledgment letter template

[*letterhead of firm subject to* ■ CASS 7.18.2 R , *including full name and address of firm*]

[*name and address of bank*]

[*date*]

**Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)**

We refer to the following [current/deposit account[s]] [and/or] [money market deposit[s]] which [*name of CASS firm*], regulated by the Financial Conduct Authority (Firm Reference Number [*FRN*]), ("us", "we" or "our") [has opened or will open] [and/or] [has deposited or will deposit] with [*name of bank*] ("you" or "your"):

[*insert the account title[s], the account unique identifier[s] (for example, as relevant, sort code and account number, deposit number or reference code) and (if applicable) any abbreviated name of the account[s] as reflected in the bank's systems*]

([collectively,] the "Client Bank Account[s]").

In relation to [each of] the Client Bank Account[s] identified above you acknowledge that we have notified you that:

(a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;

(b) we have opened, or will open, the Client Bank Account for the purpose of depositing money with you on behalf of our clients; and

(c) we hold all money standing to the credit of the Client Bank Account in our capacity as trustee under the laws applicable to us.

In relation to [each of] the Client Bank Account[s] above you agree that:

(d) you do not have any recourse or right against money in the Client Bank Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Bank Account with any other account and any right of set-off or counterclaim against money in the Client Bank Account;

(e) you will title, or have titled, the Client Bank Account as stated above and that such title is different to the title of any other account containing money that belongs to us or to any third party; and

(f) you are required to release on demand all money standing to the credit of the Client Bank Account upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy (or similar procedure), in any relevant jurisdiction, except for:

(1) any properly incurred charges or liabilities owed to you on, and arising from the operation of, the Client Bank Account; and

(2) until the fixed term expires, any amounts held for the time being under a fixed term deposit arrangement which cannot be terminated before the expiry of the fixed term,

provided that you have a contractual right to retain such money under (1) or (2) and that this right is notwithstanding paragraphs (a) to (c) above and without breach of your agreement to paragraph (d) above.

We acknowledge that:

(g) you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Client Bank Account[s].

You and we agree that:

(h) the terms of this letter shall remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;

(i) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter;



(j) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement shall prevail;

(k) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;

(l) this letter shall be governed by the laws of [*insert appropriate jurisdiction*] [*firms may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction*]; and

(m) the courts of [*insert same jurisdiction as previous*] shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [*name of CASS firm*]

x_____

Authorised Signatory

[Signed by [*name of third party administrator*] on behalf of [*CASS firm*]]

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [*name of bank*]

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: [*insert signatory's phone number and email address*]

Date:

## Client transaction account acknowledgment letter template

[*letterhead of firm subject to* ■ CASS 7.18.3 R *, including full name and address of firm*]

[*name and address of counterparty*]

[*date*]

**Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)**

We refer to the following transaction account[s] which [*name of CASS firm*], regulated by the Financial Conduct Authority (Firm Reference Number [*FRN*]), ("us", "we" or "our") has opened or will open with [*name of counterparty*] ("you" or "your"):

[*insert the account title[s], the account unique identifier[s] (for example, as relevant, account number, reference code or pool ID) and (if applicable) any abbreviated name of the account[s] as reflected in the counterparty's systems*]

([collectively,] the "Client Transaction Account[s]").

In relation to [each of] the Client Transaction Account[s] identified above you acknowledge that we have notified you that:

(a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;

(b) we have opened, or will open, the Client Transaction Account for the purpose of placing money with you on behalf of our clients in connection with carrying out one or more transactions with or through you; and

(c) you are instructed to promptly credit to this Client Transaction Account any money you receive in respect of any transaction that we have notified to you as being carried out on behalf of our clients.

In relation to [each of] the Client Transaction Account[s] identified above you agree that:

(d) all money standing to the credit of the Client Transaction Account is payable to us in our capacity as trustee under the laws applicable to us[, except where, in accordance with your default management procedures in respect of a default by us, you transfer money credited to the Client Transaction Account to anyone other than us in accordance with the "EMIR Indirect Clearing Default Management Obligations" (as defined at the time of such default in the Financial Conduct Authority's Handbook of Rules and Guidance)] [and/or] [ the "MiFIR Indirect Clearing Default Management Obligations" (as defined at the time of such default in the Financial Conduct Authority's Handbook of Rules and Guidance)]];

(e) you do not have any recourse or right against money credited to the Client Transaction Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Transaction Account with any other account and any right of set-off or counterclaim against money in the Client Transaction Account; and

(f) you will title, or have titled, the Client Transaction Account as stated above and that such title is different to the title of any other account containing money that is payable to us in a capacity other than as trustee or that is payable to any third party.

You and we agree that:

(g) the terms of this letter shall remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;

(h) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Transaction Account[s], to the extent that such previous agreement is inconsistent with this letter;

(i) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Transaction Account[s], this letter agreement shall prevail;

(j) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;



(k) this letter shall be governed by the laws of [*insert appropriate jurisdiction*] [*firms may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction*]; and

(l) the courts of [*insert same jurisdiction as previous*] shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to permit you to hold any money belonging to our clients on the Client Transaction Account[s] until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [*name of CASS firm*]

x_____

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [*name of counterparty*]

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: [*insert signatory's phone number and email address*]

Date:

## Authorised central counterparty acknowledgment letter template

[*letterhead of firm subject to* ■ CASS 7.18.4 R *, including full name and address of authorised central counterparty*]

[*name and address of counterparty*]

[*date*]

**Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)**

We refer to the following transaction account[s] which [*name of CASS firm*], regulated by the Financial Conduct Authority (Firm Reference Number [*FRN*]), ("us", "we" or "our") has opened or will open with [*name of authorised Central counterparty*] ("you" or "your"):

[*insert the account title[s], the account unique identifier[s] (for example, as relevant, account number, reference code or pool ID) and (if applicable) any abbreviated name of the account[s] as reflected in the authorised central counterparty's systems*]

([collectively,] the "Client Transaction Account[s]").

In relation to [each of] the Client Transaction Account[s] identified above we are writing to put you on notice that:

(a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;

(b) we have opened, or will open, the Client Transaction Account for the purpose of placing money with you on behalf of our clients in connection with carrying out one or more transactions with or through you;

(c) you are instructed to promptly credit to this Client Transaction Account any money you receive in respect of any transaction that we have notified to you as being carried out on behalf of our clients;

(d) all money standing to the credit of the Client Transaction Account is payable to us in our capacity as trustee under the laws applicable to us, except where, as a part of your default management process in respect of a default by us, you transfer money credited to the Client Transaction Account to anyone other than us in accordance with article 48 of Regulation (EU) No 648/2012 of 4 July 2012;

(e) you do not have any recourse or right against money credited to the Client Transaction Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Transaction Account with any other account and any right of set-off or counterclaim against money in the Client Transaction Account; and

(f) we understand the title of the Client Transaction Account is, or will be, as stated above and that such title is different to the title of any other account containing money that is payable to us in a capacity other than as trustee or is payable to any third party.

[Please confirm your receipt of this letter by signing and returning the enclosed copy of this letter as soon as possible.]

For and on behalf of [*name of CASS firm*]

x_____

Authorised Signatory

Print Name:

Title:

[RECEIPT CONFIRMED:

For and on behalf of [*name of counterparty*]

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: [*insert signatory's phone number and email address*]

Date:]

# Guidance notes for acknowledgement letters (CASS 7.18)

## Introduction

1 This annex contains *guidance* on the use of the templates for *acknowledgement letters* in ■ CASS 7 Annex 2, ■ CASS 7 Annex 3 and ■ CASS 7 Annex 4.

2 Unless stated otherwise, a reference to 'counterparty' in this annex is:

(a) in the context of a *client bank account acknowledgement letter* (and ■ CASS 7 Annex 2), to the relevant *bank*;

(b) in the context of a *client transaction account acknowledgement letter* (and ■ CASS 7 Annex 3), to the relevant exchange, *clearing house*, *intermediate broker*, *OTC* counterparty or other *person* (as the case may be); and

(c) in the context of an *authorised central counterparty acknowledgement letter* (and ■ CASS 7 Annex 4), to the relevant *authorised central counterparty*.

## General

3 Under ■ CASS 7.18.2 R (2) and ■ CASS 7.18.3 R (3), *firms* are required to have in place a duly signed and countersigned *acknowledgment letter* for a *client bank account* or *client transaction account* (respectively) before they are allowed to hold or receive *client money* in or into the *client bank account*, or allow the relevant *person* to hold any *client money* on the *client transaction account* (respectively).

4 However, a *firm* may place *client money* at an *authorised central counterparty* in connection with a *regulated clearing arrangement* if it has provided the relevant *authorised central counterparty* with a signed and completed *authorised central counterparty acknowledgement letter* (see ■ CASS 7.8.3 R).

5 For each *client bank account* or *client transaction account*, a *firm* is required to complete, sign and send to the counterparty an *acknowledgment letter* identifying that account and in the form set out in ■ CASS 7 Annex 2 (Client bank account acknowledgment letter template), ■ CASS 7 Annex 3 (Client transaction account acknowledgment letter template) or ■ CASS 7 Annex 4 (Authorised central counterparty acknowledgment letter), as appropriate.

6 When completing an *acknowledgment letter* using the appropriate template, a *firm* is reminded that it must not amend any of the text which is not in square brackets (*acknowledgment letter fixed text*). A *firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the necessary wording, in either case as appropriate. The notes below give further guidance on this.

## Clear identification of relevant accounts

7 A *firm* is reminded that for each *client bank account* or *client transaction account* it needs to have in place an *acknowledgement letter*. Accordingly, it is important that it is clear to which account or accounts each *acknowledgement letter* relates. As a result, the templates in ■ CASS 7 Annex 2, ■ CASS 7 Annex 3 and ■ CASS 7 Annex 4 require that the *acknowledgement letter* include the full title and at least one unique identifier, such as a sort code and account

number, deposit number, reference code or pool ID, for each *client bank account* or *client transaction account* to which the letter relates.

8 The title and unique identifiers included in an *acknowledgement letter* for a *client bank account* or *client transaction account* should be the same as those reflected in both the records of the *firm* and the relevant counterparty, as appropriate, for that account. Where a counterparty's systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

(a) the account may continue to be appropriately identified in accordance with the requirements of ■ CASS 7 (eg, 'designated' may be shortened to 'des', 'designated fund' may be shortened to 'des fnd', 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct', etc); and

(b) when completing an *acknowledgement letter*, such letter must include both the long and short versions of the account title.

9 A *firm* should ensure that all relevant account information is contained in the space provided in the body of the *acknowledgement letter*. Nothing should be appended to an *acknowledgement letter*.



10 In the space provided in the template letters for setting out the account title and unique identifiers for each relevant account/deposit, a *firm* may include the required information in the format of the following table:

| Full account title | Unique identifier | Title reflected in [*name of bank*] systems |
|---|---|---|
| [*Investment Firm Client Bank Account*] | [*00-00-00 12345678*] | [*INV FIRM CLIENT A/C*] |

11 Where an *acknowledgement letter* is intended to cover a range of *client bank accounts* or *client transaction accounts*, some of which may not exist as at the date the *acknowledgement letter* is countersigned by the relevant *person* (or, in the case of an *authorised central counterparty acknowledgement letter*, the date it is sent by the *firm* to the relevant *authorised central counterparty*), a *firm* should set out in the space provided in the body of the *acknowledgement letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (eg, with the word 'client' in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (eg, all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in ■ CASS 7 Annex 2 which allows a *firm* to include the account title and a unique identifier for each relevant account, a *firm* should include a statement to the following effect:

**Any account open at present or to be opened in the future which contains the term ['client'] [insert appropriate abbreviation of the term 'client' as agreed and to be reflected in the Bank's systems] in its title and which may be identified with [the following [insert common unique identifier]][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].**

**Signature and countersignatures**

12 A *firm* should ensure that each *acknowledgement letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or its counterparty may require more than one signatory).

13 An *acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in ■ CASS 7.19 . However, where electronic signatures are used, a *firm* should consider whether, under ■ CASS 7.13.8 R and taking into account the

governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the letter.

**Completing an acknowledgment letter**

14 A *firm* should use at least the same level of care and diligence when completing an *acknowledgement letter* as it would in managing its own commercial agreements.

15 A *firm* should ensure that each *acknowledgement letter* is legible (eg, any handwritten details should be easy to read), produced on the *firm's* own letter-headed paper, dated and addressed to the correct legal entity (eg, where the counterparty belongs to a group of companies).

16 A *firm* should also ensure each *acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).

17 A *firm* should similarly ensure that no square brackets remain in the text of each *acknowledgement letter* (ie, after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the templates in ■ CASS 7 Annex 2, ■ CASS 7 Annex 3 and ■ CASS 7 Annex 4) and that each page of the *acknowledgement letter* is numbered.

18 A *firm* should complete an *acknowledgement letter* so that no part of the letter can be easily altered (eg, the letter should be signed in ink rather than pencil).

19 In respect of a *client bank account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (l) and (m) of the template in ■ CASS 7 Annex 2R) or a *client transaction account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (k) and (l) of the template in ■ CASS 7 Annex 3 R), the letter should reflect a *firm's* agreement with its counterparty that the laws of a particular jurisdiction will govern the *acknowledgement letter* and that the courts of that same jurisdiction will have non-exclusive jurisdiction to settle any disputes arising out of, or in connection with, the *acknowledgement letter*, its subject matter or formation.

20 If a *firm* does not, in any *client bank account acknowledgement letter* or *client transaction account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

(a) the law and the jurisdiction under which either the *firm* or the relevant counterparty are organised; and

(b) that specified in the underlying agreement/s (eg, banking, custody or clearing services agreement) with the relevant counterparty;

then the *firm* should consider whether it is at risk of breaching either ■ CASS 7.18.6 R (3) or, in the case of a *client bank account acknowledgement letter*, ■ CASS 7.13.8 R .

21 The *FCA* recognises that some *firms* and their counterparties may wish to clarify through additional words in the governing law provision (see paragraph (l) of the template in ■ CASS 7 Annex 2 and paragraph (k) of the template in ■ CASS 7 Annex 3) that they are agreeing that the substantive law of the governing jurisdiction shall apply and that their intention is that a court should not decide to apply the substantive provisions of some other law instead of the parties' chosen governing law (a 'renvoi'). Where this is the case *firms* are permitted to insert additional text that seeks to provide increased legal certainty in the space provided. There is no restriction as to what additional words may be used (eg, additional words such as "*without regard to the principles of choice of law*" may be appropriate in the circumstances), but a *firm* should at all times have regard to the need to comply with ■ CASS 7.18.6 R (3) . However, for the

majority of *firms* the *FCA* does not expect additional wording for the governing law provision to be necessary. This is likely to be the case where only a court that is subject to 'Rome I' (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008) is likely to accept jurisdiction over a dispute arising out of or in connection with the relevant *acknowledgement letter*.

**Authorised signatories**

22 A *firm* is required, under ■ CASS 7.18.9 R , to use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant counterparty.

23 If an individual that has countersigned an *acknowledgement letter* does not provide the *firm* with sufficient evidence of his/her authority to do so then the *firm* is expected to make appropriate enquires to satisfy itself of that individual's authority.

24 Evidence of an individual's authority to countersign an *acknowledgement letter* may include a copy of the counterparty's list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *acknowledgement letter*.



25 A *firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *acknowledgement letter* as the *firm* would seek when managing its own commercial arrangements.

**Third party administrators**

26 If a *firm* uses a third party administrator ('TPA') to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgement letter*, the text "[Signed by [*Name of Third Party Administrator*] on behalf of [*CASS Firm*]]" should be inserted to confirm that the *acknowledgement letter* was signed by the TPA on behalf of the *firm*.

27 In these circumstances, the *firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgement letter* on the *firm's* behalf. A *firm* should also ensure that the *acknowledgement letter* continues to be drafted on letter-headed paper belonging to the *firm*.

**Designated client bank accounts and designated client fund accounts**

28 A *firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that (i) all *client bank accounts* include the term 'client' in their title; and (ii) all *designated client bank accounts* or *designated client fund accounts* include, as appropriate, the terms 'designated' or 'designated fund' in their title, or in each case an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition.

29 All references to the term "Client Bank Account[s]" in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.

**Indirect clearing arrangements**

30 For use with *client transaction accounts* maintained with a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement*, the square-bracketed text in paragraph (d) of the template letter in ■ CASS 7 Annex 3 should remain in the letter, and, depending on the instruments being indirectly cleared using those *client transaction accounts*, should include the reference to either or both the *EMIR indirect clearing default management obligations* and the *MiFIR indirect clearing default management obligations*.

31 All references to the term "Client Transaction Account[s]" in a *client transaction account acknowledgement letter* should be made consistently in either the singular or plural, as appropriate.

**Direct clearing arrangements**

32 For use with *client transaction accounts* maintained with an *authorised central counterparty* in respect of a *regulated clearing arrangement*, a *firm* may identify whether each account is an *omnibus client account* or an individual client account in the space provided in the body of the template letter in ■ CASS 7 Annex 4. For example, if using the table mentioned in paragraph 10 above, a *firm* may include an additional column in which for each account it includes the reference "Individual Client Account" or "Omnibus Client Account", as appropriate.

33 All references to the term "Client Transaction Account[s]" in an *authorised central counterparty acknowledgement letter* should be made consistently in either the singular or plural, as appropriate.

**Money market deposits**



34 The *client bank account acknowledgement letter* in ■ CASS 7 Annex 2 may be used with money market deposits identified as being *client money*.

35 A *firm* should ensure that *client money* placed in a money market deposit is clearly identified as *client money* (see ■ CASS 7.13.15 G ).

36 Before a *firm* places *client money* in a money market deposit, it must have a *client bank account acknowledgement letter* for that deposit. If the unique identifier which will be associated with a money market deposit consisting of *client money* is unable to be included in a *client bank account acknowledgement letter* before it is duly countersigned and returned to the *firm*, a *firm* should set out in the body of the letter: (a) the title and other account information for the *client bank account* from which the deposits will be placed with the bank; and (b) how the *firm* will notify the bank that a money market deposit placed with it consists of *client money* (eg, by the inclusion of the words 'Client Money Deposit'). For example, in the space provided in the template letter in ■ CASS 7 Annex 2 which allows a *firm* to include the account title and a unique identifier for each relevant account/deposit, a *firm* should include a statement to the following effect:

> **[[CASS Firm] money market deposits placed from [title of relevant [client bank account], [sort code], [account number]] and identified with the reference '[Client Money Deposit]' as being client money)]**

37 A *firm* which operates the alternative approach to *client money* segregation (see ■ CASS 7.13.62 R ) might not make deposits of *client money* in a money market deposit from another *client bank account*. In these circumstances, the *firm* need only include in the body of the letter how the *firm* will notify the bank that a money market deposit placed with it consists of *client money*. For example, the relevant space in the template letter in ■ CASS 7 Annex 2 may set out that:

> **[[CASS firm] money market deposits identified with the reference '[Client Money Deposit]' as being client money]**

## Sub-pool disclosure document

[*letterhead of firm, including full name and address of firm, firm reference number*]

[*addressee - client participating in specified sub-pool*]

[*date*]

**Sub-pool disclosure document (under the rules of the Financial Conduct Authority)**

1. The sub-pool to which this sub-pool disclosure document relates is designated in the firm's records as:

[*insert name of sub-pool in firm's records*]

(for the purposes of this document, the "sub-pool")

2. The net margined omnibus client account relating to the sub-pool is held at [*insert name of authorised CCP*] and is designated as:

[*insert the account title, the account unique identifier and (if applicable) any abbreviated name of the account as reflected in the authorised CCP's systems*]

(for the purposes of this document, the "omnibus client account").

3. The purpose of this letter is to:

(a) provide you with information relating to the sub-pool [operated or to be operated] by [*insert name of CASS firm*] in relation to the omnibus client account held by the firm at [*insert name of authorised CCP*];

(b) obtain your consent to holding your money in the sub-pool; and

(c) confirm your direction that upon the failure of [*insert name of CASS firm*], we are to use any client money held by the firm in the sub-pool to facilitate porting.

4. [*name of CASS firm*] will hold any client money that we receive from you in relation to the cleared transactions that we maintain for you in the omnibus client account in client bank accounts that we open in relation to the sub-pool, or we will allow the CCP to hold this client money in the omnibus client account.

5. In the event of the failure of the [*insert name of CASS firm*], you hereby direct the [*insert name of CASS firm*] to use any client money held by the [*insert name of CASS firm*] in the sub-pool to facilitate the porting of the positions recorded in the omnibus client account.

6. In the event of the failure of [*insert name of CASS firm*], if porting is not effected, or if porting is effected but any money in the sub-pool is not used to facilitate porting, you and the other beneficiaries of the sub-pool will be entitled to a distribution from any client money held in respect of this sub-pool, in accordance with the client money distribution rules in CASS 7A. Save to the extent that [*insert name of CASS firm*] holds any other client money for you in the context of any other business or sub-pool, you will not be entitled to a distribution of any other client money held by [*insert name of CASS firm*].

7. You hereby consent to the firm receiving and holding your money as client money as part of [*sub-pool specified above or specify name of sub-pool*]. Until you sign and return this letter the

firm will not hold money for you in the sub-pool and you will not be a beneficiary of the sub-pool.

8. This letter shall be governed by the laws of [*England and Wales/Scotland/Northern Ireland / insert appropriate jurisdiction*].

If you are in agreement with the foregoing terms, please sign and return the enclosed copy of this letter as soon as possible. You should retain a copy of this letter for your records.

[*insert name of CASS firm*]

x_____

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[*insert name of client*]

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: [*insert signatory's phone number and email address*]

Date:

# Chapter 7A

# Client money distribution and transfer

# 7A.1 Application and purpose

## Application

**7A.1.1** R Subject to ■ CASS 7A.1.1A R, this chapter (the *client money distribution and transfer rules*) applies to a *firm* that holds *client money* which is subject to the *client money rules* when a pooling event occurs.



**7A.1.1A** R The *client money distribution and transfer rules* do not apply to any *client money* held by a *trustee firm* under ■ CASS 7.10.34R to ■ CASS 7.10.40G.

**7A.1.1B** G As a result of ■ CASS 7A.1.1A R, the *client money distribution and transfer rules* relating to *primary pooling events* and *secondary pooling events* will not affect any *client money* held by a *firm* in its capacity as *trustee firm*. Instead, the treatment of that *client money* will be determined by the terms of the relevant instrument of trust or by applicable law. However, the *client money distribution and transfer rules* do apply to a *firm* for any *client money* that it holds other than in that capacity which is subject to the *client money rules*.

## Purpose

**7A.1.2** G The *client money distribution and transfer rules* set out the required treatment of *client money* on the occurrence of a pooling event so that where:

(1) for example, a *firm fails* (but also in other situations where a primary pooling event occurs), the rules in ■ CASS 7A.2 (Primary pooling events) facilitate the return or transfer of *client money*; and

(2) a *person* at which the *firm* holds *client money fails*, the rules in ■ CASS 7A.3 (Secondary pooling events) allocate any loss of *client money* among certain of the *firm's clients*.

## 7A.2 Primary pooling events

### Failure of the authorised firm: primary pooling event

**7A.2.1** G [deleted]

**7A.2.2** 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*;

(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*; or

(4) when the *firm* notifies the *FCA*, in accordance with ■ CASS 7.15.33 R (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

**7A.2.3** R ■ CASS 7A.2.2R (4) does not apply so long as:

(1) the *firm* is taking steps, in consultation with the *FCA*, to establish those records; and

(2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

**7A.2.3A** R If a *primary pooling event* occurs in circumstances where the *firm* had, before the *primary pooling event*, reduced its *margined transaction requirement* by utilising *approved collateral* under ■ CASS 7.16.33 R , it must immediately liquidate this *approved collateral* and place the proceeds in a *client bank account* that relates to the relevant notional *pool* under ■ CASS 7A.2.4R(1) (Pooling and distribution or transfer)

**7A.2.3B** R ■ CASS 7A.2.7-AR (Client money received after the failure of the firm) does not apply to the proceeds under ■ CASS 7A.2.3A R.

**7A.2.3C** G The proceeds of the assets realised under ■ CASS 7A.2.3A R:

(1) will form part of the relevant notional *pool* of *client money* (see ■ CASS 7A.2.4R(1A)(a)(i) (Pooling and distribution or transfer); and

(2) must be distributed or transferred on behalf of *clients* in accordance with this chapter.

## Client money reconciliations after a primary pooling event

**7A.2.3D** G (1) If a special administrator has been appointed to the *firm* under the *IBSA Regulations* then they will be required to carry out a reconciliation under regulation 10H of the *IBSA Regulations*.

(2) Notwithstanding regulation 10H of the *IBSA Regulations*, ■ CASS 7.15 has application to a *firm* after a *primary pooling event*, meaning, for example, that ongoing compliant record-keeping is required (see ■ CASS 7.15.15R(4) (Internal client money reconciliations) and ■ CASS 7.15.26AR (Frequency of external reconciliations after a primary pooling event)).

7A

## Pooling and distribution or transfer

**7A.2.4** R If a *primary pooling event* occurs, then:

(1) (a) in respect of a *sub-pool*, the following is treated as a single notional *pool* of *client money* for the beneficiaries of that *pool*:

(i) any *client money* held in a *client bank account* of the *firm* relating to that *sub-pool*; and

(ii) any *client money* held in a *client transaction account* of the *firm* relating to that *sub-pool*, except for *client money* held in a *client transaction account* at an *authorised central counterparty* or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*;

(b) in respect of the *general pool*, the following is treated as a single notional *pool* of *client money* for the beneficiaries of the *general pool*:

(i) any *client money* held in any *client bank account* of the *firm*;

(ii) any *client money* held in a *client transaction account* of the *firm*, except for *client money* held in a *client transaction account* at an *authorised central counterparty*, or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*; and

(iii) any *client money* identifiable in any other account held by the *firm* into which *client money* has been received;

except, in each case, for *client money* relating to a *sub-pool* which falls under sub-paragraphs (1)(a)(i) or (ii); and

(1A) (a) a notional *pool* under paragraph (1) shall also include any *client money* that is:

(i) transferred by the *firm* under regulation 10H(3) of the *IBSA Regulations* to a *client bank account* that is included in that *pool* under paragraph (1);

(ii) paid under ■ CASS 7A.2.3AR into a *client bank account* that is included in that *pool* under paragraph (1);

(iii) paid under ■ CASS 7A.2.4R(3)(b) or ■ CASS 7A.2.4R(3)(d) into a *client bank account* or *client transaction account* that is included in that *pool* under paragraph (1);

(iv) (subject to sub-paragraph (b)) otherwise received after the *primary pooling event* into a *client transaction account* that is included in that *pool* under paragraph (1) where the receipt is in relation to a *margined transaction* that the *firm* had entered into through the use of that *client transaction account* and which had not *closed out* before *primary pooling event*; and

(v) paid under ■ CASS 7.15.29R(1) (Reconciliation discrepancies) after the *primary pooling event* into a *client bank account* that is included in that *pool* under paragraph (1); and

(b) the *firm* must not transfer any *client money* in a notional *pool* under sub-paragraphs (1)(a) or (b) to a *client transaction account* except where necessary to comply with sub-paragraph (2)(b);

(c) a notional *pool* under paragraph (1) shall cease to include *client money* from the point at which it is:

(i) transferred by the *firm* under regulation 10H(4) of the *IBSA Regulations* from a *client bank account* that is included in that *pool* under paragraph (1); or

(ii) paid out after the *primary pooling event* from a *client transaction account* that is included in that *pool* under paragraph (1) where the payment is in relation to a *margined transaction* that the *firm* had entered into through the use of that *client transaction account* and which had not *closed out* before *primary pooling event*.

(2) the *firm* must, as soon as reasonably practicable:

(a) (subject to paragraph (4)) distribute *client money* comprising a notional *pool* in accordance with ■ CASS 7.17.2 R , so that each *client* who is a beneficiary of that *pool* receives a sum which is rateable to the *client money* entitlement calculated in accordance with ■ CASS 7A.2.5R (Client money entitlements); or

(b) (where applicable) transfer *client money* comprising a *sub-pool* to effect or facilitate *porting* of positions held for the *clients* who are beneficiaries of that *sub-pool*; and

(3) if, in connection with a *regulated clearing arrangement*, *client money* is remitted directly to the *firm* either from an *authorised central counterparty* or from a *clearing member* as part of that *person's*

default management procedures, then, as soon as reasonably practicable:

(a) any such remittance in respect of a *client transaction account* that is an *individual client account* does not form a part of any notional *pool* under ■ CASS 7A.2.4R(1) and must be distributed to the relevant *client* subject to ■ CASS 7.17.2R (4) ;

(b) subject to sub-paragraphs (3)(c) and (d), any such remittance in respect of a *client transaction account* that is an *omnibus client account* must form part of the notional *pool* under ■ CASS 7A.2.4R(1)(b) and be subject to distribution in accordance with ■ CASS 7A.2.4R(2)(a);

(c) any such remittance in respect of a *client transaction account* that is an *omnibus client account* must be distributed to the relevant *clients* for whom that *omnibus client account* is held if:

(i) no *client money* in excess of the amount recorded in that *omnibus client account* is held by the *firm* as margin in relation to the positions recorded in that *omnibus client account*; and

(ii) the amount of such remittance attributable to each *client* of the *omnibus client account* is readily apparent from information provided to the *firm* by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*;

in which case the amount of such remittance does not form a part of any notional *pool* under ■ CASS 7A.2.4R(1) and must be distributed to each such *client* in accordance with the information provided by the *authorised central counterparty* or *clearing member* subject to ■ CASS 7.17.2R (4) ; and

(d) any such remittance in respect of a *client transaction account* that is a *net margined omnibus client account* in respect of which the *firm* maintains a *sub-pool* must form part of such *sub-pool* under ■ CASS 7A.2.4R(1)(a) to be distributed in accordance with ■ CASS 7A.2.4R (2)(a); and

(4) as an alternative to distributing a *client's client money* in a notional *pool* to the relevant *client* under ■ CASS 7A.2.4R(2)(a) and in respect of *client money* that that is not required to be transferred under ■ CASS 7A.2.4R(2)(b), a *firm* (Firm A) may on its own initiative transfer some or all of that *client's client money* in the relevant notional *pool* to any other *person* (Firm B) for safekeeping on behalf of the *client* provided that:

(a) as a consequence of any such transfer, Firm A does not distribute to any other *client* whose *client money* is in that notional *pool*, or transfer on behalf of any such other *client* to another *person*, an amount of *money* that would be less than that which such other *client* was entitled to have distributed or transferred under this *rule*;

(b) unless Firm A is able to rely on regulation 10B(3)(b) of the *IBSA Regulations* for the transfer to Firm B to have effect without the consent of the *client*, either:

(i) Firm A has the specific consent of the *client* to the transfer to Firm B; or

(ii) (A) there is a written agreement between Firm A and the *client* which provides that Firm A may transfer the *client's client money* to another *person*; and

(B) Firm A can lawfully rely on that provision to achieve the transfer under this *rule*;

(c) Firm A has, in advance of the transfer under this *rule*, either:

(i) obtained a contractual undertaking from Firm B that the *money* transferred will be held by Firm B as *client money* in accordance with the *client money rules*; or

(ii) where the *client money rules* do not apply to Firm B, or where they do apply but Firm B is able to hold the *money* transferred other than as *client money*, satisfied itself, having exercised all due skill care and diligence in its assessment, that Firm B will apply adequate measures to protect the *money* transferred;

(d) where regulation 10C(3) of the *IBSA Regulations* does not apply, Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B will return the money to the *client* at the *client's* request; and

(e) Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B will notify the *client*, within 14 *days* of the transfer of that *client's* balance having commenced:

(i) of the applicable regulatory regime under which the *money* will be held by Firm B;

(ii) either:

(A) of any relevant compensation scheme limits that may apply in respect of Firm B's handling of the transferred *money*; or

(B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and

(iii) where regulation 10C(3) of the *IBSA Regulations* does not apply, that the *client* has the option of having its *money* returned to it by Firm B.

**7A.2.4A-2** G Where regulation 10C(3) of the *IBSA Regulations* does apply, Firm A should, in advance of the transfer under ■ CASS 7A.2.4R(4), obtain a contractual undertaking from Firm B that:

(1) Firm B will comply with the *client's* request for a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*; and

(2) Firm B will notify the *client*, within 14 *days* of the transfer of that *client's safe custody asset* having commenced, that the *client* can demand a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*.

**7A.2.4A-1** G Under ■ CASS 7A.2.4R(1)(b)(i) a *firm* should include the balances of *client money* referred to at ■ CASS 7.13.40AR(2), ■ CASS 7.13.53AR(2) and ■ CASS 7.13.72AR(2) in the relevant *pool*.

**7A.2.4A** G

(1) Under *EMIR*, where a *firm* that is a *clearing member* of an *authorised central counterparty* defaults, the *authorised central counterparty* may:

(a) *port client* positions where possible; and

(b) after the completion of the default management process:

(i) return any balance due directly to those *clients* for whom the positions are held, if they are known to the *authorised central counterparty*; or

(ii) remit any balance to the *firm* for the account of its *clients* if the *clients* are not known to the *authorised central counterparty*.

(1A) Under the *EMIR L2 Regulation* or the *MiFIR indirect clearing RTS*, where a *firm* acting in connection with a *regulated clearing arrangement* for a *client* (who is also an *indirect client*) defaults, the *clearing member* with whom the *firm* has placed *client money* of the *indirect client*, may, in accordance with the *EMIR indirect clearing default management obligations* or *MiFIR indirect clearing default management obligations*:

(a) transfer the positions and assets either to another *clearing member* of the relevant *authorised central counterparty* or to another *firm* willing to act for the *indirect client*; or

(b) liquidate the assets and positions of the *indirect clients* and remit all monies due to the *indirect clients*.

(1B) For the avoidance of doubt, 'relevant *clients*' in the case of ■ CASS 7A.2.4R (3)(a) and ■ CASS 7A.2.4R (3)(c) includes a *client* who is also an *indirect client*.

(2) Where any balance remitted from an *authorised central counterparty* or, in the case of *indirect clients*, a *clearing member*, to a *firm* is *client money*, ■ CASS 7A.2.4R (3) provides for the distribution of remittances from either an *individual client account* or an *omnibus client account*.

(3) Remittances received by the *firm* falling within ■ CASS 7A.2.4R (3)(a) and ■ CASS 7A.2.4R (3)(c) should not be pooled with *client money* held in any *client bank account* operated by the *firm* at the time of the *primary pooling event*. Those remittances should be segregated and promptly distributed to each *client* on whose behalf the remittance was received.

(4) For the avoidance of doubt, in respect of a *regulated clearing arrangement*, any *client money* remitted by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*, to the *firm* pursuant to ■ CASS 7A.2.4R (3) should not be treated as *client money* received after the *failure* of the *firm* under ■ CASS 7A.2.7-AR (Client money received after a primary pooling event).

(5) The *firm's* obligation to its *client* in respect of *client money* held in a *sub-pool* is discharged to the extent that the *firm* transfers that *client money* to facilitate *porting* in accordance with ■ CASS 7.11.34R (8) .

**7A.2.4B** G

(1) The restrictions on transfers of *client money* at ■ CASS 7A.2.4R(4) are each of the type referred to at regulation 10B(4) of the *IBSA Regulations* as "a restriction in client money rules".

(2) Where Firm A has complied with the restrictions at ■ CASS 7A.2.4R(4) for any transfers to Firm B, any *money* transferred to Firm B ceases to be *client money* held by Firm A (see ■ CASS 7.11.34R(2)(e) (Discharge of fiduciary duty)).

(3) But any *money* returned by Firm B to Firm A in the event of a 'reverse transfer' will be subject to the *client money rules* and *client money distribution and transfer rules* as applied to Firm A, and should be treated by Firm A in accordance with ■ CASS 7A.2.7-AR (Client money received after the failure of the firm).

## Client money entitlements

**7A.2.5** R

(-2) (a) Subject to paragraph (-2)(b), each *client's* entitlement to *client money* in a notional *pool* is calculated with reference to the *client money requirement* as shown by an *internal client money reconciliation* carried out in accordance with ■ CASS 7.15.15R(4)(a) (Internal client money reconciliations) as at the *primary pooling event*.

(b) If, as at the *primary pooling event*, the *firm* had entered in to one or more cleared *margined transactions* through the use of a *client transaction account* at a *clearing house* that had not *closed out* as at the *primary pooling event*, the *client money requirement* under (-2)(a) must be calculated as follows:

(i) ■ CASS 7.16.28R does not apply in respect of those cleared *margined transactions*; and

(ii) subject to ■ CASS 7.16.30R, in respect of those cleared *margined transactions* a *client's equity balance* is instead the amount which the *firm* is liable to pay to the *client* (or the *client* to the *firm*) under the *client money rules* for *margined transactions* following the *close out* of those *margined transactions*. This balance should include any cash margin the *firm* has received from the *client* in connection with those transactions.

(-1) Each *client's client equity balance* following any adjustments under paragraph (-2) must be reduced by:

(a) any amount paid by:

(i) an *authorised central counterparty* to a *clearing member* other than the *firm* in connection with a *porting* arrangement in accordance with ■ CASS 7.11.34R (6) in respect of that *client*; and

(ii) a *clearing member* to another *clearing member* or *firm* (other than the *firm*) in connection with a transfer in accordance with ■ CASS 7.11.34R (8);

(b) any amount paid by:

(i) an *authorised central counterparty* directly to that *client*, in accordance with■ CASS 7.11.34R (7); and

(ii) a *clearing member* directly to an *indirect client* in accordance with ■ CASS 7.11.34R (9); and

(c) any amount that must be distributed to that *client* by the *firm* in accordance with ■ CASS 7A.2.4R (3)(a) or ■ (c).

(1) When, in respect of a *client* who is a beneficiary of a *pool* and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a positive *individual client balance* and a negative *client equity balance*in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *individual client balance* for that *client*.

(2) When, in respect of a *client* who is a beneficiary of a *pool* and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a negative *individual client balance* and a positive *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *client equity balance* for that *client*.

**7A.2.5A** G

(1) (a) The effect of ■ CASS 7A.2.5R(-2)(b) is that the *client equity balance* for the relevant cleared *margined transaction* is with reference to the eventual *close out* or 'hindsight' value of the transaction, instead of being a notional balance as at the *primary pooling event* under ■ CASS 7.16.28R.

(b) ■ CASS 7A.2.5R(-2)(b) applies in respect of cleared *margined transactions* that a *firm* had entered into for any *client*, including for *indirect clients* where the *firm* is itself a *client* of a *clearing member*.

(2) In cases where ■ CASS 7A.2.5R(-2)(b) does not apply, the *client equity balance* for a *margined transaction* will be the notional balance as at the *primary pooling event* under ■ CASS 7.16.28R.

**7A.2.6** G [deleted]

## Closing a client money pool

**7A.2.6A** R

(1) Before a *firm* ceases to treat a balance of *client money* in a notional *pool* as *client money* by transferring it to itself under ■ CASS 7.17.2R(5) it must:

(a) (subject to paragraph (2)) attempt to distribute the balance to the relevant *client* or transfer it to another *person* for safekeeping on behalf of the *client* in accordance with ■ CASS 7A.2.4R (Pooling and distribution or transfer);

(b) (subject to paragraph (3)) take reasonable steps to notify any *client* in respect of whom the *firm* has evidence that the *money* may belong, of the *firm's* proposed course of action;

(c) where the *firm* has *failed*, apply any of the following types of balances of *client money* in the notional *pool* towards any costs incurred in accordance with ■ CASS 7.17.2R(4), including any costs incurred under paragraph (1)(d):

*(i)* *client money* allocated to a *client* for which, following the steps taken by the *firm* to satisfy paragraph (1)(b), the *client* to whom the *client money* belongs has not provided the *firm* with instructions that would enable the *firm* to make a distribution or transfer under paragraph (1)(a); or

(ii) *client money* belonging to a *client* who, in response to a notification made under paragraph (1)(b), has confirmed to the *firm* that it disclaims the benefit of the statutory trust under ■ CASS 7.17.2R in relation to the *client money*; or

(iii) *client money* that, following the steps taken by the *firm* to satisfy paragraph (1)(b), is unallocated to any *client* in the *firm's* records and accounts; and

(d) immediately before transferring the balances of *client money* under paragraph (1)(c) to the *firm* itself, apply them towards making good any outstanding *shortfall* in the notional *pool*, and subsequently distribute or transfer them in accordance with ■ CASS 7A.2.4R to or on behalf of *clients* for whom the *firm* is able to make such distributions or transfers.

(2) A *firm* is not required to attempt to return or transfer the balance of *client money* under paragraph (1)(a) where the *client* to whom the balance belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under ■ CASS 7.17.2R in relation to the balance *client money*.

(3) A *firm* is not required to notify a *client* under paragraph (1)(b) where:

(a) the *firm* is able to distribute the *client money* to the relevant *client* or transfer it to another *person* on behalf of the *client* in accordance with ■ CASS 7A.2.4R (Pooling and distribution or transfer);

(b) the *client* to whom the balance of *client money* belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under ■ CASS 7.17.2R in relation to the balance *client money*;

(c) in respect of a *client* for whom the *firm* has evidence that they were a *retail client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that *client* in the notional *pool* is £25 or less when calculated under ■ CASS 7A.2.5R (Client money entitlements); or

(d) in respect of a *client* for whom the *firm* has evidence that they were a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that client is £100 or less when calculated under ■ CASS 7A.2.5R (Client money entitlements).

**7A.2.6B** G

(1) A *firm* may propose to cease to treat a balance of *money* as *client money* under ■ CASS 7A.2.6AR(1) where the *firm* is using the procedure under regulation 12C of the *IBSA Regulations* to set a 'hard bar date' by giving a 'hard bar date notice', or another similar procedure in accordance with the legal procedure for the *firm's failure*.

(2) In any case, a *firm* should consider the whether its obligations under law (including trust law) or any agreement permit it to cease to treat a balance of *money* as *client money* in the way in which it proposes to do so.

(3) Balances of *client money* under ■ CASS 7A.2.6AR(1)(c)(iii) include any remaining amount of those that the *firm* is holding to comply with:

(a) ■ CASS 7.13.41R (Prudent segregation);

(b) ■ CASS 7.13.65R(1) (The alternative approach to client money segregation); and

(c) ■ CASS 7.13.73R(1) (Use of the normal approach in relation to certain regulated clearing arrangements).

**7A.2.6C** E

(1) Reasonable steps in ■ CASS 7A.2.6AR(1)(b) include the following course of conduct:

(a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;

(b) for a *client* for whom the *firm* has evidence that it was a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*:

(i) writing to the *client* at the last known address either by post or by electronic mail:

(A) to inform it of the *firm's* intention to no longer treat the balance as *client money*;

(B) to inform it of the consequences of the *firm's* proposed course of action in relation to the *client's* ability to assert an ownership right to that *money*; and

(C) to invite the *client* to submit a claim for the *money*; and

(ii) where the *client* has not responded within 28 *days* of the communication under sub-paragraph (i), attempting to communicate the information in sub-paragraph (i) to the *client* on at least one further occasion by any means other than that used in (i) including by post, electronic mail, telephone or media advertisement; and

(c) for any other *client*:

(i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and

(ii) where the *client* has not responded within 28 *days* of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the *client* on at least one further occasion by any means other than one in respect of which the *firm* has obtained positive confirmation that the *client* is not receiving such communications.

(2) Compliance with paragraph (1) may be relied on as tending to establish compliance with ■ CASS 7A.2.6AR(1)(b).

(3) Contravention of paragraph (1) may be relied on as tending to establish contravention of ■ CASS 7A.2.6AR(1)(b).

**7A.2.6D** G

For the purpose of ■ CASS 7A.2.6CE(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including:

(1) telephoning the *client*;

(2) searching internal and/or public records;

(3) media advertising;

(4) mortality screening; and

(5) using credit reference agencies or tracing agents.

**7A.2.6E** R If the *firm* undertook a tracing exercise for the purposes of ■ CASS 7.11.50R(3) (Allocated but unclaimed client money) before the *primary pooling event* but had not made the charity payment under that *rule* by the time of the *primary pooling event* then the findings of that exercise may be relied on for the purposes of ■ CASS 7A.2.6CE(1)(a).

**7A.2.6F** R

(1) A *firm* must make a record of any balance under ■ CASS 7A.2.6AR(1)(c)(i) or (ii) which is to be applied towards any costs or towards any *shortfall* in the relevant notional *pool* in accordance with ■ CASS 7A.2.6AR(1)(c) or (d) respectively, immediately before taking such steps.

(2) The record under paragraph (1) must state:

(a) the amount of the balance of *client money*;

(b) the name and contact details of any *client* to whom that balance was allocated according to the *firm's* records at the time of making the record under this *rule*; and

(c) either:

(i) the efforts applied by the *firm* to determine the *client's* correct contact details under ■ CASS 7A.2.6CE(1)(a); or

(ii) if being relied on under ■ CASS 7A.2.6ER, the efforts applied by the *firm* to determine the *client's* correct contact details for the purposes of ■ CASS 7.11.50R(3) (Allocated but unclaimed client money).

(3) A *firm* must keep the record under (1) indefinitely.

## Client money received after a primary pooling event

**7A.2.7** R [deleted]

**7A.2.7-A** R

(1) This *rule* applies in respect of *client money* received by a *firm* after a *primary pooling event* that does not form part of a notional *pool*.

(2) Where the *firm* is using the normal approach under ■ CASS 7.13.6R (The normal approach), *client money* to which this *rule* applies must be received into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under ■ CASS 7A.2.4R(1) (Pooling and distribution or transfer).

(3) (a) This paragraph applies in respect of *client money* that is received by a *firm* into an account other than a *client bank account* as required under ■ CASS 7.13.62R (The alternative approach to client money segregation) or as permitted under ■ CASS 7.13.72R (Use of

the normal approach in relation to certain regulated clearing arrangements).

(b) To the extent the *firm* makes any transfers from its own account to a *client bank account* under ■ CASS 7.13.62R(3) (The alternative approach to client money segregation) or ■ CASS 7.13.72R(2)(b) (Use of the normal approach in relation to certain regulated clearing arrangements), such transfers must be made into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under ■ CASS 7A.2.4R(1) (Pooling and distribution or transfer).

(4) Subject to paragraphs (5) and (6), a *firm* must promptly return to each relevant *client* all *client money* to which this *rule* applies.

(5) To the extent that *client money* relates to a transaction for a *client* that was concluded before the *primary pooling event* but had not yet settled at the time of the *primary pooling event*, the *firm* may use that *client money* to settle that transaction.



(6) (a) This paragraph applies where *client money* which is not received by the *firm* into a *client transaction account* relates to one or more cleared *margined transactions* entered into by the *firm* through the use of a *client transaction account* at a *clearing house*.

(b) Where such transactions have not *closed out* as at the *primary pooling event*, then provided that the *firm* has not *failed*, it may transfer that *client money* to a *client transaction account* with the relevant *clearing house* in accordance with ■ CASS 7.14 (Client money held by a third party) for the purpose of collateralising those *margined transactions*.

**7A.2.7A** G A *firm* may open a *client bank account* after a *primary pooling event* for the purposes of complying with ■ CASS 7A.2.7-AR(2) and ■ CASS 7A.2.10AR(2). If it does so it must comply with ■ CASS 7.18.15R regarding *acknowledgement letters*.

**7A.2.7B** G Following a *failure*, ■ CASS 7.17.2R(4) applies in respect of costs properly attributable to the return of a *client's client money* under ■ CASS 7A.2.7-AR(4).

**7A.2.8** G [deleted]

**7A.2.9** R If a *firm* receives a *mixed remittance* after a *primary pooling event* other than where using the alternative approach under ■ CASS 7.13.62R or under a *regulated clearing arrangement* to which ■ CASS 7.13.72R applies, it must:

(1) pay the full sum into a *client bank account* that meets the requirements of ■ CASS 7A.2.7-AR(2); and

(2) pay the *money* that is not *client money* out of that *client bank account* into a *firm's* own bank account within one *business day* of the *day* on which the *firm* would normally expect the remittance to be cleared.

**7A.2.10** G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

## Money due to a client from a firm after a primary pooling event

**7A.2.10A** R A *firm* that is operating the normal approach to segregation under ■ CASS 7.13 (Segregation of client money) which becomes liable to pay *money* to a *client* after a *primary pooling event* must promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

(1) to, or to the order of, the *client*; or

(2) into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under ■ CASS 7A.2.4R(1).

**7A.2.10B** G Where the *firm* has payment instructions from the *client*, the *firm* should pay the money to the order of the *client*, rather than into a *client bank account*.

## Secondary pooling events

**7A.2.11** R If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.

## 7A.3 Secondary pooling events

**7A.3.1** R A *secondary pooling event* occurs on the *failure* of a *person* to which *client money* held by the *firm* has been transferred under ■ CASS 7.13.3R (1) to ■ CASS 7.13.3R (3) (Depositing client money) or ■ CASS 7.14.2 R (Client money held by a third party).



**7A.3.2** R ■ CASS 7A.3.6 R to ■ CASS 7A.3.12AR do not apply if, on the *failure* of the relevant *person*:

(1) there is no *secondary pooling shortfall*; or

(2) where there is a *secondary pooling shortfall*, the *firm* pays an amount equal to the amount of *client money* which would have been held at that *person* if a *secondary pooling shortfall* had not occurred either:

(a) to its *clients* in the appropriate amounts such that they are compensated by the amount of the *secondary pooling shortfall* that they would otherwise be required to bear under this section; or

(b) into a *client bank account* at an unaffected bank with the effect that any *shortfall* that would otherwise arise for the purposes of ■ CASS 7.15 (Records, accounts and reconciliations) is avoided.

**7A.3.3** G [deleted]

**7A.3.4** G When a *person* to which *client money* held by the *firm* has been transferred under ■ CASS 7.13.3R(1) to ■ CASS 7.13.3R(3) (Depositing client money) or ■ CASS 7.14.2R (Client money held by a third party) *fails*, and the *firm* decides not to make good any *secondary pooling shortfall* in the amount of *client money* held at that *person* (see ■ CASS 7A.3.2R(2)), a *secondary pooling event* will occur. The *firm* should reflect the *secondary pooling shortfall* that arises in the *general pool* (where the *firm* maintains only a *general pool*) and, where relevant, in a particular *sub-pool* (where the firm maintains both a *general pool* and one or more *sub-pools*) in its records of the entitlement of *clients* and of *money* held with third parties under ■ CASS 7.15 (Records, accounts and reconciliations).

**7A.3.5** G The *client money distribution and transfer rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.

## Failure of a bank: pooling

**7A.3.6** R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, and/or where one or more *designated client bank accounts* or *designated client fund accounts* are held, for the *general pool* or a particular *sub-pool*, then:

(1) in relation to every *general client bank account* of the *firm* maintained in respect of that *pool*, the provisions of ■ CASS 7A.3.8 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;

(2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank for the relevant *pool*, the provisions of ■ CASS 7A.3.10 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;

(3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank for the relevant *pool*, the provisions of ■ CASS 7A.3.11 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;

(4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* for the relevant *pool*, is not pooled with any other *client money* held for that *pool* or any other *pool*; and

(5) any *money* held in a *designated client fund account* in respect of that *pool*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money* held for that *pool* or any other *pool*.

**7A.3.6A** G Depending on the *person* at which the *secondary pooling event* occurs, the types of *client bank accounts* and *client transaction accounts* that are affected by the *secondary pooling shortfall*, and the nature of a *firm's* business with a particular *client*, it is possible that the *client's* overall entitlement to *client money* held by the *firm* may be affected by a combination of ■ CASS 7A.3.8R, ■ CASS 7A.3.8AR, ■ CASS 7A.3.10R and ■ CASS 7A.3.11R.

**7A.3.7** R [deleted]

## Failure of an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty: pooling

**7A.3.7A** R If a *secondary pooling event* occurs as a result of the *failure* of an exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, then, in relation to every *general client bank account* and *client transaction account* of the *firm*, ■ CASS 7A.3.8R and ■ CASS 7A.3.13R will apply, and ■ CASS 7A.3.8AR will additionally apply in the case of the *failure* of an *authorised central counterparty*.

## Failure of a bank, intermediate broker, settlement agent, OTC counterparty, exchange or clearing house: treatment of general client bank accounts and client transaction accounts

**7A.3.8** R *Money* Subject to ■ CASS 7A.3.8AR, if a *secondary pooling event* occurs as a result of the *failure* of a bank, *intermediate broker*, *settlement agent*, *OTC* counterparty, exchange or *clearing house*, *money* held in each *general client*

*bank account* and *client transaction account* of the *firm* for the *general pool* or a *sub-pool*must be treated as pooled and:

(1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts* for the relevant *pool*, that has arisen as a result of the *failure* of the bank, exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, must be borne by all the *clients* of that *pool* whose *client money* is held in such *general client bank account* or *client transaction account* of the *firm*, rateably in accordance with their entitlements;

(2) a new *client money* entitlement must be calculated for each *client* of the relevant *pool* by the *firm*, to reflect the requirements in paragraph (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 *secondary pooling shortfall* until the *client* is repaid; and

(4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to ■ CASS 7.15.3 R (Records and accounts) for that *pool*.

**7A.3.8A** R If a *secondary pooling event* occurs as a result of the *failure* of an *authorised central counterparty*:

(1) any *money* held in a *client transaction account* that is an *individual client account* at the *failed authorised central counterparty* is not pooled by the *firm* with any of its other *client money*;

(2) any *money* held in a *client transaction account* that is an *omnibus client account* at the *failed authorised central counterparty* is not pooled by the *firm* with any of its other *client money* provided that:

(a) no *client money* in excess of the amount recorded in that *omnibus client account* is held by the *firm* as margin in relation to the positions recorded in that *omnibus client account*; and

(b) the *client* or *clients* of the *firm* to whom the amount recorded in that *omnibus client account* relates is or are readily apparent from information provided to the *firm* by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*;

(3) any *money* held in a *client transaction account* that is a *net margined omnibus client account* at the failed *authorised central counterparty* in respect of which the *firm* maintains a *sub-pool* is not pooled by the *firm* with any of its other *client money*;

(4) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in an *individual client account* to which paragraph (1) applies must be borne by the *client* whose *client money* was held in that *individual client account*;

(5) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in an *omnibus client account* to which paragraph (2) applies must either:

(a) be borne by all the *clients* whose *client money* is held in that account, rateably in accordance with their entitlements; or

(b) if the *firm* is required under applicable law to allocate the *secondary pooling shortfall* other than as under (a), be allocated as required by applicable law;

(6) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in a *net margined omnibus client account* to which paragraph (3) applies must be borne by all the *clients* whose *client money* is held in the relevant *sub-pool*, rateably in accordance with their entitlements;

(7) a new *client money* entitlement must be calculated for each relevant *client* of the relevant *pool*, to reflect the requirements in paragraphs (1), (2) and (3), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;

(8) the *firm* must make and retain a record of each *client's* share of the *secondary pooling shortfall* until the *client* is repaid; and

(9) the *firm* must use the new *client money* entitlements calculated under paragraph (7) for the purposes of reconciliations pursuant to ■ CASS 7.15.3R (Records and accounts) for the relevant *pool*.

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**7A.3.9** G The term "which should have been held" is a reference to the relevant *failed person's* failure to hold the *client money* at the time of its *failure*.

**7A.3.9A** G ■ CASS 7A.3.8AR(5)(b) enables a *firm* to allocate the relevant part of a *secondary pooling shortfall* that arises in an *omnibus client account* under ■ CASS 7A.3.8AR(2) other than on a "pro rata" basis, where this is required by applicable law.

This would include, for example, where applicable law requires the *firm* to attribute a *secondary pooling shortfall* only to a particular *client* or *clients*.

## Failure of a bank: treatment of designated client bank accounts and designated client fund accounts

**7A.3.10** R For each *client* with a *designated client bank account* maintained by the *firm* for the *general pool* or a particular *sub-pool* and held at the *failed* bank:

(1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* of the relevant *pool* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their *client money* entitlements;

(2) a new *client money* entitlement must be calculated for each of the relevant *clients* of the relevant *pool* by the *firm*, 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 *secondary pooling shortfall* at the *failed* bank until the *client* is repaid; and

(4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to ■ CASS 7.15.3 R (Records and accounts) in respect of the relevant *pool*.

**7A.3.11** R *Money* held by the *firm* in each *designated client fund account* for the *general pool* or a particular *sub-pool* with the *failed bank* must be treated as pooled with any other *designated client fund accounts* for the *general pool* or a particular *sub-pool* as the case may be which contain part of the same designated fund and:

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(1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *designated client fund accounts* that has arisen as a result of the *failure*, must be borne by each of the *clients* of the relevant *pool* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;

(2) a new *client money* entitlement must be calculated for each *client* of the relevant *pool* by the *firm*, in accordance with paragraph (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 *secondary pooling shortfall* at the *failed* bank until the *client* is repaid; and

(4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to ■ CASS 7.15.3 R (Records and accounts) for the relevant *pool*.

**7A.3.12** R A *client* whose *money* was held, or which should have been held, in a *designated client bank account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* or *client transaction account* of the *firm*.

**7A.3.12A** R A *client* whose *money* was held, or which should have been held, in a *designated client fund account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* of the *firm* that is not part of the same designated fund or against any *client transaction account* of the *firm*.

## Client money received after the secondary pooling event

**7A.3.13** R *Client money* received by the *firm* after the failure of a bank, exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, that would otherwise have been paid into a *client bank account* or *client*

*transaction account* at that bank, exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, as the case may be, for either the *general pool* or a particular *sub-pool*:

(1) must not be transferred to the *failed person* unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed person*; and

(2) must be, subject to paragraph (1), placed in a *client bank account* or *client transaction account* relating to the *general pool* or the particular *sub-pool* as the case may be other than an account at the *failed person*.

**7A.3.14** R If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

(1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and

(2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

**7A.3.15** G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

**7A.3.16** R [deleted]

**7A.3.17** R [deleted]

**7A.3.18** R [deleted]:

## Notification to the FCA of secondary pooling event

**7A.3.19** R A *firm* must notify the *FCA* as soon as reasonably practical after it becomes aware of the *failure* of any bank, exchange, *clearing house*, *intermediate broker*, *settlement agent*, *OTC* counterparty or other entity with which it has placed, or whom it has allowed to hold, *client money*:

(1) [deleted]

(2) [deleted]

(3) whether it intends to make good any *secondary pooling shortfall* that has arisen or may arise; and

(4) the amount of that *secondary pooling shortfall*, or the expected amount if the actual amount is not known.

# Chapter 8

# Mandates

## 8.1 Application

**8.1.1** R This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm's*:

(1) *designated investment business* (including *MiFID business*); or

(2) *insurance distribution activity*, except where it relates to a *reinsurance contract*;

(3) *debt management activity*.

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**8.1.2** G [deleted]

**8.1.2A** R The *mandate rules* do not apply to a *firm*:

(1) in relation to *client money* that the *firm* is holding in accordance with ■ CASS 5 or ■ CASS 7 (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with ■ CASS 7.14.2R) or ■ CASS 11; or

(2) in relation to *custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets (without arranging)*, *acting as trustee or depositary of an AIF* or *acting as trustee or depositary of a UK UCITS* in accordance with ■ CASS 6; or

(2A) in relation to *custody assets* for which a *small AIFM* is:

(a) carrying on those *excluded custody activities* that would amount to *safeguarding and administration of assets (without arranging)* but for the exclusion in article 72AA of the *RAO*; and

(b) is doing so in accordance with ■ CASS 6; or

(3) in relation to a *client's* assets that the *firm* is holding or has received under an arrangement to which ■ CASS 3 applies; or

(4) when it acts as the *operator* of a *regulated collective investment scheme* in relation to property held for or within the *scheme*.

**8.1.2B** G (1) ■ CASS 8.1.2A R is not an absolute exemption, but it excludes the application of the *mandate rules* in relation to *money* or assets that a *firm* has received, is holding, or is responsible for (as appropriate and in the circumstances described in ■ CASS 8.1.2A R).

(2) This means that, for example in respect of ■ CASS 8.1.2A R (1), a *firm* holding *client money* in accordance with ■ CASS 5 or ■ CASS 7 does not also need to comply with the *mandate rules* in relation to the *client money* which it actually holds, but the *mandate rules* would apply if the *firm* has a *mandate* under which it can receive a *client's money* from another *person* in the course of, or in connection with, the activities set out at ■ CASS 8.1.1 R (1) and ■ CASS 8.1.1 R (2).

(3) Similarly, in respect of ■ CASS 8.1.2A R (4), the *mandate rules* apply to a *firm* that is the *operator* of a *regulated collective investment scheme* if, for example, it has a *mandate* under which it can receive a *client's money* from another *person* for the purposes of investing it in the *scheme*.

**8.1.3** G [deleted]

## Purpose

**8.1.4** G The *mandate rules* require *firms* to establish and maintain records and *internal controls* to prevent the misuse of a *mandate*.

**8.1.4A** G The *mandate rules* only apply to a *firm* that has a *mandate*, and do not affect the duties of any other *person* to whom the *firm* is able to give the types of instructions referred to in ■ CASS 8.2.1R (4). For example, if a *person* (A) has accepted a *deposit* from a *client*, and a *firm* (B) has a *mandate* in respect of that *client's deposit* held by A, the *mandate rules* only apply to B, and do not affect the duties of A in relation to the *deposit*.

**8.1.5** R [deleted]

## 8.2 Definition of mandate

8.2.1 R A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):

(1) they are obtained by the *firm* from the *client*, and with the *client's* consent;

(2) where those means are obtained in the course of, or in connection with, the *firm's insurance distribution activity*, they are in written form at the time they are obtained from the *client*;

(3) they are retained by the *firm*;

(4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):

(a) instructions to another *person* in relation to the *client's money* that is credited to an account maintained by that other *person* for the *client*;

(b) instructions to another *person* in relation to any *money* to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client money* for the *client* in accordance with ■ CASS 5 or ■ CASS 7);

(c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments*, *acting as trustee or depositary of an AIF* or *acting as trustee or depositary of a UK UCITS*);

(d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and

(5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

### The form of a mandate

8.2.2 G A *mandate* can take any form and need not state that it is a *mandate*. For example it could take the form of:

(1) a standalone document containing certain information conferring authority to control a *client's* assets or liabilities on the *firm*;

(2) a specific provision within a document or agreement that also relates to other matters; or

(3) an authority provided by a client orally.

## Retention by the firm

**8.2.3** G

(1) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retained it (for example by not destroying the relevant document, electronic record or telephone recording):

(a) after it uses it to effect those immediate transactions; or

(b) because those transactions are not, for whatever reason, effected immediately.

(2) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

## Ability to give instructions to another person

**8.2.4** G

The instructions referred to at ■ CASS 8.2.1 R (4) are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with ■ CASS 5, ■ CASS 6 or ■ CASS 7 (for example, because of an exemption in those *rules*).

**8.2.5** G

A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1R (4)(a) could include a direct debit instruction over a *client's* bank account in favour of the *firm*. The fact that the instruction was given by the *client* in the form of a paperless direct debit would not prevent it from being a *mandate*.

**8.2.6** G

A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1 R (4)(d) could include the *client's* credit card details.

## Conditions on use of mandate and client's further involvement

**8.2.7** G

(1) If a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client*

might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.

(2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but the *firm* cannot, in practice, use those means without the *client's* further involvement, then the condition in ■ CASS 8.2.1 R (5) would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in ■ CASS 8.2.1 R (4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to those instructions.

## 8.3 Records and internal controls

**8.3.1** R A *firm* that has *mandates* must establish and maintain adequate records and *internal controls* in respect of its use of the *mandates*.

**8.3.2** R The records and *internal controls* required by ■ CASS 8.3.1 R must include:

(1) an up-to-date list of each *mandate* that the *firm* has obtained, including a record of any conditions placed by the *client* or the *firm's* management on the use of the *mandate* and, where a *mandate* was received in non-written form in the course of, or in connection with, its *designated investment business*, the details required under ■ CASS 8.3.2C R;

(2) a record of each transaction entered into under each *mandate* that the *firm* has;

*(3)* *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is carried out in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;

(4) the details of the procedures and *internal controls* around the giving of instructions under the *mandates* that the *firm* has (such instructions being those referred to in ■ CASS 8.2.1 R (4)); and

(5) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.

### A firm's list of mandates

**8.3.2A** R (1) A *firm's* up-to-date list of *mandates* under ■ CASS 8.3.2 R (1) must be maintained in a medium that allows the storage of information in a way accessible for future reference by the *FCA* or by an auditor preparing a report under ■ SUP 3.10.4 R.

(2) It must be possible for any corrections or other amendments, and the contents of the list prior to such corrections and amendments, to be easily ascertained.

**8.3.2B** G A *firm* may use version control to comply with ■ CASS 8.3.2A R (2).

**8.3.2C** R An entry in a *firm's* list of *mandates* under ■ CASS 8.3.2 R (1) that relates to a *mandate* that was received in non-written form (eg in a telephone call) in the course of, or in connection with, its *designated investment business* must, as well as the information referred to at ■ CASS 8.3.2 R (1), include the following details:

(1) the nature of the *mandate* (eg debit card details);

(2) the purpose of the *mandate* (eg collecting insurance premiums);

(3) how the *mandate* was obtained (eg by telephone);

(4) the name of the relevant *client*; and

(5) the date on which the *mandate* was obtained.

**8.3.2D** G If a *firm* receives information through a telephone call in the course of, or in connection with, its *designated investment business* that amounts to a *mandate* as a result of the *firm* retaining a recording of the call (see ■ CASS 8.2.3 G), the requirements at ■ CASS 8.3.2 R (1) apply, regardless of whether or not the *firm* intends to use the *mandate* in the future. The *firm* will meet the requirements of ■ CASS 8.3.2 R (1) if the *firm's* list of *mandates* is updated with the details of the *mandate* that the *firm* obtained as a result of the call.

**8.3.2E** G A *firm* should not reproduce information meeting the conditions under ■ CASS 8.2.1 R as a separate record (eg by including such information in its list of *mandates* under ■ CASS 8.3.2 R (1)) unless the *firm* considers this necessary, as this creates additional risk of misuse. Making a record of the details concerning the *mandate* described in ■ CASS 8.3.2C R would be appropriate.

**8.3.2F** G When keeping its list of *mandates* under ■ CASS 8.3.2 R (1) up to date:

(1) a *firm* should create a new entry in the list each time the *firm* obtains a new *mandate*;

(2) if, for an existing entry on its list, a *firm* obtains the same information meeting the conditions in ■ CASS 8.2.1 R again (eg in a written confirmation following a paperless direct debit), the additional *mandate* is not a new *mandate* and the *firm* should not create another entry on the list; but

(3) the *firm* should, for every entry on its list, identify each of the locations in which it has retained the information that meets the conditions in ■ CASS 8.2.1 R (eg a *client's* debit card details retained in a telephone recording and also the *firm's* written log of the call, or two separate documents containing the same information).

## Retention of records

**8.3.2G** R

A *firm* must retain the records required under ■ CASS 8.3.1 R in relation to a particular *mandate* for the following period after it ceases to have the *mandate* (e.g. because the *firm* has destroyed the relevant document, electronic record or telephone recording), as applicable:

(1) subject to (2), a minimum of one year;

(2) a minimum of five years, where the relevant *mandate* was held by the *firm* in the course of, or in connection with, its *MiFID business*.

**8.3.2H** G

Where a *firm* has an obligation under ■ CASS 8.3.2G R to retain records after it ceases to have a particular *mandate*, it may keep the *mandate* on the *firm's* list under ■ CASS 8.3.2 R (1) for the relevant period, but the list should be updated to reflect the fact that it ceased to have the relevant *mandate* at the relevant date.

**8.3.3** G

A *firm* should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and criteria to which transactions effected by a *firm* with or for a *client* may be subject.

(1) The requirements in ■ CASS 8.3.2 R (1) and ■ CASS 8.3.2 R (3) apply only in respect of conditions placed around the *firm's* use of a *mandate* itself or around the instructions described in ■ CASS 8.2.1 R (4). Examples of these include conditions under which a *mandate* may only be used by the *firm* in connection with transactions up to a certain value, or under which instructions under a *mandate* may only be given by certain personnel within the *firm*.

(2) The requirements in ■ CASS 8.3.2 R (1) and ■ CASS 8.3.2 R (3) do not apply in respect of criteria which relate to the nature and circumstances of transactions effected by a *firm* with or for a *client*. Examples of those criteria include investment restrictions or exposure limits for a managed portfolio, and required or preferred execution prices or execution venues.

# Chapter 9

# Information to clients

## 9.1 Application

**9.1.1** R This chapter applies as follows:

(1) ■ CASS 9.2 and ■ CASS 9.3 apply to a *prime brokerage firm* to which ■ CASS 6 (Custody rules) applies;

(2) subject to paragraphs (3) and (4), ■ CASS 9.4 and ■ CASS 9.5 apply to a *firm* to which either or both ■ CASS 6 (Custody rules) and ■ CASS 7 (Client money rules) applies;

(3) ■ CASS 9.4 and ■ CASS 9.5 do not apply to a *firm* which only *arranges safeguarding and administration of assets*; and

(4) for a *firm* to which ■ CASS 7 (client money rules) applies as well as either or both of ■ CASS 5 (Client money: insurance distribution activity) and ■ CASS 11 (Debt management client money chapter) apply, this chapter does not apply to *client money* that a *firm* holds in accordance with ■ CASS 5 or ■ CASS 11.

## 9.2 Prime broker's daily report to clients

**9.2.1** R

(1) A *firm* must make available to each of its *clients* to whom it provides *prime brokerage services* a statement in a *durable medium*:

(a) showing the value at the close of each *business day* of the items in (3); and

(b) detailing any other matters which that *firm* considers are necessary to ensure that a *client* has up-to-date and accurate information about the amount of *client money* and the value of *safe custody assets* held by that *firm* for it.

(2) The statement must be made available to those *clients* not later than the close of the next *business day* to which it relates.

(3) The statement must include:

(a) the total value of *safe custody assets* and the total amount of *client money* held by that *prime brokerage firm* for a *client*;

(b) the cash value of each of the following:

(i) Cash loans made to that *client* and accrued interest;

*(ii)* *securities* to be redelivered by that *client* under open short positions entered into on behalf of that *client*;

(iii) current settlement amount to be paid by that *client* under any *futures* contracts;

(iv) short sale cash proceeds held by the *firm* in respect of short positions entered into on behalf of that *client*;

(v) cash margin held by the *firm* in respect of open *futures* contracts entered into on behalf of that *client*;

(vi) mark-to-market close-out exposure of any *OTC* transaction entered into on behalf of that *client* secured by *safe custody assets* or *client money*;

(vii) total secured obligations of that *client* against the *prime brokerage firm*; and

(viii) all other *safe custody assets* held for that *client*.

(c) total collateral held by the *firm* in respect of secured transactions entered into under a *prime brokerage agreement*, including where the *firm* has exercised a right of use in respect of that *client's safe custody assets*;

(d) the location of all of a *client's safe custody assets*, including assets held with a sub-custodian; and

(e) a list of all the institutions at which the *firm* holds or may hold *client money*, including money held in *client bank accounts* and *client transaction accounts*.

**9.2.2** G Where a *firm* has entered into an agreement with a *client* under article 91 (Reporting obligations for prime brokers) of the *AIFMD level 2 regulation*, and to the extent that the *firm* makes available to the *client* the same statements as specified by that article that it is required to provide to the relevant *depositary*, the *FCA* will treat the obligations under ■ CASS 9.2.1 R as satisfied by the *firm*.

## 9.3 Prime brokerage agreement disclosure annex

**9.3.1** R

(1) A *firm* must ensure that every *prime brokerage agreement* that includes its right to use *safe custody assets* for its own account includes a disclosure annex.

(2) A *firm* must ensure that the disclosure annex sets out a summary of the key provisions within the *prime brokerage agreement* permitting the use of *safe custody assets*, including:

(a) the contractual limit, if any, on the *safe custody assets* which a *prime brokerage firm* is permitted to use;

(b) all related contractual definitions upon which that limit is based;

(c) a list of numbered references to the provisions within that *prime brokerage agreement* which permit the *firm* to use the *safe custody assets*; and

(d) a statement of the key risks to that *client's safe custody assets* if they are used by the firm, including but not limited to the risks to the *safe custody assets* on the *failure* of the *firm*.

(3) A *firm* must ensure that it sends to the *client* in question an updated disclosure annex if the terms of the *prime brokerage agreement* are amended after completion of that agreement such that the original disclosure annex no longer accurately records the key provisions of the amended agreement.

**9.3.2** G

(1) *Principle* 10 (Clients' assets) requires a *firm* to arrange adequate protection for *client's* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.

(2) Subject to paragraph (3), a *prime brokerage firm* should not enter into "right to use arrangements" for a *client's safe custody assets* unless:

(a) in the case of a *CASS small firm* or a *firm* to which ■ CASS 1A.3.1C R applies, the person in that *firm* to whom the responsibilities set out in ■ CASS 1A.3.1 R or in ■ CASS 1A.3.1C R (2) respectively have been allocated; or

(b) in the case of any other *firm*, the *person* who carries out the *CASS operational oversight function*; and

(c) those of that *firm's* managers who are responsible for those *safe custody assets*;

are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle* 10 which include (where applicable):

(i) the daily reporting obligation in ■ CASS 9.2.1 R; and

(ii) the record-keeping obligations in ■ CASS 6.3.6AR.

(3) Paragraph (2) does not apply where the *prime brokerage firm* is also *acting as trustee or depositary of an AIF* which is an *unauthorised AIF* and exercises a right of reuse for a *safe custody asset* of that *unauthorised AIF* under ■ FUND 3.11.24 R (Reuse of assets).

## 9.4 Information to clients concerning custody assets and client money

**9.4.1** G

(1) *Firms* to which ■ COBS 6.1 applies are reminded that, under ■ COBS 6.1.7R, a *firm* that holds *client designated investments* or *client money* must provide its *clients* with specific information about how the *firm* holds those *client designated investments* and *client money* and how certain arrangements might give rise to specific consequences or risks for those *client designated investments* and *client money*.

(2) ■ COBS 6.1 (Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)) applies to a *firm* in relation to its *designated investment business*, other than *MiFID, equivalent third country or optional exemption business* or *insurance distribution activities*, for a *retail client*.

**9.4.2** R

A *firm* to which ■ COBS 6.1 applies that holds *custody assets* or *client money* must, in relation to its business for which ■ COBS 6.1 applies:

(1) provide the information in ■ COBS 6.1.7 R for any *custody assets* the *firm* may hold for a *client*, including any *custody assets* which are not *designated investments*; and

(2) provide the information in ■ COBS 6.1.7 R and in (1) to each of its *clients*.

**9.4.2A** R

*Firms* to which ■ COBS 6.1ZA applies are reminded of the requirements under article 49 of the *MiFID Org Regulation* (which are directly applicable to some *firms* and which are also applied to *firms* in other circumstances under ■ COBS 6.1ZA.3R) to provide certain information to a *client* when the *firm* is holding the *client's financial instruments* or funds (see ■ COBS 6.1ZA.9EU) and the requirement under ■ COBS 6.1ZA.10AR when a *firm* doing *insurance distribution activities* is holding *client money* and has elected to comply with the *client money chapter*.

(2) ■ COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions)) applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business* or its *insurance distribution activities* for a *client*.

**9.4.2B** R

A *firm* to which ■ COBS 6.1ZA applies that holds *custody assets* or *client money* must, in relation to its business for which ■ COBS 6.1ZA applies:

provide the information referred to in paragraphs 2 to 7 of article 49 of the *MiFID Org Regulation* for any *custody asset* that the *firm* may hold for a *client*, including:

any *custody asset* which is a *designated investment* but not a *financial instrument*; and

any *custody asset* which is neither a *designated investment* nor a *financial instrument*; and

provide the information in (1) to each of its *clients*.

**9.4.3** G A *firm* should provide the information required in ■ CASS 9.4.2 R or ■ CASS 9.4.2BR (as applicable) to any *client* for whom it holds *custody assets* or *client money*, including a *retail client*, a *professional client* and an *eligible counterparty*.

**9.4.4** G (1) *Firms* are reminded of their obligation, under ■ COBS 4.2.1 R, to be fair, clear and not misleading in their communications with *clients*.

*(2)* *Firms* are also reminded of the requirements in respect of communications made to *retail clients* under ■ COBS 4.5 and *clients* under article 44 of the *MiFID Org Regulation* and ■ COBS 4.5A (as applicable).

## 9.5 Reporting to clients on request

**9.5.1** G

(1) *Firms* to which ■ COBS 16.4 applies are reminded that, under ■ COBS 16.4, they are required to send to each of their *clients* at least once a year a statement in a *durable medium* of those *designated investments* and/or *client money* they hold for that *client*. A *firm* which *manages investments* may provide this statement in its *periodic statement*, as required under ■ COBS 16.3.

(2) ■ COBS 16.4 (Statements of client designated investments or client money) applies, in accordance with ■ COBS 16.1.2R, to a *firm* carrying on *designated investment business* other than *MiFID, equivalent third country or optional exemption business*.

**9.5.2** G

*Firms* are reminded that the requirements in ■ COBS 16.4, article 63 of the *MiFID Org Regulation* and ■ COBS 16A.4 only set out the minimum frequency at which *firms* must report to their *clients* on their holdings of *designated investments* and/or *client money*. *Firms* may choose to report to their *clients* more frequently.

**9.5.3** G

Subject to ■ CASS 9.5.5AR and ■ CASS 9.5.6 R, ■ CASS 9.5.4R, ■ CASS 9.5.4BR and ■ CASS 9.5.5 R require *firms* to comply with a *client's* request for information on the *custody assets* and/or *client money* the *firm* holds for a *client* under ■ CASS 6 and/or ■ CASS 7, and such request may be made by a *client* at any time.

**9.5.4** R

When a *firm* to which ■ COBS 16.4 applies receives a request, made by a *client*, or on a *client's* behalf, for a statement of the *custody assets* and/or *client money* that the *firm* holds for that *client*, the *firm* must provide the *client* with the statement requested in a *durable medium*.

**9.5.4A** R

(1) *Firms* to which ■ COBS 16A applies are reminded of the requirements under article 63 of the *MiFID Org Regulation* (which are directly applicable to some *firms* and which are also applied to *firms* in other circumstances under ■ COBS 16A.1.2R) in relation to quarterly statements when the *firm* is holding a *client's financial instruments* or funds (see ■ COBS 16A.4.1EU and ■ COBS 16A.5.1EU).

(2) ■ COBS 16A (Reporting information to clients (MiFID provisions) applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

**9.5.4B** R When a *firm* to which ■ COBS 16A applies receives a request, made by a *client*, or on a *client's* behalf, for a statement of the *custody assets* that the *firm* holds for that *client*, it must provide the *client* with a statement in a *durable medium* in relation to any *custody assets* that are not *financial instruments*.

**9.5.4C** G A *firm* to which ■ COBS 16A applies may combine the statement required under ■ CASS 9.5.4BR with a statement issued in response to a request made under the last sentence of the first sub-paragraph of article 63(1) of the *MiFID Org Regulation*.

**9.5.5** R When a *firm* receives a request, made by a *client*, or on a *client's* behalf, for a copy of any statement of *custody assets* and/or *client money* previously provided to that *client*, the *firm* must provide the *client* with the copy of the statement requested in a *durable medium* and within five *business days* following the receipt of the request.

**9.5.5A** R A *firm* is not required to provide a *client* with a statement under ■ CASS 9.5.4R or ■ CASS 9.5.4BR, or a copy of a statement under ■ CASS 9.5.5R (as applicable) where the following conditions are met:

(1) the *firm* provides the *client* with access to an online system, which qualifies as a *durable medium*;

(2) up-to-date statements of the *client's custody assets* and/or *client money* can be easily accessed by the *client* via the system under (1); and

(3) the *firm* has evidence that the *client* has accessed this statement at least once during the relevant quarter.

**9.5.6** R Any charge agreed between the *firm* and the *client* for providing the statements in ■ CASS 9.5.4R, ■ CASS 9.5.4BR or ■ CASS 9.5.5R (as applicable) must be at a commercial cost.

**9.5.7** G Any statement provided to a *client* under ■ CASS 9.5.4 R or ■ CASS 9.5.5 R (as applicable) may, although it is not required to, be in the same form as the statement a *firm* is required to provide to a *client* under ■ COBS 16.4 or, if appropriate, ■ COBS 16.3.

**9.5.8** G Consistent with the *fair, clear and not misleading rule*, a *firm* should ensure that, in any statements of *custody assets* and/or *client money* it provides to its *clients*, it is clear from the statement which assets and/or monies the *firm* reports as holding for the *client* are, or are not, protected under ■ CASS 6 and/or ■ CASS 7 (e.g. if the statement also includes information regarding assets and/or monies which are held by the *firm* for that *client* which are not subject to the *custody rules* and/or *client money rules*) .

**9.5.9** G *Firms* are reminded that under ■ CASS 3.2.4 G *firms* that enter into arrangements with *retail clients* covered by ■ CASS 3 (Collateral) should, when appropriate, identify in any statement of *custody assets* sent to the *client*

under ■ COBS 16.4 (Statements of client designated investments or client money), article 63 of the *MiFID Org Regulation* or ■ COBS 16A.4 (as applicable) or this section the details of the assets which form the basis of that collateral arrangement.

# Chapter 10

# CASS resolution pack

## 10.1 Application, purpose and general provisions

### Application

**10.1.1** R

(1) Subject to (2) this chapter applies to a *firm* when it:

(a) holds *financial instruments*, is *safeguarding and administering investments*, is acting as trustee or depositary of an AIF or is acting as trustee or depositary of a UCITS, in accordance with ■ CASS 6;

(aa) is acting as a *small AIFM* and carries on *excluded custody activities* in accordance with ■ CASS 6; and/or

(b) holds *client money* in accordance with ■ CASS 7.

(2) This chapter does not apply to a *firm* to which ■ CASS 6 applies merely because it is:

(a) a *firm* which *arranges safeguarding and administration of assets*; or

(b) a *small AIFM* carrying on those *excluded custody activities* that would amount to *arranging safeguarding and administration of assets* but for the exclusion in article 72AA of the *RAO*.

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### Purpose

**10.1.2** G

The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would:

(1) in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of *client money* and *safe custody assets* held by the *firm* to that *firm's clients*; and

(2) in the event of its or another *firm's* resolution, assist the Bank of England; and

(3) in either case, assist the *FCA*.

### General provisions

**10.1.3** R

A *firm* falling within ■ CASS 10.1.1 R must maintain and be able to retrieve, in the manner described in this chapter, a *CASS resolution pack*.

**10.1.4** G

A *firm* is required to maintain a *CASS resolution pack* at all times when ■ CASS 10.1.1 R applies to it.

**10.1.5** G

(1) The *rules* in this chapter specify the types of documents and records that must be maintained in a *firm's CASS resolution pack* and the retrieval period for the pack. The *firm* should maintain the component documents of the *CASS resolution pack* in order for them to be retrieved in accordance with ■ CASS 10.1.7 R, and should not use the retrieval period to start producing these documents.

(2) The contents of the documents that constitute the *CASS resolution pack* will change from time to time (for example, because daily reconciliations must be included in the pack).

(3) A *firm* is only required to retrieve the *CASS resolution pack* in the circumstances prescribed in ■ CASS 10.1.7 R.

**10.1.6** R

For the purpose of this chapter, a *firm* will be treated as satisfying a *rule* in this chapter requiring it to include a document in its *CASS resolution pack* if a member of that *firm's group* includes that document in its own *CASS resolution pack*, provided that:

(1) that *group* member is subject to the same *rule*; and

(2) the *firm* is still able to comply with ■ CASS 10.1.7 R.

**10.1.7** R

In relation to each document in a *firm's CASS resolution pack* a *firm* must:

(1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and

(2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FCA* or Bank of England request.

[**Note:** article 2(5) of the *MiFID Delegated Directive*]

**10.1.8** R

Where documents are held by members of a *firm's group* in accordance with ■ CASS 10.1.6 R, the *firm* must have adequate arrangements in place with its *group* members which allow for delivery of the documents within the timeframe referred to in ■ CASS 10.1.7 R.

**10.1.9** E

(1) For the purpose of ■ CASS 10.1.7 R, the following documents and records should be retrievable immediately:

(a) the document identifying the institutions referred to in ■ CASS 10.2.1R (2);

(b) the document identifying individuals pursuant to ■ CASS 10.2.1R (4);

(c) any written notification or *acknowledgement letters* referred to in ■ CASS 10.2.1R (5);

(d) the most recent *internal custody records checks* referred to in ■ CASS 10.3.1R (3);

(e) the most recent *external custody reconciliations* referred to in ■ CASS 10.3.1R (5);

(f) the most recent *internal client money reconciliations* referred to in ■ CASS 10.3.1R (7) and ■ CASS 10.3.1R (7A); and

(g) the most recent *external client money reconciliations* referred to in ■ CASS 10.3.1R(7A).

(2) Where a *firm* is reliant on the continued operation of certain systems for the provision of component documents in its *CASS resolution pack*, it should have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.

(3) Contravention of (1) or (2) may be relied upon as tending to establish contravention of ■ CASS 10.1.7 R.

**10.1.10** G Where a *firm* anticipates that it might be the subject of an *insolvency order*, it is likely to have sought advice from an external adviser. The *firm* should make the *CASS resolution pack* available promptly, on request, to such an adviser.

**10.1.11** R

(1) A *firm* must ensure that it reviews the content of its *CASS resolution pack* on an ongoing basis to ensure that it remains accurate

(2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in ■ CASS 10.2.1 R, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.

**10.1.12** G For the purpose of ■ CASS 10.1.11R (2), an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to ■ CASS 10.2.1R (2).

**10.1.13** G A *firm* may hold in electronic form any document in its *CASS resolution pack* provided that it continues to be able to comply with ■ CASS 10.1.7 R and ■ CASS 10.1.11 R in respect of that document.

**10.1.14** R The individual to whom responsibility for CASS operational oversight has been allocated under ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or, as the case may be, ■ CASS 1A.3.1CR (2), must report at least annually to the *firm's governing body* in respect of compliance with the *rules* in this chapter.

**10.1.15** G Individuals allocated functions relating to CASS operational oversight pursuant to ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or, as the case may be, ■ CASS 1A.3.1CR (2), are reminded that their responsibilities include compliance with the provisions in this chapter.

**10.1.16** R A *firm* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, ■ CASS 10.1.3 R.

## 10.2 Core content requirements

**10.2.1** R A *firm* must include within its *CASS resolution pack*:

(1) a master document containing information sufficient to retrieve each document in the *firm's CASS resolution pack*;

(2) a document which identifies the institutions the *firm* has appointed (including through an *appointed representative*, *tied agent*, *field representative* or other agent):

(a) in the case of *client money*, for the placement of *money* in accordance with ■ CASS 7.13.3 R or to hold *client money* in accordance with ■ CASS 7.14.2 R; and

(b) in the case of *safe custody assets*, for the deposit of those assets in accordance with ■ CASS 6.3.1 R;

(3) a document which identifies each *appointed representative*, *tied agent*, *field representative* or other agent of the *firm* which receives *client money* or *safe custody assets* in its capacity as the *firm's* agent;

(4) a document which identifies:

(a) each *senior manager* and *director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* by ■ CASS 6 or ■ CASS 7; and

(b) the individual to whom responsibility for *CASS* operational oversight has been allocated under ■ CASS 1A.3.1 R or, as the case may be, to whom the *CASS operational oversight function* has been allocated under ■ CASS 1A.3.1A R;

(5) for each institution identified in ■ CASS 10.2.1R (2), a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the *firm* that relates to the holding of *client money* or *safe custody assets* including any written notification or *acknowledgement letters*sent or received pursuant to ■ CASS 7.18;

(6) a document which:

(a) identifies each member of the *firm's group* involved in operational functions related to any obligations imposed on the *firm* under ■ CASS 6 or ■ CASS 7, including in the case of a member that is a *nominee company*, identification as such; and

(b) identifies each third party which the *firm* uses for the performance of operational functions related to any of the obligations imposed on the *firm* by ■ CASS 6 or ■ CASS 7; and

(c) for each *group* member identified in (a), the type of entity (such as branch, subsidiary and or *nominee company*) the *group* member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;

(7) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between the *firm* and each third party identified in (6)(b);

(8) where the *firm* relies on a third party identified in (6)(b), a document which describes how to:

(a) gain access to relevant information held by that third party; and

(b) effect a transfer of any of the *client money* or *safe custody assets* held by the *firm*, but controlled by that third party; and

(9) a copy of the *firm's* manual in which are recorded its procedures for the management, recording and transfer of the *client money* and *safe custody assets* that it holds.

**10.2.2** G For the purpose of ■ CASS 10.2.1R (4), examples of individuals within the *firm* who are critical or important to the performance of operational functions include:

(1) those necessary to carry out both internal and external *client money* and *safe custody asset* reconciliations and record checks; and

(2) those in charge of client documentation for business involving *client money* and *safe custody assets*.

**10.2.3** R For the purpose of ■ CASS 10.2.1R (2), a *firm* must ensure that the document records:

(1) the full name of the individual institution in question;

(2) the postal and email address and telephone number of that institution; and

(3) the numbers of all accounts opened by that *firm* with that institution.

## 10.3 Existing records forming part of the CASS resolution pack

**10.3.1** R A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:

(1) ■ CASS 6.3.2A R (safe custody assets: appropriateness of the firm's selection of a third party);

(1A) ■ CASS 6.3.6AR (third party rights over client assets);

(2) ■ CASS 6.4.3 R (firm's use of safe custody assets);

(3) ■ CASS 6.6.2 R and ■ CASS 6.6.3 R (*safe custody assets* held for each client);

(4) ■ CASS 6.6.6 R (client agreements: firm's right to use);

(4A) ■ CASS 6.6.8 R (internal custody record checks, physical asset reconciliations and external custody reconciliations);

(5) [deleted]

(5A) ■ SYSC 6.1.1 R (policy and procedures for carrying out record checks and reconciliations);

(5B) ■ CASS 7.13.14BR (policy for use of *client bank accounts* under ■ CASS 7.13.13R(3A)(b));

(6) ■ CASS 7.13.25 R (client money: appropriateness of the firm's selection of a third party);

(7) ■ CASS 7.15.2 R, ■ CASS 7.15.3 R and ■ CASS 7.15.5 R (client money held for each client);

(7A) ■ CASS 7.15.7 R (internal client money reconciliations and external client money reconciliations);

(10) ■ COBS 3.8.2 R (2)(a) and ■ COBS 3.8.2 R (2)(c) (client categorisation); and

(11) ■ COBS 8.1.4 R or ■ COBS 8A.1.9R (retail and professional client agreements).

**10.3.2** G ■ CASS 10.3.1 R does not change the record keeping requirements of the *rules* referred to therein.

# Chapter 11

# Debt management client money chapter

## 11.1 Application

**11.1.1** R This chapter (the *debt management client money chapter*) applies to a *CASS debt management firm* that receives or holds *client money* as set out in this chapter.

**11.1.2** G The requirements imposed on a *CASS debt management firm* that holds *client money* vary depending on whether a *firm* is classified as a *CASS small debt management firm* or a *CASS large debt management firm* in ■ CASS 11.2.3 R (*CASS debt management firm* types). ■ CASS 11.1.4 R to ■ CASS 11.1.6 R indicate which rules in the *debt management client money chapter* apply to which category of *firm*.

**11.1.3** G The *debt management client money chapter* applies (to the extent indicated by ■ CASS 11.1.4 R to ■ CASS 11.1.6 R) to a *CASS debt management firm*, even if at the date of the determination or, as the case may be, the notification, referred to in ■ CASS 11.2.4 R, the *CASS debt management firm* is not holding *client money*, provided that:

(1) it held *client money* in the previous calendar year; or

(2) it projects to hold *client money* in the current calendar year.

### Application to CASS small debt management firms

**11.1.4** R Subject to ■ CASS 11.1.6 R, only the rules and guidance in the *debt management client money chapter* listed in the table below apply to *CASS small debt management firms*.

| Reference | Rule |
|---|---|
| CASS 11.1.1 R to CASS 11.1.4 R and CASS 11.1.6 R | Application |
| CASS 11.2.1 R to CASS 11.2.9 G | Firm classification |
| CASS 11.3.1 R to CASS 11.3.2 R and CASS 11.3.6 R | Responsibility for CASS operational oversight |
| CASS 11.4.1 G to CASS 11.4.4 G | Definition of client money and discharge of fiduciary duty |
| CASS 11.5.1 R and CASS 11.5.2 R | Organisational requirements |
| CASS 11.6.1 R and CASS 11.6.2 G | Statutory trust |
| CASS 11.7.1 G and CASS 11.7.5 G | Selecting an approved bank at which to hold client money |

| Reference | Rule |
|---|---|
| CASS 11.8.1 G to CASS 11.8.13 R | Client bank account acknowledgement letters |
| CASS 11.9.1 R to CASS 11.9.13 G | Segregation and the operation of client money accounts |
| CASS 11.10.1 R to CASS 11.10.7 G | Payments to creditors |
| CASS 11.11.1 R to CASS 11.11.12 R , CASS 11.11.30 R and CASS 11.11.32 G | Records, accounts and reconciliations |
| CASS 11.12.1 G to CASS 11.12.7 R | CASS 11 resolution pack |
| CASS 11.13.1 R to CASS 11.13.14 R | Client money distribution in the event of a failure of a firm or approved bank |

## Application to CASS large debt management firms

**11.1.5** R Subject to ■ CASS 11.1.6 R, the rules and guidance in the *debt management client money chapter* apply to *CASS large debt management firms*, except where indicated otherwise in the relevant rule.

## Solicitors

**11.1.6** R

(1) An *authorised professional firm* regulated by the Law Society of England and Wales, the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the following rules of its *designated professional body*, must comply with those rules and, if it does so, it will be deemed to comply with the *debt management client money chapter*.

(2) The relevant rules are:

(a) if the *firm* is regulated by the Law Society of England and Wales, the SRA Accounts Rules 2011;

(b) if the *firm* is regulated by the Law Society of Scotland, the Law Society of Scotland Practice Rules 2011; and

(c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

## 11.2 Firm classification

**11.2.1** R

(1) A *CASS debt management firm* must, once every year and by the time it is required to make a notification in accordance with ■ CASS 11.2.4 R, determine whether it is a *CASS large debt management firm* or a *CASS small debt management firm* according to the amount of *client money* which it held during the previous year or, if it did not hold *client money* during the previous year, according to the amount of *client money* it projects to hold in the following year, in each case using the limits set out in the table in ■ CASS 11.2.3 R.

(2) For the purpose of determining its '*CASS debt management firm* type' in accordance with ■ CASS 11.2.3 R, a *CASS debt management firm* must:

(a) if it currently holds *client money*, calculate the highest total amount of *client money* held during the previous calendar year ending on 31 December and use that figure to determine its '*CASS debt management firm* type';

(b) if it did not hold *client money* in the previous calendar year but projects that it will do so in the current calendar year, calculate the highest total amount of *client money* that it projects that it will hold during that year and use that figure to determine its '*CASS debt management firm* type'.

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**11.2.2** R

For the purpose of calculating the value of the total amounts of *client money* that it holds on any given *day* during a calendar year (in complying with ■ CASS 11.2.1 R) a *CASS debt management firm* must base its calculation on accurate internal records of *client money* holdings. A *CASS large debt management firm* must do this using the internal reconciliations performed during the previous year that are prescribed in ■ CASS 11.11.13 R. A *CASS small debt management firm* must use the records used in carrying out checks required of it under ■ CASS 11.11.8 R.

**11.2.3** R

CASS debt management firm types

| CASS debt management firm type | Highest total amount of *client money* held during the *CASS debt management firm*'s last calendar year or as the case may be that it projects that it will hold during the current calendar year |
|---|---|
| *CASS large debt management firm* | An amount equal to or greater than £1 million |
| *CASS small debt management firm* | Less than £1 million |

## Notification

**11.2.4** R Once every calendar year, a *CASS debt management firm* must notify the *FCA*, in writing, of the information in (1), (2) or (3), as applicable, and the information in (4), in each case no later than the *day* specified in (1) to (4):

(1) if it held *client money* in the previous calendar year, the highest total amount of *client money* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or

(2) if it did not hold *client money* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total amount of *client money* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or

(3) in any other case, the highest total amount of *client money* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money*; and

(4) in every case, of its '*CASS debt management firm* type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).

**11.2.5** R For the purpose of the annual notification in ■ CASS 11.2.4 R, a *CASS debt management firm* must apply the calculation *rule* in ■ CASS 11.2.2 R.

## Option to be treated as a CASS large debt management firm

**11.2.6** G ■ CASS 11.2.7 R provides a *CASS debt management firm* with the ability to opt in to a higher category of '*CASS debt management firm* type'. This may be useful for a *CASS debt management firm* whose holding of *client money* is near the upper categorisation limit for a *CASS small debt management firm*.

**11.2.7** R

(1) Notwithstanding ■ CASS 11.2.3 R, provided that the conditions in (2) are satisfied, a *CASS debt management firm* that would otherwise be classified as a *CASS small debt management firm* under the limits provided for in ■ CASS 11.2.3 R may elect to be treated as a *CASS large debt management firm*.

(2) The conditions to which (1) refers are that in either case:

(a) the election is notified to the *FCA* in writing;

(b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and

(c) the *FCA* has not objected.

## Effective date of firm type

**11.2.8** R A *firm*'s '*CASS debt management firm* type' and any change to it takes effect:

(1) if the *firm* notifies the *FCA* in accordance with ■ CASS 11.2.4 R (1) or ■ CASS 11.2.4 R (2), on 1 February following the notification; or

(2) if the *firm* notifies the *FCA* in accordance with ■ CASS 11.2.4 R (3), on the *day* it begins to hold client money; or

(3) if the *firm* makes an election under ■ CASS 11.2.7 R and provided the conditions in ■ CASS 11.2.7 R (2) are satisfied, on the *day* the notification made under ■ CASS 11.2.7 R (2)(a) states that the election is intended to take effect.

**11.2.9** G Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Debt Management Client Assets Firm Classification".

## 11.3 Responsibility for CASS operational oversight

### CASS small debt management firm other than a not-for-profit debt advice body

**11.3.1** R

(1) A *CASS small debt management firm*, other than a *not-for-profit debt advice body*, must allocate to a *director* or *senior manager* responsibility for:

(a) oversight of the *firm's* operational compliance with ■ CASS 11;

(b) reporting to the *firm's governing body* in respect of that oversight; and

(c) completing and submitting a CCR005 return in accordance with ■ SUP 16.12.29CR.

(2) [deleted]

**11.3.1A** G

■ CASS 11.3.3G(5) to (11) also apply to a *CASS small debt management firm* that is an *SMCR firm* and the function in ■ CASS 11.3.1R. However:

(1) the function in ■ CASS 11.3.1R is not a separate *FCA certification function*; and

(2) the *person* performing that function will not necessarily be subject to the employee certification regime described in ■ SYSC 27 (Senior managers and certification regime: Certification regime).

### CASS small debt management firm that is a not-for-profit debt advice body

**11.3.2** R

A *CASS small debt management firm* that is a *not-for-profit debt advice body* must allocate to a *director* or *senior manager*:

(1) oversight of the *firm's* operational compliance with ■ CASS 11;

(2) reporting to the *firm's governing body* in respect of that oversight; and

(3) completing and submitting a CCR005 return in accordance with ■ SUP 16.12.29C R.

**11.3.2A** G

(1) ■ CASS 11.3.3G(5) to ■ (11) do not apply to a *CASS small debt management firm* that is a *not-for-profit debt advice body*. This is

because neither ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities) nor ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility) apply to it.

(2) It will not have any *SMF managers* as no *designated senior management functions* apply to it.

(3) The function in ■ CASS 11.3.2R is not a separate *FCA certification function* and the *person* performing that function will not necessarily be subject to the employee certification regime described in ■ SYSC 27 (Senior managers and certification regime: Certification Regime).

## CASS large debt management firms

**11.3.3** G

(1) [deleted]

(2) As a consequence of ■ CASS 11.3.4R, in a *CASS large debt management firm* (including a *not-for-profit debt advice body* fitting into that category) the function described in ■ CASS 11.3.4R is required to be discharged by a *director* or *senior manager*.

(3) [deleted]

(4) [deleted]

(4A) For an *SMCR firm*, the function in ■ CASS 11.3.4R is not a separate *controlled function* and performing that function does not require approval as an *approved person*. Paragraphs (5) to (11) describe how ■ CASS 11.3.4R applies to such *firms*.

(4B) There are three elements of the regime for *SMCR firms* that are particularly relevant to ■ CASS 11.3, although they do not all apply to all *SMCR firms*:

(a) a *firm's* obligation to allocate certain responsibilities to its *SMF managers* (see ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities));

(b) a *firm's* obligation to ensure that one or more of its *SMF managers* have overall responsibility for each of its activities, business areas and management functions (see ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility)); and

(c) the certification regime (the certification regime is explained in ■ SYSC 27 (Senior managers and certification regime: Certification regime) and ■ SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) explains that the certification regime comes into force sometime after other parts of the senior managers and certification regime).

(5) Paragraphs (6) to (9) explain how ■ CASS 11.3.4R applies to an *SMCR firm* to which ■ SYSC 24 and ■ SYSC 26 apply.

(6) The *SMCR firm* must allocate responsibility for the *firm's* compliance with *CASS* to one of its *SMF managers* (see ■ SYSC 24.2.1R). That responsibility is an "*FCA-prescribed senior management responsibility*". The full list of *FCA-prescribed senior management responsibilities* is in the table in ■ SYSC 24.2.6R.

(7) Although the *CASS* function in ■ SYSC 24.2.1R is different from the function in ■ CASS 11.3.4R, the *SMCR firm* may allocate the function in ■ CASS 11.3.4R to the *SMF manager* in (6).

(8) The *SMCR firm* may allocate the *CASS FCA-prescribed senior management responsibility* described in (6) to an *SMF manager* who does not perform any other function coming within the *FCA* regime for *SMF managers* in *SMCR firms*. See ■ SUP 10C.7 (Other overall responsibility function (SMF18)) and ■ SUP 10C.8.1R (Other local responsibility function (SMF22)) for details.

(9) The *SMCR firm* may choose to allocate the function in ■ CASS 11.3.4R to someone who is not an *approved person* and *SMF manager*. If so:

(a) that *person* will be subject to the employee certification regime described in ■ SYSC 27 (Senior managers and certification regime: Certification regime);

(b) that *person* will be subject to supervision by the *SMF manager* in (6); and

(c) the function in ■ CASS 11.3.4R will be the *CASS* oversight *FCA certification function* in ■ SYSC 27.8.1R.

(10) In relation to an *SMCR firm* to which ■ SYSC 24 applies but ■ SYSC 26 does not apply the *guidance* in paragraphs (6), (7) and (9) applies, but the *guidance* in paragraph (8) does not apply.

(11) (a) The position of an *SMCR firm* to which neither ■ SYSC 24 nor ■ SYSC 26 apply is slightly different.

(b) The *firm* may choose to allocate the function in ■ CASS 11.3.4R to an *SMF manager*.

(c) The *firm* may instead choose to allocate the *CASS* function to someone who is not an *SMF manager*.

(d) Where (c) applies, the *person* performing the function in ■ CASS 11.3.4R will fall into the certification regime. The function in ■ CASS 1A.3.1AR will be the *CASS* oversight *FCA certification function* in ■ SYSC 27.8.1R.

(e) A *not-for-profit debt advice body* will not have any *SMF managers* as no *controlled functions* apply to it.

**11.3.4** R A *CASS large debt management firm* must allocate to a *director* or *senior manager* the function of:

(1) oversight of the operational effectiveness of that *CASS debt management firm's* systems and controls that are designed to achieve compliance with ■ CASS 11;

(2) reporting to the *CASS debt management firm's governing body* in respect of that oversight; and

(3) completing and submitting a CCR005 return to the *FCA* in accordance with ■ SUP 16.12.29C R.

**11.3.5** R [deleted]

**11.3.5A** G [deleted]

## Record of responsibility for CASS operational oversight

**11.3.6** R

(1) Subject to (2), a *CASS debt management firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with, as applicable, ■ CASS 11.3.1 R, ■ CASS 11.3.2 R, and ■ CASS 11.3.4 R.

(2) A *CASS small debt management firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.

(3) A *CASS debt management firm* must ensure that a record made under this rule is retained for a period of five years after it is made.

## 11.4 Definition of client money and the discharge of fiduciary duty

**11.4.1** G ■ CASS 11 provides important safeguards for the protection of *client money* held by *CASS debt management firms* that sit alongside the fiduciary duty owed by firms in relation to *client money*. ■ CASS 11.4.2 R to ■ CASS 11.4.4 G provide *guidance* and *rules* for when *money* ceases to be *client money* for the purposes of both those rules and of the fiduciary duty which *CASS debt management firms* owe to *clients* in relation to *client money*.

**11.4.2** R *Money* ceases to be *client money* if:

(1) it is paid to the *client*, or a duly authorised representative of the *client*; or

(2) it is:

(a) paid to a third party on the instruction of the *client*, or with the specific consent of the *client*; or

(b) paid to a third party further to an obligation on the *firm* under any applicable law; or

(3) it is paid into an account of the *client* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *client*;

(4) it is due and payable to the *firm* for its own account;

(5) it is paid to the *firm* as an excess in the *client bank account* (see ■ CASS 11.11.12 R (2) and ■ CASS 11.11.23 R (3)).

**11.4.3** R When a *CASS debt management firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid.

**11.4.4** G *Money* is not *client money* when it is properly due and payable to the *firm* for its own account. The circumstances in which *money* may become due and payable to the *firm* could include when fees have become due and payable from the *client* to the *firm* under the agreement between the *client* and the *firm*.

## 11.5 Organisational requirements

**11.5.1** R A *CASS debt management firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

**11.5.2** R A *CASS debt management firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

## 11.6 Statutory trust

**11.6.1** R A *CASS debt management firm* receives and holds *client money* as trustee on the following terms:

(1) for the purposes and on the terms of the *debt management client money rules* and the *debt management client money distribution rules*;

(2) subject to (3), for the *clients* for whom that *money* is held, according to their respective interests in it;

(3) on *failure* of the *CASS debt management firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and

(4) after all valid claims and costs under (2) and (3) have been met, for the *CASS debt management firm* itself.

**11.6.2** G Section 137B(1) of the *Act* provides that rules may make provisions which result in *client money* being held by a *firm* on trust. ■ CASS 11.6.1 R creates such a rule in relation to *client money* held by a *CASS debt management firm*. The consequence of this rule is there is a fiduciary relationship between a *CASS debt management firm* and its *client*, under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *CASS debt management firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

## 11.7 Selecting an approved bank at which to hold client money

**11.7.1** G A *CASS debt management firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.

**11.7.2** R Before a *CASS large debt management firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the *firm* to hold *client money* at the *approved bank* concerned.

**11.7.3** R A *CASS large debt management firm* must consider the risks associated with holding all *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.



**11.7.4** G In complying with ■ CASS 11.7.3 R a *CASS large debt management firm* should consider as appropriate, together with any other relevant matters:

(1) the amount of *client money* held by the *firm*;

(2) the amount of *client money* the firm anticipates holding at the *approved bank*; and

(3) the credit worthiness of the *approved bank*.

**11.7.5** G A *CASS small debt management firm* can demonstrate compliance with ■ CASS 11.7.1 G by checking that the *person* it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm's* attention to cause it to believe that such *person* is not an appropriate place at which to hold *client money*.

**11.7.6** R A *CASS large debt management firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of an *approved bank*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the *approved bank* to hold *client money*.

## 11.8 Client bank account acknowledgement letters

**11.8.1** G The main purposes of a *client bank account acknowledgement letter* are:

(1) to put the *approved bank* on notice of a *firm's clients*' interests in *client money* that has been deposited with such *person*;

(2) to ensure that the *client bank account* has been opened in accordance with ■ CASS 11.9.3 R, and is distinguished from any account containing money that belongs to the *firm*; and

(3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to such *person* (or *person* connected to such *person*).

**11.8.2** R (1) For each *client bank account*, a *CASS debt management firm* must, in accordance with ■ CASS 11.8.4 R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the *approved bank* with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.

(2) Subject to ■ CASS 11.8.6 R, a *CASS debt management firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the *approved bank* that has not been inappropriately redrafted and clearly identifies the *client bank account*.

**11.8.3** R In drafting *client bank account acknowledgement letters* under ■ CASS 11.8.2 R a *CASS debt management firm* is required to use the relevant template in ■ CASS 11 Annex 1 R.

**11.8.4** R When completing a *client bank account acknowledgement letter* under ■ CASS 11.8.2 R (1) a *CASS debt management firm*:

(1) must not amend any of the *acknowledgement letter fixed text*;

(2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and

(3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.

**11.8.5** G ■ CASS 11 Annex 2 contains *guidance* on using the template *client bank account acknowledgement letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.

**11.8.6** R

(1) If, on countersigning and returning the *client bank account acknowledgement letter* to a *firm*, the relevant *approved bank* has also:

(a) made amendments to any of the *acknowledgement letter fixed text*; or

(b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;

the *client bank account acknowledgement letter* will have been inappropriately redrafted for the purposes of ■ CASS 11.8.2 R (2).

(2) Amendments made to the *acknowledgement letter variable text*, in the *client bank account acknowledgement letter* returned to a *firm* by the relevant *approved bank*, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the *acknowledgement letter fixed text*, have been specifically agreed with the firm and do not cause the *client bank account acknowledgement letter* to be inaccurate.



**11.8.7** R A *CASS debt management firm* must use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

**11.8.8** R A *CASS debt management firm* must retain each countersigned *client bank account acknowledgement letter* it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last *client bank account* to which the acknowledgment letter relates is closed.

**11.8.9** R A *CASS debt management firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*).

**11.8.10** R A *CASS debt management firm* must, periodically (at least annually, and whenever it becomes aware that something referred to in a *client bank account acknowledgement letter* has changed) review each of its countersigned *client bank account acknowledgement letters* to ensure that they remain accurate.

**11.8.11** R Whenever a *CASS debt management firm* finds a countersigned *client bank account acknowledgement letter* to contain an inaccuracy, the *firm* must promptly draw up a new replacement *client bank account acknowledgement letter* under ■ CASS 11.8.2 R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank*.

**11.8.12** G Under ■ CASS 11.8.10 R, a *CASS debt management firm* should obtain a replacement *client bank account acknowledgement letter* whenever:

(1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or

(2) it becomes aware of an error or misspelling in the letter.

**11.8.13** R If a *CASS debt management firm's client bank account* is transferred to another *approved bank*, the *firm* must promptly draw up a new *client bank account acknowledgement letter* under ■ CASS 11.8.2 R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank* within 20 *business days* of the *firm* sending it to that *person*.

## 11.9 Segregation and the operation of client money accounts

### Requirement to segregate

**11.9.1** R A *CASS debt management firm* must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an *approved bank*, rather than being first received into the *firm's* own account and then segregated.

**11.9.2** G A *CASS debt management firm* should arrange for *clients* and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.

**11.9.3** R A *CASS debt management firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.

**11.9.4** R Cheques received by a *CASS debt management firm*, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.

**11.9.5** R Where a *CASS debt management firm* receives *client money* in the form of cash, a cheque or other payable order, it must:

(1) pay the *money* into a *client bank account* in accordance with ■ CASS 11.9.1 R promptly and no later than on the *business day* after it receives the *money*;

(2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle* 10; and

(3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of ■ CASS 11.11 (Records, accounts and reconciliations).

## Mixed remittance

**11.9.6** R If a *CASS debt management firm* receives a *mixed remittance* it must:

(1) pay the full sum into a *client bank account* promptly and in accordance with ■ CASS 11.9.1 R to ■ CASS 11.9.5 R; and

(2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the money that is not *client money* out of the *client bank account*.

## Allocation of client money receipts

**11.9.7** R (1) A *CASS debt management firm* must allocate in its books and records any *client money* it receives to an individual *client* promptly and, in any case, no later than five *business days* following the receipt.

(2) Pending a *CASS debt management firm*'s allocation of a client money receipt to an individual *client* under (1), it must record the received *client money* in its books and records as "unallocated client money".

**11.9.8** R If a *CASS debt management firm* receives money (either in a *client bank account* or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:

(1) take all necessary steps to identify the *money* as either *client* money or its own *money*;

(2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as "unidentified client money" while it performs the necessary steps under (1).

**11.9.9** G If a *CASS debt management firm* is unable to identify money that it has received as either *client money* or its own *money* under ■ CASS 11.9.8 R (1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A *firm* should have regard to its fiduciary duties when considering such matters.

## Money received by appointed representatives, tied agents, field representatives and other agents

**11.9.10** R A *CASS debt management firm* must ensure that *client money* received by its *appointed representatives*, *field representatives* or other agents is:

(1) received directly into a *client bank account* of the *firm*; or

(2) if it is received in the form of a cheque or other payable order:

(a) paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt; or

(b) forwarded to the *firm* or, in the case of a *field representative*, forwarded to a specified business address of the *CASS debt management firm*, to ensure that the *money* arrives at the specified business address promptly and, in any event, no later than the close of the third *business day* following the receipt of the *money* from the client; or

(3) if it is received in the form of cash, paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt.

## Interest

**11.9.11** R A *CASS debt management firm* must pay a *client* any interest earned on *client money* held for that *client*.

## Returning money to clients

**11.9.12** R A *CASS debt management firm* must, on receipt of a written request to withdraw from a *debt management plan*, promptly return to the *client* any *client money* held by it for the *client*.

**11.9.13** G The *FCA* would expect compliance with the requirement in ■ CASS 11.9.12 R to return client money promptly to require *client money* to be returned to a *client* within five *business days* of the date on which a *client's* withdrawal from a *debt management plan* takes effect.

## 11.10 Payments to creditors

**11.10.1** R Where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, the *firm* must pay that *money* to creditors as soon as reasonably practicable, save in the circumstances in ■ CASS 11.10.3 R.

**11.10.2** G In the *FCA's* view, the payment to creditors under ■ CASS 11.10.1 R should normally be within five *business days* of the receipt of cleared funds.

**11.10.3** R The circumstances referred to in ■ CASS 11.10.1 R are:

(1) the contract between the *client* and the *CASS debt management firm* expressly provides that *client money* might be held for more than five *business days* without being distributed to creditors;

(2) the existence of such a term expressly providing that *client money* might be held for more than five *business days* without being distributed to creditors has been separately brought to the attention of the *client* prior to his entering into the contract; and

(3) the *CASS debt management firm* has explained to the *client* the risks and implications, if any, of payment to creditors being delayed prior to the entry into the contract.

**11.10.4** R On each occasion that a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and it is proposed not to make a *client's* payment to creditors within five *business days* of receipt of the *client money* in the circumstances described in ■ CASS 11.10.3 R (1), it must:

(1) as soon as reasonably practicable and within the five *business day* period, inform the *client's* creditors of the fact that it has received *client money* from the *client* for the purpose of distribution to his or her creditors and that it will not distribute that *client money* to the creditors within the five *business-day* period; and

(2) perform daily reconciliations of the money held for the *client* concerned in accordance with the provisions of ■ CASS 11.11.

**11.10.5** R On each occasion a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and is unable for any reason other than

in the circumstances described in ■ CASS 11.10.3 R (1) to make a payment to the *client's* creditors within five *business days* of receipt, it must:

(1) inform the *client* of the delay and the reason for the delay;

(2) inform the *client* of the risks and implications of the late payments;

(3) inform the *client's* creditors of this delay as soon as reasonably practicable and within the period of five *business days* of the receipt of the relevant *client money*; and

(4) perform daily checks of its records of the money held for the *client* concerned in accordance with the provisions of ■ CASS 11.11.

**11.10.6** R

(1) Subject to (2), where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, and it fails to pay that *money* to creditors as soon as reasonably practicable following its receipt (see ■ CASS 11.10.1 R and ■ CASS 11.10.2 G), it must put the *client* into the financial position he would have been in had the delay not occurred.

(2) Paragraph (1) does not apply in the circumstances described in ■ CASS 11.10.3 R or where the delay is due to circumstances beyond the *firm's* control.

**11.10.7** G

Putting a *client* into the position he would have been in had the delay not occurred under ■ CASS 11.10.6 R should include paying to the *client* a sum equivalent to the amount of any additional interest which would not have accrued but for the delay and any default charges that have been applied to the account as a result of the delay.

## 11.11 Records, accounts and reconciliations

### Records and accounts

**11.11.1** R A *CASS debt management firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.

**11.11.2** G In accordance with ■ CASS 11.11.1 R, a *CASS debt management firm* must maintain internal records and accounts of the *client money* it holds (for example, a cash book). These internal records are separate to any external records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

**11.11.3** R A *CASS debt management firm* must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *clients*.

**11.11.4** R A *CASS debt management firm* must maintain up-to-date records that detail all payments to, from, or made on behalf of, *clients* and written and oral contact with *clients* and their creditors.

### Policies and procedures

**11.11.5** G *CASS debt management firms* are reminded that they must, under ■ SYSC 6.1.1 R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* in this chapter.

### Checks and reconciliations of internal records

**11.11.6** G So that a *CASS debt management firm* may check that it has sufficient *money* segregated in its *client bank accounts* to meet its obligations to *clients* for whom it is undertaking *debt management activity*, it is required periodically to carry out reconciliations of its internal records and accounts to check that the total amount of *client money* that it should have segregated in *client bank accounts* is equal to the total amount of *client money* it actually has segregated in *client bank accounts*. ■ CASS 11.11.8 R to ■ CASS 11.11.23 R provide *rules* that the different types of *CASS debt management firm* are obliged to follow to meet this obligation.

## Checks of internal records: CASS small debt management firm

**11.11.7** G For a *CASS small debt management firm* to demonstrate it has maintained its records and accounts in a way envisaged by ■ CASS 11.11.3 R, it should carry out checks of its internal records and accounts that are reasonable and proportionate to its business. ■ CASS 11.11.8 R provides a rule that a *CASS small debt management firm* is obliged to follow to meet this obligation.

**11.11.8** R A *CASS small debt management firm* must undertake periodic checks of its internal accounts and records to ensure that the amount of money it holds in its *client bank accounts* is equal to the amount of *client money* that should be segregated under ■ CASS 11.9.

**11.11.9** R In carrying out the checks required by ■ CASS 11.11.8 R a *CASS small debt management firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

**11.11.10** G The checks that a *CASS small debt management firm* is required to undertake under ■ CASS 11.11.8 R include checking that its internal records and accounts accurately record the balances of *client money* held in respect of individual *clients*, and that the aggregate of those individual *client money* balances are equal to the total *client money* segregated in its *client bank accounts*. In undertaking the comparison between the internal records of balances of *client money* and the *client money* segregated in *client bank accounts*, a *firm* should use the previous day's closing *client money* balances and should compare those with other records relating to the same day. In determining an appropriate frequency for its record checks, a *firm* should consider the volume and frequency of transactions in its *client bank accounts*.

**11.11.11** G In seeking to comply with its obligation to carry out checks on its internal records and accounts, a *CASS small debt management firm* may choose to follow the steps specifically required of *CASS large debt management firms* in undertaking a *CASS large debt management firm internal client money reconciliation* and *CASS large debt management firm external client money reconciliation*. A *CASS small debt management firm* which follows that procedure is likely to be regarded by the *FCA* as having fulfilled its obligation under ■ CASS 11.11.8 R.

## CASS small debt management firms: remedying discrepancies

**11.11.12** R Where the check of its internal records and accounts that a *CASS small debt management firm* is required to undertake under ■ CASS 11.11.8 R reveals a difference between the amount of *money* it holds in its *client bank accounts*

and the amount of *client money* that should be held and segregated under ■ CASS 11.9, a *CASS small debt management firm* must:

(1) ensure that any shortfall in the amount held in its *client bank accounts* as compared to the amount that should be held there is made up by a prompt payment into the *firm's client bank accounts*;

(2) ensure that any excess in the amount held in its *client bank accounts* as compared to the amount that should be held there is promptly withdrawn from its *client bank accounts*; and

(3) ensure that any correction of a shortfall or excess of the kind referred to in (1) and (2) is carried out, at the latest, before the end of the *business day* following the day on which difference was discovered.

## CASS large debt management firms internal client money reconciliation

**11.11.13** R A *CASS large debt management firm* must, as regularly as is necessary, but no less often than every five *business days*, carry out a *CASS large debt management firm internal client money reconciliation*.

**11.11.14** R A *CASS large debt management firm internal client money reconciliation* requires a *CASS large debt management firm* to check whether its *client money* resource, as determined by ■ CASS 11.11.16 R, on the previous *business day*, was at least equal to the *client money* requirement, as determined by ■ CASS 11.11.17 R as at the close of business on that day.

**11.11.15** R In carrying out a *CASS large debt management firm internal client money reconciliation*, a *CASS large debt management firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

## Calculating the client money resource

**11.11.16** R The client money resource for *client money* held in accordance with ■ CASS 11.11.14 R is the aggregate of the balances on the *firm's client bank accounts*, as at the close of business on the previous *business day*.

## Calculating the client money requirement

**11.11.17** R (1) The *client money* requirement is the sum of:

(a) the aggregate of all individual *client* balances calculated in accordance with ■ CASS 11.11.21 R and ■ CASS 11.11.22 R;

(b) the amount of any unallocated *client money* under ■ CASS 11.9.7 R;

(c) the amount of any unidentified *client money* under ■ CASS 11.9.8 R; and

(d) any other amounts of *client money* included in the calculation under (2).

(2) For the purposes of (1)(d), the *CASS debt management firm* must consider whether there are amounts of *client money*, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its *client money* requirement and, if so, adjust the calculation accordingly.

**11.11.18** G The *client money* requirement calculated in accordance with ■ CASS 11.11.17 R should represent the total amount of *client money* a *CASS debt management firm* is required to have segregated in *client bank accounts* under the *debt management client money chapter*.

**11.11.19** G *Firms* are reminded that, under ■ CASS 11.4.3 R, if a *firm* has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its *clients* (for example, to return *client money* to the *client* or distribute it to the *client's* creditors), the sum concerned must be included in the *firm's* calculation of its *client money* requirement until the cheque or order is presented and paid.

**11.11.20** G The following *guidance* applies where a *CASS debt management firm* receives *client money* in the form of cash, a cheque or other payable order:

(1) In carrying out the calculation of the *client money* requirement, a *CASS debt management firm* may initially include the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with ■ CASS 11.9.5 R. If it does so, the *firm* should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the *firm's client money* requirement and *client money* resource.

(2) In carrying out the calculation of the *client money* requirement, a *CASS debt management firm* may alternatively exclude the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with ■ CASS 11.9.5 R. If it does so, the *firm* is reminded that it must separately record the receipt of the *money* in the *firm's* books and records under ■ CASS 11.9.5 R (3).

(3) A *CASS debt management firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* into a *client bank account* promptly and no later than on the *business day* after it receives the money (see ■ CASS 11.9.5 R).

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

(1) the amount paid by the *client* to the *CASS debt management firm*; plus

(2) the amount of any interest, and any other sums, due to the *client*;

less:

(3) the aggregate of the amount of money:

(a) paid back to that *client*; and

(b) due and payable by the *client* to the *CASS debt management firm*; and

(c) paid out to a third party for, or on behalf of, that *client*.

**11.11.22** R Where the individual *client* balance calculated in respect of an individual *client* under ■ CASS 11.11.21 R is a negative figure (because the amounts paid by or due to a *client* under ■ CASS 11.11.21 R (1) and ■ CASS 11.11.21 R (2) are less than the amounts paid out or due and payable by that *client* under ■ CASS 11.11.21 R (3), that individual *client* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in ■ CASS 11.11.17 R.

## Large debt management firms: reconciliation differences and discrepancies

**11.11.23** R When a *CASS large debt management firm internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a *CASS large debt management firm* must:

(1) identify the reason for the difference;

(2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which difference was discovered; and

(3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

## CASS large debt management firm external client money reconciliation

**11.11.24** G The purpose of the reconciliation process required by ■ CASS 11.11.25 R is to ensure the accuracy of a *firm's* internal accounts and records against those of any third parties by whom *client money* is held.

**11.11.25** R A *CASS large debt management firm* should perform a *CASS large debt management firm external client money reconciliation*:

(1) as regularly as is necessary; and

(2) no less frequently than the *CASS large debt management firm internal client money reconciliations*; and

(3) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of *approved banks* with whom *client money* is deposited.

**11.11.26** R A *CASS large debt management firm external client money reconciliation* requires a *CASS large debt management firm* to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.

**11.11.27** G The *FCA* expects a *CASS large debt management firm* which carries out transactions for its clients on a daily basis to carry out a *CASS large debt management firm external client money reconciliation* on a daily basis.

**11.11.28** R When any discrepancy is revealed by a *CASS large debt management firm external client money reconciliation*, a *CASS large debt management 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 that of the *firm*.

**11.11.29** R While a *CASS large debt management firm* is unable to resolve a discrepancy arising from the *CASS large debt management firm external client money reconciliation*, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have 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 pay its own *money* into a relevant account.

## Notification requirements



**11.11.30** R A *CASS debt management firm* must inform the *FCA* in writing without delay if:

(1) its internal records and accounts of *client money* are materially out of date or materially inaccurate so that the *firm* is no longer able to comply with the requirements in ■ CASS 11.11.1 R to ■ CASS 11.11.4 R; or

(2) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in ■ CASS 11.9.

**11.11.31** R A *CASS large debt management firm* must inform the *FCA* in writing without delay if:

(1) after having carried out a *CASS large debt management firm internal client money reconciliation* in accordance with ■ CASS 11.11.13 R it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a *client bank account* so that the *firm* is unable to comply with ■ CASS 11.11.23 R;

(2) after having carried out a *CASS large debt management firm external client money reconciliation* in accordance with ■ CASS 11.11.25 R it will

be unable to, or materially fails to, identify and correct any discrepancies in accordance with ■ CASS 11.11.28 R;

(3) it will be unable to or materially fails to conduct a *CASS large debt management firm internal client money reconciliation* in compliance with ■ CASS 11.11.13 R; or

(4) it will be unable to or materially fails to conduct a *CASS large debt management firm external client money reconciliation* in compliance with ■ CASS 11.11.25 R.

**11.11.32** G *CASS debt management firms* are also reminded of their obligation to notify the *appropriate regulator* of a significant breach of a *rule* under ■ SUP 15.3.11 R.

## 11.12 CASS 11 resolution pack

**11.12.1** G The purpose of the *CASS 11 resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in dealing with *client money* in a timely manner.

**11.12.2** R A *CASS debt management firm* which holds *client money* must maintain at all times and be able to retrieve, in the manner described in this section, a *CASS 11 resolution pack*.

**11.12.3** R A *CASS debt management firm* must include within its *CASS 11 resolution pack* all those documents referred to in ■ CASS 11.12.4 R.

**11.12.4** R The documents in ■ CASS 11.12.3 R that a *CASS debt management firm* must include within its *CASS 11 resolution pack* are:

(1) a master document containing information sufficient to retrieve each document in the *firm's CASS 11 resolution pack*;

(2) a document which identifies all the *approved banks* with whom *client money* may be deposited;

(3) a document which identifies each *appointed representative*, *field representative* or other agent of the *firm* which may receive *client money* in its capacity as the *firm's* agent;

(4) a document which identifies each *senior manager* and *director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* under the *debt management client money rules*;

(5) for all *approved banks* identified in (2) the written *client bank account acknowledgement letters* sent and received in accordance with ■ CASS 11.8.2 R; and

(6) records relating to the internal and external client money checks it is required to carry out under ■ CASS 11.11.

**11.12.5** R In relation to each document in a *CASS debt management firm's CASS 11 resolution pack* a *firm* must:

(1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and, in any event, within 48 hours of that officer's appointment; and

(2) ensure that it is able to retrieve each document as soon as practicable and, in any event, within 48 hours where it has taken a decision to do so or as a result of an *FCA* request.

**11.12.6** R

(1) A *CASS debt management firm* must ensure that it reviews the content of its *CASS 11 resolution pack* on an ongoing basis to ensure that it remains accurate.

(2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in ■ CASS 11.12.4 R, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.

**11.12.7** R A *CASS debt management firm* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, ■ CASS 11.12.2 R and ■ CASS 11.12.6 R.

## 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.

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### 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).

## CASS debt management firm client bank account acknowledgement letter template

This annex consists only of one or more forms. Forms are to be found through the following address:

*CASS debt management firm client bank account acknowledgment letter template* - CASS 11 Annex 1 R

# Guidance notes for client bank account acknowledgement letters (CASS 11.8.5G)

**Introduction**

1. This annex contains *guidance* on the use of the template *client bank account acknowledgement letters* in ■ CASS 11 Annex 1.

**General**

2. Under ■ CASS 11.8.2 R (2), *CASS debt management firms* are required to have in place a duly signed and countersigned *client bank account acknowledgement letter* for a *client bank account* before they are allowed to hold or receive *client money* in or into the account.

3. For each *client bank account* a *CASS debt management firm* is required to complete, sign and send to the *approved bank* a *client bank account acknowledgement letter* identifying that account and in the form set out in ■ CASS 11 Annex 1 (CASS debt management firm client bank account acknowledgment letter template).

4 . When completing a *client bank account acknowledgement letter* using the appropriate template, a *CASS debt management firm* is reminded that it must not amend any of the text which is not in square brackets (acknowledgment letter fixed text). A *CASS debt management firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.

**Clear identification of relevant accounts**

5. A *CASS debt management firm* is reminded that for each *client bank account* it needs to have in place a *client bank account acknowledgement letter*. As a result, it is important that it is clear to which account or accounts each *client bank account acknowledgement letter* relates. As a result, the templates in ■ CASS 11 Annex 1 require that the *client bank account acknowledgement letter* include the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each *client bank account*.

6. The title and unique identifiers included in a *client bank account acknowledgement letter* for a *client bank account* should be the same as those reflected in both the records of the *CASS debt management firm* and the relevant *approved bank*, as appropriate, for that account. Where an *approved bank's* systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

(a) the account may continue to be appropriately identified in line with the requirements of ■ CASS 11 (for example, 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct' etc); and

(b) when completing a *client bank account acknowledgement letter*, such letter must include both the long and short versions of the account title.

7. A *CASS debt management firm* should ensure that all relevant account information is contained in the space provided in the body of the *client bank account acknowledgement letter*. Nothing should be appended to a *client bank account acknowledgement letter*.

8. In the space provided in the template letters for setting out the account title and unique identifiers for each relevant account/deposit, a *CASS debt management firm* firm may include the required information in the format of the following table:

| Full account title | Unique identifier | Title reflected in [*name of approved bank*] systems |
|---|---|---|
| [*Debt Management Firm Client Bank Account*] | [*00-00-00 12345678*] | [*DM FIRM CLIENT A/C*] |

9. Where a *client bank account acknowledgement letter* is intended to cover a range of *client bank accounts*, some of which may not exist as at the date the *client bank account acknowledgement letter* is countersigned by the *approved bank*, a *CASS debt management firm* should set out in the space provided in the body of the *client bank account acknowledgement letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (e.g. with the word 'client' in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (e.g. all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in ■ CASS 11 Annex 1 which allows a *CASS debt management firm* to include the account title and a unique identifier for each relevant account, a *CASS debt management firm* should include a statement to the following effect:

> **Any account open at present or to be opened in the future which contains the term ['client'] [insert appropriate abbreviation of the term 'client' as agreed and to be reflected in the Approved Bank's systems] in its title and which may be identified with [the following [insert common unique identifier]][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].**



**Signatures and countersignatures**

10. A *CASS debt management firm* should ensure that each *client bank account acknowledgement letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or the *approved bank* may require more than one signatory).

11. A *client bank account acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in ■ CASS 11.8. However, where electronic signatures are used, a *CASS debt management firm* should consider whether, taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.

**Completing a client bank account acknowledgment letter**

12. A *CASS debt management firm* should use at least the same level of care and diligence when completing a *client bank account acknowledgement letter* as it would in managing its own commercial agreements.

13. A *CASS debt management firm* should ensure that each *client bank account acknowledgement letter* is legible (e.g. any handwritten details should be easy to read), produced on the *firm's* own letter-headed paper, dated and addressed to the correct legal entity (e.g. where the *approved bank* belongs to a group of companies).

14. A *CASS debt management firm* should also ensure each *client bank account acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).

15. A *CASS debt management firm* should similarly ensure that no square brackets remain in the text of each *client bank account acknowledgement letter* (e.g. after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the templates in ■ CASS 11 Annex 1) and that each page of the letter is numbered.

16. A *CASS debt management firm* should complete a *client bank account acknowledgement letter* so that no part of the letter can be easily altered (e.g. the letter should be signed in ink rather than pencil).

17. In respect of the *client bank account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (l) and (m) of the template *client bank account acknowledgement letters*), a *CASS debt management firm* should agree with the approved bank and reflect in the letter that the laws of a particular jurisdiction will govern the *client bank account acknowledgement letter* and that the courts of that same jurisdiction will have jurisdiction to settle any disputes arising out of, or in connection with, the *client bank account acknowledgement letter*, its subject matter or formation.

18. If a *CASS debt management firm* does not, in any *client bank account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

(a) the laws of the jurisdiction under which either the *firm* or the relevant *approved bank* are organised; or

(b) as is found in the underlying agreement/s (e.g. banking services agreement) with the relevant *approved bank*;

then the *CASS debt management firm* should consider whether it is at risk of breaching either ■ CASS 11.8.4 R (3) or, if it is a *CASS large debt management firm*, ■ CASS 11.7.2 R.

**Authorised signatories**

19. A *CASS debt management firm* is required under ■ CASS 11.8.7 R to use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

20. If an individual that has countersigned a *client bank account acknowledgement letter* does not provide the *CASS debt management firm* with sufficient evidence of his/her authority to do so then the *CASS debt management firm* is expected to make appropriate enquiries to satisfy itself of that individual's authority.

21. Evidence of an individual's authority to countersign a *client bank account acknowledgement letter* may include a copy of the *approved bank's* list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *client bank account acknowledgement letter*.

22. A *CASS debt management firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *client bank account acknowledgement letter* as the *firm* would seek when managing its own commercial arrangements.

**Third party administrators**

23. If a *CASS debt management firm* uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgement letter*, the text "[Signed by [**Name of Third Party Administrator**] on behalf of [*CASS debt management firm*]]" should be inserted to confirm that the *client bank account acknowledgement letter* was signed by the TPA on behalf of the *CASS debt management firm*.

24. In these circumstances, the *CASS debt management firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgement letter* on the *CASS debt management firm's* behalf. A *CASS debt management firm* should also ensure that the *client bank account acknowledgement letter* continues to be drafted on letter-headed paper belonging to the *CASS debt management firm*.

**Client bank accounts**

25. A *CASS debt management firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that all *client bank accounts* include the term 'client' in their title or an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition.

26. All references to the term "Client Bank Account[s]" in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.

# Chapter 12

# Commodity Futures Trading Commission Part 30 exemption order

## 12.1 Application

12.1.1 R This chapter applies to a *firm* conducting business pursuant to the *Part 30 exemption order*.

12.1.2 G United States ('US') legislation restricts the ability of non-US firms to trade on behalf of customers resident in the US ('US customers') on non-US futures and options exchanges. The relevant US regulator (the *CFTC*) operates an exemption system for *firms* authorised under the *Act*. Under the *Part 30 exemption order*, eligible *firms* may apply for confirmation of exemptive relief from Part 30 of the General Regulations under the US Commodity Exchange Act. In line with this system, both the applicant *firm* and the *FCA* must make certain written representations to the *CFTC*.

## 12.2 Treatment of client money

**12.2.1** G Under condition 2(g) of the *Part 30 exemption order*, a *firm* with exemptive relief represents to the *CFTC* that it consents to refuse to allow any US customer the option of not having its *money* treated as *client money* if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an "eligible contract participant" as defined in section 1a(18)of the Commodity Exchange Act, 7 U.S.C.

**12.2.2** G The *FCA* understands that in complying with condition 2(g) of the *Part 30 exemption order*, a *firm* is representing that it will not:

(1) make use of the opt-out arrangements in CASS 7.10.9G to CASS 7.10.13G; or

(2) conduct business to which the *client money rules* do not apply because of the exemption for *CRD credit institutions* and *approved banks* in CASS 7.10.16R to CASS 7.10.24R; or

(3) enter into any *TTCA* under CASS 7.11;

in relation to business conducted pursuant to the *Part 30 exemption order*.

### LME bond arrangements

**12.2.3** G For *firms* with exemptive relief under the *Part 30 exemption order*, the *CFTC* has issued certain no-action letters which, on the *FCA's* understanding, would allow such firms to use an *LME bond arrangement* as an alternative to complying with condition 2(g) of the *Part 30 exemption order*. Under an *LME bond arrangement*, a *firm* may arrange for a binding letter of credit to be issued to cover the 'secured amount' (as defined by section 30.7 of the General Regulations under the US Commodity Exchange Act). The letter of credit must be drawn up in a pre-specified format and may be issued for either:

(1) an omnibus account in favour of a specified trustee; or

(2) a specified *client* who is the named beneficiary.

**12.2.4** R A *firm* must not reduce the amount of, or cancel a letter of credit issued under, an *LME bond arrangement* where this will cause the *firm* to be in breach of the conditions of the *Part 30 exemption order*.

**12.2.5** R A *firm* must notify the *FCA* immediately if it arranges the issue of a letter of *credit* for a specified *client* who is the named beneficiary under an *LME bond arrangement*.

**12.2.6** G A *firm's* use of an *LME bond arrangement* does not remove the need for the *firm* to act in accordance with the *client money rules*.

# Chapter 13

# Claims management: client money

## 13.1 Application

13.1.1 R This chapter applies to a *firm* that:

(1) carries on a *regulated claims management activity*; and

(2) receives or holds *client money*.

## 13.2 Organisational requirements and responsibility for CASS operational oversight

**13.2.1** R A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *customer's* rights and prevent the use of *client money* for its own account.

**13.2.2** R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

**13.2.3** R A *firm* must allocate to a *director* or *senior manager* responsibility for:

(1) oversight of the *firm's* operational compliance with ■ CASS 13;

(2) reporting to the *firm's governing body* in respect of that oversight; and

(3) completing and submitting the *client money* parts of a CMC001 return in accordance with ■ SUP 16.25.3R to ■ SUP 16.25.8R.

**13.2.4** R (1) A *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with ■ CASS 13.2.3R.

(2) But a *firm* must make and retain such a record only where:

(a) there is a *person* in that *firm* who performs the *compliance oversight function*; and

(b) it allocates responsibility in accordance with ■ CASS 13.2.3R to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.

(3) A *firm* must ensure that a record made under this *rule* is retained for a period of five years after it is made.

**13.2.5** G (1) This paragraph ■ CASS 13.2.5G explains how ■ CASS 13.2.3R fits into the senior managers and certification regime. This paragraph does not deal with a *firm* that is a *PRA-authorised person*.

(2) The senior managers and certification regime is summarised in ■ SYSC 23.3 (Overview of the senior managers and certification regime).

(3) The function in ■ CASS 13.2.3R is not a separate *controlled function* and performing that function does not require approval as an *approved person*.

(4) There are three elements of the senior managers and certification regime that are particularly relevant to ■ CASS 13.2.3R, although they do not all apply to all *SMCR firms*:

(a) a *firm's* obligation to allocate certain responsibilities to its *SMF managers* (see ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities));

(b) a *firm's* obligation to ensure that one or more of its *SMF managers* have overall responsibility for each of its activities, business areas and management functions (see ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility)); and

(c) the certification regime (the certification regime is explained in ■ SYSC 27 (Senior managers and certification regime: Certification regime) and ■ SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) explains that the certification regime comes into force sometime after other parts of the senior managers and certification regime).

(5) (a) This paragraph (5) explains how ■ CASS 13.2.3R applies to a *limited scope SMCR firm*. Most *firms* carrying on a *regulated claims management activity* will be *limited scope SMCR firms*.

(b) Neither ■ SYSC 24 nor ■ SYSC 26 applies to a *limited scope SMCR firm*.

(c) The *firm* may choose to allocate the function in ■ CASS 13.2.3R to an *SMF manager*.

(d) The *firm* may instead choose to allocate the function in ■ CASS 13.2.3R to someone who is not an *SMF manager*.

(e) Where (d) applies, the *person* performing the function in ■ CASS 13.2.3R will fall into the certification regime. The function in ■ CASS 13.2.3R will be the *CASS* oversight *FCA certification function* in ■ SYSC 27.8.1R.

(6) (a) This paragraph (6) explains how ■ CASS 13.2.3R applies to a *core SMCR firm*.

(b) ■ SYSC 24 applies to a *core SMCR firm* but ■ SYSC 26 does not.

(c) The *firm* must allocate responsibility for the *firm's* compliance with *CASS* to one of its *SMF managers* (see ■ SYSC 24.2.1R). That responsibility is an "*FCA-prescribed senior management responsibility*". The full list of *FCA-prescribed senior management responsibilities* is in the table in ■ SYSC 24.2.6R.

(d) Although the *CASS* function in ■ SYSC 24.2.1R is different from the function in ■ CASS 13.2.3R, the *firm* may allocate the function in ■ CASS 13.2.3R to the *SMF manager* in ■ CASS 13.2.5G(6)(c).

(e) The *firm* may choose to allocate the function in ■ CASS 13.2.3R to someone who is not an *SMF manager*. If so:

(i) that *person* will be subject to the certification regime described in ■ SYSC 27 (Senior managers and certification regime: Certification regime);

(ii) that *person* will be subject to supervision by the *SMF manager* in (c); and

(iii) the function in ■ CASS 13.2.3R will be the *CASS* oversight *FCA certification function* in ■ SYSC 27.8.1R.

(7) (a) This paragraph (7) explains how ■ CASS 13.2.3R applies to an *enhanced scope SMCR firm*.

(b) Both ■ SYSC 24 and ■ SYSC 26 apply to an *enhanced scope SMCR firm*.

(c) ■ CASS 13.2.5G(6) applies to an *enhanced scope SMCR firm*.

(d) In addition, the *firm* may allocate the *CASS FCA-prescribed senior management responsibility* to an *SMF manager* who does not perform any other function coming within the *FCA* regime for *SMF managers* in *SMCR firms*. See ■ SUP 10C0.7 (Other overall responsibility function (SMF18)) and ■ SUP 10C.8.1R (Other local responsibility function (SMF22)) for details. Where this is the case, the manager will be performing the *other overall responsibility function* or the *other local responsibility function*.

(8) A *firm* may only give the function in ■ CASS 13.2.3R to a *director* or *senior manager*. It is likely that an *SMF manager* will satisfy this condition. If the *firm* wants to give the function to someone else, it should make sure that it meets the requirements of ■ CASS 13.2.3R as well as of the senior managers and certification regime.

## 13.3 Statutory trust

**13.3.1** R A *firm* receives and holds *client money* as trustee on the following terms:

(1) for the purposes and on the terms of the *claims management client money rules* and the *claims management client money distribution rules*;

(2) subject to (3), for the *customers* for whom that *money* is held, according to their respective interests in it;

(3) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and

(4) after all valid claims and costs under (2) and (3) have been met, for the *firm* itself.

## 13.4 Selecting an approved bank at which to hold client money

**13.4.1** G A *firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.

**13.4.2** R Before a *firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the *firm* to hold *client money* at the *approved bank* concerned.

**13.4.3** R A *firm* must consider the risks associated with holding all *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.

**13.4.4** G In complying with ■ CASS 13.4.3R, a *firm* should consider as appropriate, together with any other relevant matters:

(1) the amount of *client money* held by the *firm*;

(2) the amount of *client money* the *firm* anticipates holding at the *approved bank*; and

(3) the creditworthiness of the *approved bank*.

**13.4.5** G A *firm* can demonstrate compliance with ■ CASS 13.4.2R by checking that the *person* it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm's* attention to cause it to believe that such *person* is not an appropriate place at which to hold *client money*.

## 13.5 Client bank account acknowledgement letters

**13.5.1** G The main purposes of a *client bank account acknowledgement letter* are:

(1) to put the *approved bank* on notice of a *firm's clients'* interests in *client money* that has been deposited with such *person*;

(2) to ensure that the *client bank account* has been opened in accordance with ■ CASS 13.6.3R, and is distinguished from any account containing money that belongs to the *firm*; and

(3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to such *person* (or *person* connected to such *person*).

### Requirement for and content of client bank account acknowledgement letters

**13.5.2** R (1) For each *client bank account*, a *firm* must, in accordance with ■ CASS 13.5.4R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the *approved bank* with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.

(2) Subject to ■ CASS 13.5.6R, a *firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the *approved bank*. The letter must not have been inappropriately redrafted and should clearly identify the *client bank account*.

**13.5.3** R In drafting *client bank account acknowledgement letters* under ■ CASS 13.5.2R a firm is required to use the relevant template in ■ CASS 13 Annex 1R.

**13.5.4** R When completing a *client bank account acknowledgement letter* under ■ CASS 13.5.2R(1) a *firm*:

(1) must not amend any of the *acknowledgement letter fixed text*;

(2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and

(3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.

**13.5.5** G ■ CASS 13 Annex 2G contains *guidance* on using the template *client bank account acknowledgement letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.

## Countersignature by the bank

**13.5.6** R

(1) If, on countersigning and returning the *client bank account acknowledgement letter* to a *firm*, the relevant *approved bank* has also:

(a) made amendments to any of the *acknowledgement letter fixed text*; or

(b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;

the *client bank account acknowledgement letter* will have been inappropriately redrafted for the purposes of ■ CASS 13.5.2R(2).

(2) Amendments made to the *acknowledgement letter variable text*, in the *client bank account acknowledgement letter* returned to a *firm* by the relevant *approved bank*, will not have the result that the letter has been inappropriately redrafted if those amendments:

(a) do not affect the meaning of the *acknowledgement letter fixed text*;

(b) have been specifically agreed with the *firm*; and

(c) do not cause the *client bank account acknowledgement letter* to be inaccurate.

**13.5.7** R A *firm* must use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

## Retention of client bank account acknowledgement letters

**13.5.8** R A *firm* must retain each countersigned *client bank account acknowledgement letter* it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last *client bank account* to which the acknowledgment letter relates is closed.

**13.5.9** R A *firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*).

## Review and replacement of client bank account acknowledgement letters

**13.5.10** R A *firm* must, periodically (at least annually, and whenever it becomes aware that something referred to in a *client bank account acknowledgement letter* has changed) review each of its countersigned *client bank account acknowledgement letters* to ensure that they remain accurate.

**13.5.11** R Whenever a *firm* finds a countersigned *client bank account acknowledgement letter* to contain an inaccuracy, the *firm* must promptly draw up a new replacement *client bank account acknowledgement letter* under ■ CASS 13.5.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank*.

**13.5.12** G Under ■ CASS 13.5.10R, a *firm* should obtain a replacement *client bank account acknowledgement letter* whenever:

(1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or

(2) it becomes aware of an error or misspelling in the letter.

**13.5.13** R If a *firm's client bank account* is transferred to another *approved bank*, the *firm* must promptly draw up a new *client bank account acknowledgement letter* under ■ CASS 13.5.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank* within 20 *business days* of the *firm* sending it to that *person*.

## 13.6 Segregation and the operation of client money accounts

### Requirement to segregate

**13.6.1** R A *firm* must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an *approved bank*, rather than being first received into the *firm's* own account and then segregated.

**13.6.2** G A *firm* should arrange for clients and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.

**13.6.3** R A *firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.

**13.6.4** R Cheques received by a *firm*, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.

**13.6.5** R Where a *firm* receives *client money* in the form of cash, a cheque or other payable order, it must:

(1) pay the *money* into a *client bank account* in accordance with ■ CASS 13.6.1R promptly and no later than the *business day* after the day on which it receives the *money*;

(2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle* 10; and

(3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of ■ CASS 13.10 (Records, accounts and reconciliations).

**13.6.6** R If a *firm* receives *money* (either in a *client bank account* or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:

(1) take all necessary steps to identify the *money* as either *client money* or its own *money*; and

(2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as "unidentified client money" while it performs the necessary steps under (1).

**13.6.7** G If a *firm* is unable to identify *money* that it has received as either *client money* or its own *money* under ■ CASS 13.6.6R(1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A *firm* should have regard to its fiduciary duties when considering such matters.

**13.6.8** G A *firm* must ensure that *client money* received by its agents is:

(1) received directly into a *client bank account* of the *firm*; or

(2) if it is received in the form of a cheque or other payable order:

(a) paid into a *client bank account* of the *firm* promptly and, in any event, no later than the next *business day* after receipt; or

(b) forwarded to the *firm* promptly and, in any event, so that it is received by the *firm* no later than the close of the third *business day* following the receipt of the *money* from the *customer*; or

if it is received in the form of cash, paid into a *client bank account* of the *firm* promptly and, in any event, no later than the next *business day* after receipt.

## Mixed remittance

**13.6.9** R If a *firm* receives a *mixed remittance* it must:

(1) pay the full sum into a *client bank account* promptly and in accordance with ■ CASS 13.6.1R to ■ 13.6.5R; and

(2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the money that is not *client money* out of the *client bank account*.

## Interest

**13.6.10** R A *firm* must pay a *client* any interest earned on *client money* held for that *client*.

## 13.7 Money due and payable to the firm

**13.7.1** R *Money* is not *client money* when it is or becomes properly due and payable to the *firm* for its own account.

**13.7.2** G

(1) The circumstances in which *money* may be or become due and payable to the *firm* for its own account could include:

(a) when fees and/or third party disbursements have become due and payable to the *firm* for its own account under the agreement between the *customer* and the *firm*; and

(b) when *money* recovered for a *customer* or a sum in respect of damages, compensation or settlement of a *claim* is paid into a *client bank account* and the *firm* has agreed with the *client* that a proportion of the sum is to be paid to the *firm* for fees or in respect of liabilities the *firm* has incurred on behalf of the *customer*.

(2) The circumstances in which *money* is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

**13.7.3** G *Firms* are reminded that when entering into or varying contractual arrangements with *customers* regarding circumstances in which *money* becomes properly due and payable to the *firm* for its own account, *firms* should comply with any relevant obligations to *customers* including the *client's best interests rule* and requirements under the *Unfair Terms Regulations* and the Consumer Rights Act 2015.

## 13.8 Money due to a client or third party.

**13.8.1** R *Client money* in respect of *money* recovered for a *customer* or *money* in respect of damages, compensation or settlement of a *claim* received into a *client bank account* must be paid to the *customer*, or a duly authorised representative of the *customer*, as soon as reasonably practicable after receipt and, in any event, a *firm* must take steps within two *business days* of receipt to make such a payment.

**13.8.2** R *Money* received from a *customer* in respect of third party disbursements which is due and payable to the third party in accordance with the terms of the contractual arrangements between the parties should be paid to the third party as soon as reasonably practicable after receipt.

## 13.9 Discharge of fiduciary duty

**13.9.1** G ■ CASS 13 provides important safeguards for the protection of *client* money held by *firms* that sit alongside the fiduciary duty owed by *firms* in relation to *client money*. ■ CASS 13.9.2R to ■ 13.9.3R provide for when money ceases to be *client money* for the purposes of ■ CASS 13 and the fiduciary duty which *firms* owe to *clients* in relation to *client money*.

**13.9.2** R *Money* ceases to be *client money* if:

(1) it is paid to the *customer*, or a duly authorised representative of the *customer*; or

(2) it is:

(a) paid to a third party on the instruction of the *customer*, or with the specific consent of the *customer*; or

(b) paid to a third party further to an obligation on the *firm* under any applicable law; or

(3) it is paid into an account of the *customer* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *customer*; or

(4) it is due and payable to the *firm* for its own account (see ■ CASS 13.7.1R to ■ 13.7.2G); or

(5) it is paid to the *firm* as an excess in the *client bank account* (see ■ CASS 13.10.15R(3)).

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

## 13.10 Records, accounts and reconciliations

### Records and accounts

**13.10.1** R

(1) A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *customer* from *client money* held for any other *customer*, and from its own *money*.

(2) A *firm* must allocate in its books and records any *client money* it receives to an individual *customer* promptly and, in any case, no later than two *business days* following the receipt.

(3) Pending a *firm's* allocation of a receipt of *client money* to an individual *customer* under (2), it must record the received *client money* in its books and records as "unallocated client money".

**13.10.2** G

In accordance with ■ CASS 13.10.1R, a *firm* must maintain internal records and accounts of the *client money* it holds (for example, a cash book and client ledger accounts). These internal records are separate to any external records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

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**13.10.3** R

A *firm* must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *customers*.

**13.10.4** R

A *firm* must maintain up-to-date records that detail all payments received for, or on behalf of, *customers* and all payments to, from, or made on behalf of, *customers*.

### Internal client money reconciliation

**13.10.5** R

A *firm* must carry out an *internal client money reconciliation* each *business day*.

**13.10.6** R

An *internal client money reconciliation* requires a *firm* to check whether its *client money* resource, as determined by ■ CASS 13.10.8R, on the previous *business day*, was at least equal to the *client money* requirement, as determined by ■ CASS 13.10.9R, as at the close of business on that day.

**13.10.7** R In carrying out an *internal client money reconciliation*, a *firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

## Calculating the client money resource

**13.10.8** R The *client money* resource for *client money* held in accordance with ■ CASS 13.10.6R is the aggregate of the balances on the *firm's client bank accounts*, as at the close of business on the previous *business day*.

## Calculating the client money requirement

**13.10.9** R

(1) The *client money* requirement is the sum of:

(a) the aggregate of all individual *customer* balances calculated in accordance with ■ CASS 13.10.13R and ■ CASS 13.10.14R;

(b) the amount of any unallocated *client money* under ■ CASS 13.10.1R(3);

(c) the amount of any unidentified *client money* under ■ CASS 13.6.6R(2)R; and

(d) any other amounts of *client money* included in the calculation under (2).

(2) For the purposes of (1)(d), the *firm* must consider whether there are amounts of *client money*, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its *client money* requirement and, if so, adjust the calculation accordingly.

**13.10.10** G The *client money* requirement calculated in accordance with ■ CASS 13.10.9R should represent the total amount of *client money* a *firm* is required to have segregated in *client bank accounts* under ■ CASS 13.

**13.10.11** G *Firms* are reminded that, under ■ CASS 13.9.3R, if a *firm* has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its *clients* (for example, to return *client money* to the *client*), the sum concerned must be included in the *firm's* calculation of its *client money* requirement until the cheque or order is presented and paid.

**13.10.12** G

(1) The following *guidance* applies where a *firm* receives *client money* in the form of cash, a cheque or other payable order.

(2) In carrying out the calculation of the *client money* requirement, a *firm* may initially include the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with ■ CASS 13.6.5R. If it does so, the *firm* should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the *firm's client money* requirement and *client money* resource.

(3) In carrying out the calculation of the *client money* requirement, a *firm* may alternatively exclude the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with ■ CASS 13.6.5R. If it does so, the *firm* is reminded that it must separately record the receipt of the *money* in the *firm's* books and records under ■ CASS 13.6.5R(3).

(4) A *firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* into a *client bank account* promptly and no later than on the *business day* after it receives the *money* (see ■ CASS 13.6.5R).

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

(1) the amount received for or on behalf of the *customer* by the *firm*; plus

(2) the amount of any interest, and any other sums, due from the *firm* to the *customer*; less:

(3) the aggregate of the amount of *money*:

(a) paid to that *customer* by the *firm*; and

(b) due and payable by the *customer* to the *firm*; and

(c) due by the *customer* to a third party in accordance with the contractual arrangements in place between the *firm* and the *customer*.

**13.10.14** R Where the individual *customer* balance calculated in respect of an individual *client* under ■ CASS 13.10.13R is a negative figure (because the amounts received for or on behalf of, or due, to a *client* under ■ CASS 13.10.13R(1) and ■ CASS 13.10.13R(2) are less than the amounts paid by, or due and payable by, that *customer* under ■ CASS 13.10.13R(3), that individual *customer* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in ■ CASS 13.10.9R.



## Reconciliation differences and discrepancies

**13.10.15** R When an *internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a *firm* must:

(1) identify the reason for the difference;

(2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered; and

(3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

## External client money reconciliation

**13.10.16** G The purpose of the reconciliation process required by ■ CASS 13.10.17R is to ensure the accuracy of a *firm's* internal accounts and records against those of any third parties by whom *client money* is held.

**13.10.17** R A *firm* must perform an *external client money reconciliation*:

(1) each *business day*; and

(2) as soon as reasonably practicable after the relevant *internal client money reconciliation*;

to ensure the accuracy of its internal accounts and records by comparing its internal accounts records against those of *approved banks* with whom *client money* is deposited.

**13.10.18** G An *external client money reconciliation* requires a *firm* to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.

**13.10.19** R When any discrepancy is revealed by an *external client money reconciliation*, a *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 system of the party providing the statement or confirmation and that of the *firm*.

**13.10.20** R While a *firm* is unable to resolve a discrepancy arising from an *external client money reconciliation*, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have 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 pay its own *money* into a relevant *client bank account*.



## Notification requirements

**13.10.21** R A *firm* must inform the *FCA* in writing without delay if:

(1) its internal records and accounts of client money are materially out of date or materially inaccurate so that the firm is no longer able to comply with the requirements in ■ CASS 13.10.1R to ■ CASS 13.10.4R; or

(2) it will be unable to or materially fails to conduct an *internal client money reconciliation* in compliance with ■ CASS 13.10.5R; or

(3) after having carried out an *internal client money reconciliation* in accordance with ■ CASS 13.10.5R it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a *client bank account* so that the *firm* is unable to comply with ■ CASS 13.10.15R; or

(4) it will be unable to or materially fails to conduct an *external client money reconciliation* in compliance with ■ CASS 13.10.17R; or

(5) after having carried out an *external client money reconciliation* in accordance with ■ CASS 13.10.17R it will be unable to, or materially fails to, identify the reason for any discrepancies and correct them in accordance with ■ CASS 13.10.19R; or

(6) it becomes aware that, at any time in the preceding 12 *months*, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in ■ CASS 13.6.

## 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).

## CASS client bank account acknowledgement letter template

[Letterhead of *firm* subject to ■ CASS 13.5.3R, including full name and address of *firm*]

[Name and address of *approved bank*]

[*Date*]

**Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)**

We refer to the following [current/deposit account[s]] which [name of *firm*], regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), ("us", "we" or "our") has opened or will open with [name of *approved bank*] ("you" or "your"):

> [Insert the account title[s], the account unique identifier[s] (for example, as relevant, sort code and account number) and (if applicable) any abbreviated name of the account[s] as reflected in the *approved bank's* systems]

([collectively,] the "Client Bank Account[s]").

In relation to [each of] the Client Bank Account[s] identified above you acknowledge that we have notified you that:

> (a)we are under an obligation to keep money we hold belonging to our clients separate from our own money;
>
> (b)we have opened or will open the Client Bank Account for the purpose of depositing money with you on behalf of our clients; and
>
> (c)we hold all money standing to the credit of the Client Bank Account in our capacity as trustee under the laws applicable to us.

In relation to [each of] the Client Bank Account[s] identified above you agree that:

> (d)you do not have any recourse or right against money in the Client Bank Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Bank Account with any other account and any right of set-off or counterclaim against money in the Client Bank Account;
>
> (e) you will title, or have titled, the Client Bank Account as stated above and that such title is different to the title of any other account containing money that belongs to us or to any third party; and
>
> (f) you are required to release on demand all money standing to the credit of the Client Bank Account, upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy, (or similar procedure) in any relevant jurisdiction, except for any properly incurred charges or liabilities owed to you on, and arising from the operation of, the Client Bank Account, provided that you have a contractual right to retain such money and that this right is notwithstanding (a) to (c) above and without breach of your agreement to (d) above.

We acknowledge that:

(g)you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Client Bank Account[s].

You and we agree that:

(h)the terms of this letter will remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;

(i)this letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter;

(j)in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement will prevail;

(k)no variation to the terms of this letter will be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;

(l)this letter will be governed by the laws of [*insert appropriate jurisdiction*]; and

(m)the courts of [*insert same jurisdiction as previous*] will have jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [name of *firm*]

x_____

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [name of *approved bank*]

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: [insert signatory's phone number and email address]

Date:

## Guidance notes for client bank account acknowledgement letters (CASS 13.5.5G)

Introduction

1.This annex contains *guidance* on the use of the template *client bank account acknowledgement letters* in ■ CASS 13 Annex 1R.

General

2.Under ■ CASS 13.5.2R(2), *firms* are required to have in place a duly signed and countersigned *client bank account acknowledgement letter* for a *client bank account* before they are allowed to hold or receive *client money* in or into the account.

3.For each *client bank account* a *firm* is required to complete, sign and send to the *approved bank* a *client bank account acknowledgement letter* identifying that account and in the form set out in ■ CASS 13 Annex 1R (CASS claims management firm client bank account acknowledgment letter template).

4.When completing a *client bank account acknowledgement letter* using the appropriate template, a *firm* is reminded that it must not amend any of the text which is not in square brackets (acknowledgment letter fixed text). A *firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.

Clear identification of relevant accounts

5.A *firm* is reminded that for each *client bank account* it needs to have in place a *client bank account acknowledgement letter*. As a result, it is important that it is clear to which account or accounts each *client bank account acknowledgement letter* relates. As a result, the template in ■ CASS 13 Annex 1R requires that the *client bank account acknowledgement letter* includes the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each *client bank account*.

6.The title and unique identifiers included in a *client bank account acknowledgement letter* for a *client bank account* should be the same as those reflected in both the records of the *firm* and the relevant *approved bank*, as appropriate, for that account. Where an *approved bank's* systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

(a)the account may continue to be appropriately identified in line with the requirements of ■ CASS 13 (for example, 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct' etc); and

(b)when completing a *client bank account acknowledgement letter*, such letter must include both the long and short versions of the account title.

7.A *firm* should ensure that all relevant account information is contained in the space provided in the body of the *client bank account acknowledgement letter*. Nothing should be appended to a *client bank account acknowledgement letter*.

8.In the space provided in the template letter for setting out the account title and unique identifiers for each relevant account/deposit, a *firm* may include the required information in the format of the following table:

| Full account title | Unique identifier | Title reflected in [*name of approved bank*] systems |
|---|---|---|
| [*Claims Management Firm Client Bank Account*] | [*00-00-00 12345678*] | [*CM FIRM CLIENT A/C*] |

9.Where a *client bank account acknowledgement letter* is intended to cover a range of *client bank accounts*, some of which may not exist as at the date the *client bank account acknowledgement letter* is countersigned by the *approved bank*, a *firm* should set out in the space provided in the body of the *client bank account acknowledgement letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (e.g. with the word 'client' in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (e.g. all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in ■ CASS 13 Annex 1R which allows a *firm* to include the account title and a unique identifier for each relevant account, a *firm* should include a statement to the following effect:

> **Any account open at present or to be opened in the future which contains the term ['client'] [insert appropriate abbreviation of the term 'client' as agreed and to be reflected in the Approved Bank's systems] in its title and which may be identified with [the following [insert common unique identifier]][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].**

Signatures and countersignatures

10.A *firm* should ensure that each *client bank account acknowledgement letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or the *approved bank* may require more than one signatory).

11.A *client bank account acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in ■ CASS 13.5. However, where electronic signatures are used, a *firm* should consider whether, taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.



Completing a client bank account acknowledgment letter

12.A *firm* should use at least the same level of care and diligence when completing a *client bank account acknowledgement letter* as it would in managing its own commercial agreements. 13.A *firm* should ensure that each *client bank account acknowledgement letter* is legible (e.g. any handwritten details should be easy to read), produced on the *firm's* own letter-headed paper, dated and addressed to the correct legal entity (e.g. where the *approved bank* belongs to a group of companies).14.A *firm* should also ensure each *client bank account acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).15.A *firm* should similarly ensure that no square brackets remain in the text of each *client bank account acknowledgement letter* (e.g. after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the template in ■ CASS 13 Annex 1R) and that each page of the letter is numbered.16.A *firm* should complete a *client bank account acknowledgement letter* so that no part of the letter can be easily altered (e.g. the letter should be signed in ink rather than pencil).17.In respect of the *client bank account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (11) and (12) of the template *client bank account acknowledgement letters*), a *firm* should agree with the approved bank and reflect in the letter that the laws of a particular jurisdiction will govern the *client bank account acknowledgement letter* and that the courts of that same jurisdiction will have jurisdiction to settle any disputes arising out of, or in connection with, the *client bank account acknowledgement letter*, its subject matter or formation.18.If a *firm* does not, in any *client bank account*

*acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

(a)the laws of the jurisdiction under which either the *firm* or the relevant *approved bank* are organised; or

(b)as is found in the underlying agreement/s (e.g. banking services agreement) with the relevant *approved bank*;

then the *firm* should consider whether it is at risk of breaching ■ CASS 13.5.4R(3) or ■ CASS 13.4.2R.Authorised signatories

19 .A *firm* is required under ■ CASS 13.5.7R to use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*. 20.If an individual that has countersigned a *client bank account acknowledgement letter* does not provide the *firm* with sufficient evidence of their authority to do so then the *firm* is expected to make appropriate enquiries to satisfy itself of that individual's authority.21.Evidence of an individual's authority to countersign a *client bank account acknowledgement letter* may include a copy of the *approved bank's* list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *client bank account acknowledgement letter*.22.A *firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *client bank account acknowledgement letter* as the *firm* would seek when managing its own commercial arrangements.Third party administrators

23.If a *firm* uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgement letter*, the text "[Signed by [**Name of Third Party Administrator**] on behalf of [*firm*]]" should be inserted to confirm that the *client bank account acknowledgement letter* was signed by the TPA on behalf of the *firm*. 24.In these circumstances, the *firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgement letter* on the *firm's* behalf. A *firm* should also ensure that the *client bank account acknowledgement letter* continues to be drafted on letter-headed paper belonging to the *firm*.Client bank accounts

25.A *firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that all *client bank accounts* include the term 'client' in their title or an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition. 26.All references to the term "Client Bank Account[s]" in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.

# Chapter 14

# Temporary permissions regime – client assets rules

## 14.1 General application

### Who?

**14.1.1** R This chapter only applies to a *TP firm* that has not *failed*.

### What?

**14.1.2** R Unless otherwise stated, the *rules* in ■ CASS 14 apply:

(1) in relation to:

(a) a *TP firm's* activities to which ■ CASS 7 applies as a result of ■ GEN 2.2.26R, but subject to ■ CASS 14.1.3R; and

(b) a *TP firm's* activities to which ■ CASS 5 or ■ CASS 6 applies as a result of ■ GEN 2.2.26R; and

(2) where those activities are carried on in reliance on the *TP firm's temporary permission*.

**14.1.3** R ■ CASS 14 does not apply in relation to a *TP firm's* activities to which ■ CASS 7 applies if, during the period for which it is has a *temporary permission*, the *TP firm* does not hold any *client money* for the purposes of the *rules* in ■ CASS 7 that apply as a result of ■ GEN 2.2.26R.

**14.1.4** G ■ CASS 14.1.3R may, for example, be relevant to a *TP firm* that can apply the exclusion from the definition of *client money* at ■ CASS 7.10.16R(1) (credit institutions) or at ■ CASS 7.11.1R(4) (title transfer collateral arrangements) throughout the period.

**14.1.5** G (1) ■ CASS 14 does not apply in relation to a *TP firm's* activities which are carried on other than in reliance on its *temporary permission*. It only applies in relation to the part of its *Part 4A permission* that the *TP firm* is treated as having under regulation 8, 11, 28 or 34 of the *EU Exit Passport Regulations*.

(2) For example, where a *TP firm* had *Part 4A permission* immediately before *IP completion day* to *act as trustee or depositary of an AIF* or to *act as trustee or depositary of a UCITS*, and continues to hold that *permission*, the *rules* applying to activities under that part of its *Part 4A permission* are not affected by its *temporary permission* because of ■ GEN 2.2.26R(1) (see also the guidance at ■ GEN 2.2.37G(3)). In relation to those activities, it should continue to comply with the applicable *rules* in *CASS*. It may also consider making the election at

■ CASS 14.3.6R in relation to its activities that are carried on in reliance on the *TP firm's* temporary permission.

## Where?

**14.1.6** R The *rules* in ■ CASS 14 apply in relation to a *TP firm's* activities described at ■ CASS 14.1.2R wherever they are carried on.

**14.1.7** G ■ CASS 14.1.6R means that the rules in ■ CASS 14 apply both to activities carried on from a *UK branch* and activities carried on other than from a *UK branch* into the *UK*.

## 14.2 Temporary permission CASS firm classification

**14.2.1** R

(1) Subject to paragraphs (2) to (5), this section applies only to a *TP firm* to which either or both of ■ CASS 6 and ■ CASS 7 apply as a result of ■ GEN 2.2.26R.

(2) In relation to a *TP firm* to which both ■ CASS 5 and ■ CASS 7 (Client money rules) apply as a result of ■ GEN 2.2.26R, this section does not apply in relation to *client money* that the *TP firm* holds in accordance with ■ CASS 5 as a result of ■ GEN 2.2.26R.

(3) The *rules* in this section apply to a *TP firm* even if at the date of the determination or, as the case may be, the notification required under them, either or both of ■ CASS 6 and ■ CASS 7 do not apply to it, provided that:

(a) either or both of those chapters applied to it as a result of ■ GEN 2.2.26R during part or all of the previous calendar year; or

(b) it projects that either or both will apply to it as a result of ■ GEN 2.2.26R in the current calendar year.

(4) The *rules* in this section do not apply to a *TP firm* to which, as a result of ■ GEN 2.2.26R, only ■ CASS 6 applies, applied or is projected to apply, merely because it is, was, or is projected to be a *firm* which *arranges safeguarding and administration of assets*.

(5) The *rules* in this section do not apply to a *TP firm* that has notified the *FCA* of an election made under ■ CASS 14.3.6R.

**14.2.2** G

This section does not apply to a *TP firm* to which, as a result of ■ GEN 2.2.26R, ■ CASS 5 applies but neither ■ CASS 6 nor ■ CASS 7 applies.

**14.2.3** G

The frequency of a *TP firm's* reporting obligations under ■ CASS 14.3 depends on the 'CASS firm type' within which a *TP firm* falls. The 'CASS firm types' are defined in accordance with ■ CASS 14.2.8R.

**14.2.4** R

(1) A *TP firm* must once every year, and by the time it is required to make a notification in accordance with ■ CASS 14.2.9R, determine whether it is a *CASS large TP firm*, *CASS medium TP firm* or a *CASS small TP firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in ■ CASS 14.2.8R.

(2) For the purpose of determining its 'CASS firm type' in accordance with ■ CASS 14.2.8R, a *TP firm* must:

(a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year ending on 31 December, and use that figure to determine its 'CASS firm type';

(b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year, and use that figure to determine its 'CASS firm type'; but

(c) in either case, exclude from its calculation any *client money* held in accordance with ■ CASS 5.

**14.2.5** G For the purposes of ■ CASS 14.2.4R a *TP firm* should only include *client money* and *safe custody assets* that it holds (or is projected to hold) in relation to the *TP firm's* activities which are carried on (or projected to be carried on) in reliance of the *firm's temporary permission*. It should not include *client money* and *safe custody assets* that it holds in reliance of any authorisation in its *Home State*.

**14.2.6** R For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given day during a calendar year a *TP firm* must:

(1) in complying with ■ CASS 14.2.4R(2)(a), base its calculation on the reconciliation performed in accordance with ■ CASS 7.15.20R during the previous year;

(2) in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or those *safe custody assets* into sterling at the previous day's closing spot exchange rate; and

(3) in relation to *safe custody assets* only, calculate their total value using the previous day's closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

**14.2.7** R (1) Notwithstanding ■ CASS 14.2.4R, provided that the conditions in (2) are satisfied a *TP firm* may elect to be treated:

(a) as a *CASS medium TP firm*, in the case of a *TP firm* that is classed by the application of the limits in ■ CASS 14.2.8R as a *CASS small TP firm*; and

(b) as a *CASS large TP firm*, in the case of a *TP firm* that is classed by the application of the limits in ■ CASS 14.2.8R as a *CASS medium TP firm*.

(2) The conditions to which (1) refers are that in either case:

(a) the election is notified to the *FCA* by email;

(b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and

(c) the *FCA* has not objected.

**14.2.8** R CASS firm types

| CASS firm type | Highest total amount of *client money* held during the *TP firm's* last calendar year or as the case may be that it projects that it will hold during the current calendar year | Highest total value of *safe custody assets* held by the *TP firm* during the *TP firm's* last calendar year or as the case may be that it projects that it will hold during the current calendar year |
|---|---|---|
| *CASS large TP firm* | more than £1 billion | more than £100 billion |
| *CASS medium TP firm* | an amount equal to or greater than £1 million and less than or equal to £1 billion | an amount equal to or greater than £10 million and less than or equal to £100 billion |
| *CASS small TP firm* | Less than £1 million | Less than £10 million |

**14.2.9** R Once every calendar year a *TP firm* must notify to the *FCA* by email the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the day specified in (1) to (4):

(1) if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January;

(2) if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *TP firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *TP firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth business day of January; or

(3) in any other case, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *TP firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the firm begins to hold *client money* or *safe custody assets*; and

(4) in every case, of its 'CASS firm type' classification, notification of which must be made at the same time the *TP firm* makes the notification under (1), (2) or (3).

**14.2.10** R For the purpose of the annual notification to which ■ CASS 14.2.9R refers, a *TP firm* must apply the calculation rule in ■ CASS 14.2.6R.

**14.2.11** R For the purpose of ■ CASS 14.2.9R(1), the *FCA* will treat that obligation as satisfied if a *TP firm* submitted a *TPCAR* for each period within the previous calendar year in compliance with the *rules* in ■ CASS 14.3.

**14.2.12** R A *TP firm's* 'CASS firm type' and any change to it takes effect if the *TP firm*:

(1) notifies the *FCA* in accordance with ■ CASS 14.2.9R(1) or ■ CASS 14.2.9R(2), on 1 February following the notification; or

(2) notifies the *FCA* in accordance with ■ CASS 14.2.9R(3), on the day it begins to hold *client money* or *safe custody assets*; or

(3) makes an election under ■ CASS 14.2.7R(1), and provided the conditions in ■ CASS 14.2.7R(2) are satisfied, on the day the notification made under ■ CASS 14.2.7R(2)(a) states that the election is intended to take effect.

**14.2.13** G Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Client Assets TP Firm Classification".

## 14.3 Temporary Permission Client Assets Return

**14.3.1** R

(1) A *TP firm* must submit a completed *TPCAR* to the *FCA* by email for each reporting period specified in ■ CASS 14.3.3R.

(2) The *TP firm* must submit the *TPCAR* to the *FCA* by the deadline specified in ■ CASS 14.3.4R.

(3) A *TPCAR* must be completed using the template specified at ■ CASS 14 Annex 1R.

**14.3.2** G

Guidance notes on completing a TPCAR are available at ■ CASS 14 Annex 2G.

**14.3.3** R

The *TPCAR* reporting periods for the purposes of ■ CASS 14.3.1R are:

(1) for *TP firms* to which either or both of ■ CASS 6 and ■ CASS 7 applies as a result of ■ GEN 2.2.26R, either:

(a) for *CASS small TP firms*, the initial twelve-*month* period 1 January 2021 to 31 December 2021, and each subsequent 12-*month* period; or

(b) for *CASS medium TP firms* and *CASS large TP firms*, the initial one-*month* period from 1 January 2021 to 31 January 2021, and each subsequent one-*month* period; and

(2) for *TP firms* to whom as a result of ■ GEN 2.2.26R, ■ CASS 5 applies:

(a) if the *TP firm's* annual revenue from its business to which ■ CASS 5 applies as a result of ■ GEN 2.2.26R is £5 million or less:

(i) the shorter of:

(A) the initial period from 1 January 2021 to the *firm's accounting reference date*, and

(B) the initial period from 1 January 2021 to the last *day* of the six-*month* period after the *firm's accounting reference date*; and

(ii) each six-*month* period subsequent to the shorter of those initial periods; or

(b) if the *TP firm's* annual revenue from its business to which ■ CASS 5 applies as a result of ■ GEN 2.2.26R exceeds £5 million:

(i) the shorter of:

(A) the initial period from 1 January 2021 to the *firm's accounting reference date*, and

(B) the initial period from 1 January 2021 to the last *day* of the three-*month* period after the *firm's accounting reference date*; and

(ii) each three-*month* period subsequent to the shorter of those initial periods.

**14.3.4** R The *TPCAR* submission deadlines for the purposes of ■ CASS 14.3.1R are:

(1) for *TP firms* to which either or both of ■ CASS 6 and ■ CASS 7 applies as a result of ■ GEN 2.2.26R, either:

(a) for *CASS small TP firms* the 15th *business day* of the *month* that follows the reporting period specified in ■ CASS 14.3.3R(1)(a); or

(b) for *CASS medium TP firms* and *CASS large TP firms*, the 15th *business day* of the *month* that follows the reporting period specified in ■ CASS 14.3.3R(1)(b); and

(2) for *TP firms* to which ■ CASS 5 applies as a result of ■ GEN 2.2.26R, the 30th *business day* after the relevant reporting period specified in ■ CASS 14.3.3R(2).

**14.3.5** G (1) If both ■ CASS 14.3.3R(1) and (2) apply to a *TP firm*, then it should submit a completed *TPCAR* to the *FCA* to cover each reporting period that applies to it, by the relevant submission deadline in ■ CASS 14.3.4R(1) and ■ (2).

(2) In those cases:

(a) a *TP firm* should only complete Part 1 and Part 2 of any *TPCAR* that is for a reporting period specified under ■ CASS 14.3.3R(1); and

(b) it should only complete Part 1 and Part 3 of any *TPCAR* that is for a reporting period specified under ■ CASS 14.3.3R(2).

## Election to use the CMAR for TP firms that had a Part 4A permission before IP completion day

**14.3.6** R (1) This *rule* applies to a *TP firm* to which ■ SUP 16.14.3R (Client money and asset return) applies as a result of ■ GEN 2.2.26R(1), on the basis that it has classified itself as a *CASS large firm* or a *CASS medium firm* for the purposes of ■ CASS 1A.

(2) A *TP firm* may comply with ■ SUP 16.14.3R instead of ■ CASS 14.3.1R provided that it has notified the *FCA* in advance and by email that it has elected to do so.

(3) A *TP firm* that makes the election under this *rule* must, when completing data field 8 of the *CMAR*:

(a) use a separate row to distinguish between types of business activity or services which are carried on in reliance of the *firm's temporary permission* and types which are not; and

(b) clearly indicate which rows relate to a business activity or service which is carried on in reliance of the *firm's temporary permission*.

**14.3.7** G

(1) See ■ GEN 2.2.37G(3) for an explanation of the effect of ■ GEN 2.2.26R(1) and ■ CASS 14.1.5G.

(2) ■ CASS 14.3.6R may be relevant to a *TP firm* that had a *Part 4A permission* immediately before *IP completion day* for *acting as trustee or depositary of an AIF* or *acting as trustee or depositary of a UCITS* and continues to hold that *permission*.

(3) In complying with ■ CASS 14.3.6R(3):

(a) a *TP firm* should observe the guidance at ■ SUP 16 Annex 29AG (Guidance notes for the data item in SUP 16 Annex 29R) in relation to data field 8 of the *CMAR* and, therefore, distinguish between each different type of business activity or service which it carries on in reliance its *temporary permission*, as well as between each type which it carries on under its *Part 4A permission*;

(b) a *TP firm* could, for example, annotate each row which relates to a business activity or service which is carried on in reliance of the *firm's temporary permission* by including the letters "TP" in data field 8A; and

(c) if a *TP firm* follows sub-paragraph (b), the overall effect may be that data field 8 includes a number of rows that are prefaced with "TP" (for example, "TP CFD business" and "TP share custody business") and a number of rows that are not (for example, "AIF depositary business" and "UCITS depositary business").

## 14.4 Temporary permission auditor's report

**14.4.1** R This section does not apply in relation to a *TP firm* to which only ■ CASS 5 applies as a result of ■ GEN 2.2.26R.

**14.4.2** R Subject to ■ CASS 14.4.3R, a *TP firm* to which this section applies must ensure that the *FCA* receives any report made by its external auditors pursuant to a requirement in its *Home State* that implements article 8 of the *MiFID Delegated Directive*, in the following circumstances:

(1) where the auditor's report confirms that the *TP firm's* arrangements referred to in article 8 of the *MiFID Delegated Directive* are not adequate; or

(2) in response to a request made by the *FCA* to the *TP firm* in writing.

**14.4.3** R

(1) If the *TP firm* did not have a *temporary permission* during the entire period covered by an auditor's report, that auditor's report is excluded from the requirement under ■ CASS 14.4.2R.

(2) Where the auditor's report required under ■ CASS 14.4.2R is not in English, the *TP firm* must ensure that the *FCA* receives both the auditor's report and an English translation of it.

**14.4.4** R

(1) A *TP firm* must ensure that any auditor's report and English translation which are required to be provided to the *FCA* under this section are sent by email.

(2) In the case of an auditor's report, this must be sent:

(a) where ■ CASS 14.4.2R(1) applies, as soon as it is made available to the relevant *Home State* regulator; and

(b) where ■ CASS 14.4.2R(2) applies, immediately on the *FCA's* written request.

(3) In the case of an English translation, this must be sent:

(a) where ■ CASS 14.4.2R(1) applies, within one *month* of the auditor's report being made available to the relevant *Home State* regulator; and

(b) where ■ CASS 14.4.2R(2) applies, within one *month* of the *FCA's* written request.

**14.4.5** R Where a *TP firm* intends to rely on another *person* to send an auditor's report to the *FCA* under this section, it must inform the *FCA* in advance of that person's identity by email.

**14.4.6** R The *rules* in this section apply regardless of whether the scope of an auditor's report includes a *TP firm's* activities specified in ■ CASS 14.1.2R.

## 14.5 Client information

**14.5.1** R A *TP firm* must provide any *client* in respect of which it carries on the activities specified in ■ CASS 14.1.2R with the following information (the "TP Firm CASS Disclosure") in English and in a *durable medium*:

(1) any non-*UK* jurisdiction under which the *TP firm's failure* may be administered; and

(2) unless such an outcome is not possible under the law of that jurisdiction as it applies on *IP completion day*, a statement that makes clear the possibility that any *client money* or *safe custody assets* belonging to that *client* will, as a result of the law of that jurisdiction, be treated differently to *money* or assets belonging to other customers of the *TP firm* in the event of the *TP firm's failure*.

**14.5.2** R (1) A *firm* must ensure that the "TP Firm CASS Disclosure" is not obscured by or disguised within other information.

(2) Where a *firm* provides the "TP Firm CASS Disclosure" amidst or alongside other information, it must ensure that it uses a font size for the 'TP Firm CASS Disclosure' that is at least equal to the predominant font size used throughout the information provided, as well as a layout that ensures the "TP Firm CASS Disclosure" is prominent.

**14.5.3** G (1) To comply with ■ CASS 14.5.1R(1) it is sufficient to name the jurisdiction. For example, this may be the name of the *TP firm's Home State*, or an administrative region within it.

(2) In order to comply with ■ CASS 14.5.1R(2), a *TP firm* should carefully consider the applicable law and insolvency rules in question as at *IP completion day* when deciding whether or not a statement is required to be given under that provision. For example, it could obtain a legal opinion on whether the law differentiates between the treatment of different classes of *clients*. If, following such careful consideration, the *firm* cannot rule out the possibility of different treatment, then it should make the statement under ■ CASS 14.5.1R(2).

**14.5.4** R The "TP Firm CASS Disclosure" under ■ CASS 14.5.1R is not required where a *firm* complies with those requirements of ■ CASS 5, ■ CASS 6 or ■ CASS 7 that are applied under ■ GEN 2.2.26R without needing to safeguard *client money* or *safe custody assets*.

**14.5.5** G Situations falling under ■ CASS 14.5.4R include where, for example, the *TP firm* relies on:

(1) ■ CASS 5.1.5R(1)(b) or (2);

(2) ■ CASS 7.10.6R; or

(3) ■ GEN 2.2.26R(3) or (4) and takes the approach set out in article 10.6.a, 10.6.b or 10.6.d of *IDD*.

**14.5.6** R A *TP firm* must provide the "TP Firm CASS Disclosure" under ■ CASS 14.5.1R to a *client*:

(1) where it safeguards *client money* or *safe custody assets* for the *client* on *IP completion day*, on that date (unless it has taken steps before that date which would have complied with the requirements under ■ CASS 14.5.1R and ■ CASS 14.5.2R); or

(2) otherwise, in good time before it safeguards *client money* or *custody assets* for the *client*.

## 14.6 Tied agents and appointed representatives of TP firms

**14.6.1** G

(1) *CASS* does not apply directly to a *TP firm's appointed representative* or *tied agent*.

(2) A *TP firm* will be responsible for the acts and omissions of its *appointed representatives* and *tied agents* in carrying on business for which the *TP firm* has accepted responsibility.

(3) In determining whether a *TP firm* has complied with any provision of *CASS*, anything done or omitted by a *TP firm's* appointed representative or tied agent (when acting as such) will be treated as having been done or omitted by the *TP firm*.

(4) ■ CASS 14.6.2R further restricts the possibility of *appointed representatives* and *tied agents* of *TP firms* from receiving or holding *client money* and *safe custody assets*. But that *rule* does not apply in relation to the business of an *appointed representative* or *tied agent* of a *TP firm* in respect of which ■ CASS 5 would apply to the *TP firm* as a result of ■ GEN 2.2.26R.

**14.6.2** R

A *TP firm* must not permit an *appointed representative* or *tied agent* to receive or hold *client money* or *safe custody assets* in the course of or in connection with any of their business in respect of which ■ CASS 6 or ■ CASS 7 would apply to the *TP firm* as a result of ■ GEN 2.2.26R.

## Temporary permissions client asset return (TPCAR)

[**Note**: A *firm* must answer all the questions in Part 1. A *firm* must also complete either Part 2 or Part 3, depending on the answer to question 1.1.3. Further guidance notes are available at
■ CASS 14 Annex 2G.]

CASS 14 Annex 1

## Guidance notes for the TPCAR

1.This annex contains *guidance* on the *TPCAR* and is therefore only relevant to a *firm* that is subject to ■ CASS 14.3.

2.Italicised terms in the *TPCAR* have the same meaning as in the *Glossary*.

3.A *firm* is reminded of its obligation to determine their "CASS firm type" categorisation in accordance with ■ CASS 14.2.8R.

4.A *firm* should complete Part 1 and either Part 2 or Part 3, depending on whether it is reporting on *investment services and activities* or *insurance distribution activities*. See also the guidance at■ CASS 14.3.5G for firms that carry on both sorts of activities under their *temporary permission*.

5.For the purposes of the *TPCAR*, the *FCA* does not prescribe any particular methodology or frequency for valuing *safe custody assets*.

6.Guide for completing individual questions in the *TPCAR*:

| PART 1 - TO BE COMPLETED BY ALL TP FIRMS | |
|---|---|
| **Section 1.1 - Scope of this return** | |
| 1.1.1 | What is the reporting period start date for this return? |
| 1.1.2 | What is the reporting period end date for this return?<br><br>The reporting period is a calendar period for which the *TPCAR* is required to be completed in accordance with CASS 14.3.1R, including the first *day* and the last *day* of the relevant period applicable to the *firm*. The first reporting period starts from 1 January 2021.<br><br>For example:<br><br>•For a *firm* conducting *investment services or activities* under their *temporary permission* which is subject to monthly reporting under CASS 14.3.3R, the first reporting period will be 1 January 2021 to 31 January 2021, regardless of whether or not any *day* in January is a *business day*.<br><br>•For a *firm* conducting *insurance distribution* activities under their *temporary permission* which is subject to half-yearly reporting under CASS 14.3.3R and has an accounting reference date of 31 March, the first reporting period will be 1 January 2021 to 31 March 2021, regardless of whether or not any *day* in this period is a *business day*. The next reporting period for such a *firm* will be 1 April 2021 to 30 September 2021. |
| 1.1.3 | Does this return report on:<br><br>- *investment services and activities*, to which CASS 6 or CASS 7 apply as a result of GEN 2.2.26R; or<br><br>- *insurance distribution* activities, to which CASS 5 applies as a result of GEN 2.2.26R?<br><br>A *firm* should identify the relevant activity in the course of which it holds *client money* or *safe custody assets* under its *temporary permission* and answer either "investment services or activities" or "insurance distribution activities".<br><br>If a *firm* is conducting both activities in the course of which it holds *client money* or *safe custody assets* under its *temporary permission*, then it will need to complete a separate *TPCAR* for each activity. |

**PART 1 - TO BE COMPLETED BY ALL TP FIRMS**

**Section 1.2 - Location of activities**

1.2.1 Did the *firm* conduct the activities to which this return relates from an establishment in the *UK*?

A *firm* should answer either "Yes" or "No". For example, a *firm* should answer "Yes" if, during the reporting period, it conducted the above activities from a *branch* in the *UK*.

**Section 1.3 - Compliance**

1.3.1 During the reporting period, did the *firm* have any breaches of its obligations under CASS 14?

A *firm* should answer either "Yes" or "No".

1.3.2 During the reporting period, did the *firm* obtain an external auditor's report on the adequacy of the *firm's* arrangements under its client assets obligations?

A *firm* should answer either "Yes" or "No".

**Section 1.4 - Solvency**

1.4.1 During the reporting period, were there any issues with the *firm's* solvency?

A *firm* should answer either "Yes" or "No".

**Section 1.5 - Other issues**

1.5.1 During the reporting period, were there any other issues with the *firm* in relation to its obligations under *CASS* which applied as a result of GEN 2.2.26R? If so, please provide a brief description.

A *firm* should describe any issues not covered by the *TPCAR* that may be relevant in respect of holding *client money* or *safe custody assets* to which *CASS* applies as a result of GEN 2.2.26R during the reporting period.

**PART 2 - FOR REPORTING ON INVESTMENT SERVICES OR ACTIVITIES**

2.1.1 During the reporting period, did the *firm* hold *client money* and/or *safe custody assets* in relation to activities carried on in reliance of the *firm's temporary permission* to which CASS 6 or CASS 7 apply as a result of GEN 2.2.26R?

A *firm* should answer either "Yes" or "No".

2.1.2 What was the highest balance of *client money* held in relation to activities carried on in reliance of the *firm's temporary permission*, in relation to which CASS 7 applies as a result of GEN 2.2.26R?

A *firm* should report the highest total amount of *client money* that it held at any point during the reporting period.

A *firm* should ensure that it includes in the amount reported any *client money* that it is holding, which has or have been placed with a third party *custodian*, either by a *custodian* with which that *firm* has deposited those *client money*, or by that *firm* if it is a *custodian*.

A *firm* should determine the highest figures by reference to the data that it has recorded from its reconciliations required under article 2(1)(c) of the *MiFID Delegated Directive* that relate to the reporting period in question.

2.1.3 What was the highest amount of *safe custody assets* held in relation to activities carried on in reliance of the *firm's temporary permission*, in relation to which CASS 6 applies as a result of GEN 2.2.26R?

A *firm* should report the highest total amount of *safe custody assets* that it held at any point during the reporting period.

A *firm* should ensure that it includes in the amount reported any *safe custody assets* that it is holding, which has or have been placed with a third party *custo*

**PART 2 - FOR REPORTING ON INVESTMENT SERVICES OR ACTIVITIES**

*dian*, either by a *custodian* with which that *firm* has deposited those safe custody assets, or by that *firm* if it is a *custodian*.

A *firm* should determine the highest figures by reference to the data that it has recorded from its reconciliations required under article 2(1)(c) of the *MiFID Delegated Directive* that relate to the reporting period in question.

2.1.4 What percentage of the *client money* reported in Question 2.1.2 was deposited with a *bank* or a *qualifying money market fund* in the same *group* as the *firm* (article 4, *MiFID Delegated Directive*)?

A *firm* should state what percentage of *client money* are held with a *credit institution*, *bank* or *qualifying money market fund* of the same *group* as the *firm*.

2.1.5 What was the frequency of reconciliations between the *firm's* internal accounts and records and those of any third party with whom the *client money* reported in Question 3 was held (article 2(1)(c), *MiFID Delegated Directive*)?

A firm should identify the frequency of its reconciliations in respect of *client money* required by article 2(1)(c) of *MiFID Delegated Directive* and answer either "Daily", "Quarterly", "Monthly", "Annually" or "Other".

2.1.6 What was the frequency of reconciliations between the *firm's* internal accounts and records and those of any third party with whom the *safe custody assets* reported in Question 2.1.2 were held (article 2(1)(c), *MiFID Delegated Directive*)?

A *firm* should identify the frequency of its reconciliations in respect of *safe custody assets* required by article 2(1)(c) of *MiFID Delegated Directive* and answer either "Daily", "Quarterly", "Monthly", "Annually" or "Other".

2.1.7 Did the *firm* resolve all discrepancies identified by its reconciliations referred to in Questions 7 and 8 as applicable (article 2(1)(c), *MiFID Delegated Directive*)?

A *firm* should answer either "Yes" or "No".

2.1.8 Were there any changes to the *firm's* officer responsible for compliance with obligations relating to safeguarding of client assets appointed pursuant to article 7 of the *MiFID Delegated Directive*?

A *firm* should answer either "Yes" or "No".

2.1.9 Did the *firm* have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under CASS 6 or 7 which applied as a result of GEN 2.2.26R?

A *firm* should answer either "Yes" or "No".

**PART 3 - FOR REPORTING ON INSURANCE DISTRIBUTION ACTIVITIES**

3.1.1 During the reporting period, did the *firm* hold *money* in relation to activities carried on in reliance of the *firm's temporary permission* to which CASS 5 applies as a result of GEN 2.2.26R?

A *firm* should answer either "Yes" or "No".

3.1.2 How did the *firm* protect such *money* in accordance with article 10.6 of the *IDD*?

This question should only be answered if a *firm* answered "Yes" in Question 3.1.1.

A *firm* should answer "Contractual risk transfer to the insurer", "Holding customers' monies in segregated customer accounts", "Holding capital on a permanent basis" or "A guarantee fund".

A *firm's* answer may depend on which of these methods are permitted by its *Home State's* implementation of the *IDD*.

More than one answer may be given if the *firm* protects *money* using more than one of these methods.

| PART 3 - FOR REPORTING ON INSURANCE DISTRIBUTION ACTIVITIES | |
|---|---|
| 3.1.3 | What was the highest balance of *money* held by the *firm* in relation to activities carried on in reliance of the *firm's temporary permission* to which CASS 5 applies as a result of GEN 2.2.26R?<br><br>This question should only be answered if a *firm* answered "Yes" in Question 11.<br><br>A *firm* should take into account the amount recorded in the *firm's* records that relate to the reporting period in question. A *firm* should also take into account *money* held in all the possible methods of holding such *money* under *IDD*. |
| 3.1.4 | Did the *firm* have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under CASS 5 which applied as a result of GEN 2.2.26R? .<br><br>A *firm* should answer either "Yes" or "No" |

# Client Assets

## CASS TP 1
## Transitional Provisions

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| 1AZ | The changes to the *Glossary* in Annex A and to *CASS* in Annex B of the Client Assets (Client Money and Custody Assets Distribution and Transfers) Instrument 2017 | R | In relation to a *firm*:<br>(i) that has *failed*; or<br>(ii) in respect of which a *primary pooling event* occurred,<br>in either case before the changes in column (2) took effect, the changes effected by the provisions in the Annex listed in column (2) do not apply to the *firm*, and therefore the provisions in *CASS* amended by that Annex will continue to apply as they were in force as at 25 July 2017. | Indefinitely | 26 July 2017 |
| -1A | CASS 1A.3.1 | R | A *firm* which has only an *interim permission* may allocate responsibility for the functions described in this *rule* to any *director* or *senior manager*. | For as long as the *firm* has only an *interim permission*. | |
| -1B | CASS 1A.3.1 C | R | A *firm* which has only an *interim permission*, and which is in the situation described in this *rule*:<br>(1) need not comply with CASS 1A.3.1 CR (1); and<br>(2) need only allocate responsibility for the functions described in CASS 1A.3.1 CR (2) to any *director* or *senior manager*. | For as long as the *firm* has only an *interim permission*. | |
| -1 | CASS 1A | R | Expired | | |
| 1 | CASS 2 to CASS 4 | R | [deleted] | | |
| 2 | Every *rule* in the *Handbook* | R | Expired | | |
| | | G | Expired | | |
| 2A | | G | [deleted] | | |
| 3 | CASS 5.1 to CASS 5.6 | R | Apply in relation to *money* (and where appropriate *designated investments*) held by a *firm* on 14 January 2005 (being *money* or *designated investments* to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such | Indefinitely | 14 January 2005 |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | *money* (or *designated investments*) relate to business carried on before 14 January 2005 and which would, if conducted on or after 14 January 2005, be an *insurance mediation activity* and if conducted on or after 1 October 2018, be an *insurance distribution activity*. | | |
| 3A | CASS 5.1 to CASS 5.6 | R | Apply in relation to *money* (and where appropriate *designated investments*) held by a *firm* on 1 October 2018 (being *money* or *designated investments* to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such *money* (or *designated investments*) relate to business carried on before 1 October 2018 and which would, if conducted on or after 1 October 2018, be *reinsurance distribution*. | Indefinitely | 1 October 2018 |
| 4 | CASS 5.1.5A R | R | Expired | | |
| 5 | CASS 5.3.2 R | R | Expired | | |
| 6 | CASS 5.4.7 R | R | Expired | | |
| 7 | CASS 5.5.65 R | R | Expired | | |
| 7A | CASS 6.1.6B R | R | *Firms* need not comply with this *rule* in respect of any arrangement relating to the transfer of full ownership of a *client's safe custody asset* to the *firm* for the purposes set out in CASS 6.1.6 R (1) and CASS 6.1.6A R (1) that existed before 1 December 2014, unless and until the arrangement is materially amended on or after that date. *Firms* must comply with this *rule* in respect of any arrangement for such purposes that is entered into on or after 1 December 2014. | From 1 December 2014 to 1 June 2015 | 1 December 2014 |
| 7B | CASS 6.1.12 R to CASS 6.1.12C G | R | (1) *Firms* need not comply with these *rules* in respect of a business relationship with a particular *client* consisting of the provision of either or both *MiFID business* or *designated invest* | From 1 December 2014 to 1 June 2015 | 1 December 2014 |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | *ment business* services that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. *Firms* must comply with these rules in respect of any such relationship that is entered into on or after 1 December 2014.<br><br>(2) Where the *rules* in column (2) are disapplied by (1), CASS 6.1.12 R to CASS 6.1.16 G will continue to apply as they were in force as at 30 November 2014. | | |
| 7C | CASS 6.3.4B G | R | *Firms* need not comply with this *rule* in respect of arrangements with third parties with whom it deposits *clients' safe custody assets* or arranges safeguarding and administration of assets which are *clients' safe custody assets* that were entered into before 1 December 2014, unless and until they are materially amended on or after that date. *Firms* must comply with this rule in respect of any arrangements with such third parties that are entered into on or after 1 December 2014. | From 1 December 2014 to 1 June 2015 | 1 December 2014 |
| 8 | CASS 6.3.5 R | | [deleted] | | |
| 8A | CASS 6.3.5 R to CASS 6.3.8R | R | Expired | | |
| | | G | Notwithstanding the operation of *CASS TP 1.1R(8A)*, a *firm* should as soon as reasonably practicable modify its agreement with that third party so as to meet the requirements of CASS 6.3.5 R to CASS 6.3.8 R. | | |
| 9 | CASS 6.1.6 R (2) and CASS 6.1.6A R | | [deleted] | | |
| 9A | CASS 7.1.8C R to CASS 7.1.8D R and CASS 7.1.10A R to CASS 7.1.10C R | R | *Firms* need not comply with these *rules* in respect of a business relationship with a particular *client* that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. *Firms* must comply with this *rule* in respect of any such relationship that is entered into on or after 1 December 2014. | From 1 December 2014 to 1 June 2015 | 1 December 2014 |
| 9B | CASS 7.2.3B R | R | *Firms* need not comply with this *rule* in respect of any arrangement relating to the transfer of full ownership of a *client's money* to the *firm* for the purposes set out in CASS 7.2.3R (1) and CASS 7.2.3AR | From 1 December 2014 to 1 June 2015 | 1 December 2014 |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | (1) that existed before 1 December 2014, unless and until the arrangement is materially amended on or after that date. *Firms* must comply with this *rule* in respect of any arrangement for such purposes that is entered into on or after 1 December 2014. | | |
| 9C | CASS 7.10.7AR(2) | R | A *firm* need not give the *FCA* at least one *month's* notice under this *rule*, if it informs the *FCA* immediately at the time of making the election under CASS 7.10.7AR(1). | From 21 March 2016 to 22 April 2016 | 21 March 2016 |
| 9D | CASS 7.10.7BR(1) | R | A *firm* need not give customers at least one *month's* advance notice under this *rule*, if it informs customers as soon as practicable at the time of making the election under CASS 7.10.7AR(1). | From 21 March 2016 to 22 April 2016 | 21 March 2016 |
| 10 | CASS 7.2.3R (2) and CASS 7.2.3A R | | [deleted] | | |
| 10A | CASS 7.13.13R (2) | R | (1) The *rule* in column (1) applies when a *firm* enters into a new contract with a bank to provide a *client bank account*.<br><br>(2) In relation to an arrangement under which a *firm* holds a *client bank account* with a bank that is in place as at the date in column (5), and as soon as it is permitted to do so under that arrangement, the *firm* must terminate any contract that does not comply with the *rule* in column (1) and enter into a new contract (in respect of which (1) shall apply). If necessary to comply | Indefinitely | 1 July 2014 |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | with the *rule* in column (1), a *firm* must move *client money* into another *client bank account* under compliant terms. | | |
| 10B | CASS 7.2.8AA R to CASS 7.2.8AE R | R | (1) These *rules* do not apply in respect of a business relationship with a particular *client* that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. *Firms* must comply with this *rule* in respect of any such relationship that is entered into on or after 1 December 2014.<br><br>(2) Where the *rules* in column (2) are disapplied by (1), CASS 7.2.8 R to CASS 7.2.11 G will continue to apply as they were in force as at 30 November 2014. | From 1 December 2014 to 1 June 2015 | 1 December 2014 |
| 10C | CASS 7.4.17B R to CASS 7.4.19C R | R | (1) *Firms* that are operating the alternative approach for any business line on 30 November 2014, having previously sent a written confirmation to the *FCA* under CASS 7.4.15 R, need not comply with the *rules* in column (1) for such business line during the period in column (5) and may continue to segregate *client money* during that period for such business line on the basis set out in that confirmation to the *FCA*, unless and until during the period in column (5) they start complying with CASS 7.4.18A R to CASS 7.4.19C R for such business line having already complied with CASS 7.4.17B R to CASS 7.4.17E R.<br><br>(2) In circumstances where the *rules* in column (2) are disapplied by (1), CASS 7.4.16 G to CASS 7.4.19 G will continue to apply as they were in force as at 30 November 2014. | From 1 December 2014 to 31 May 2015 | 1 December 2014 |
| 10D | CASS 7.6.6A R | R | (1) A *firm* operating an internal reconciliation of *client money* balances that is not a *standard method of internal client money reconciliation* as at 30 November 2014 need not comply with this *rule*, except to the extent referred to in (3).<br><br>(2) Where a *firm* does not comply with the *rule* in column (2) in accordance with (1), CASS 7.6.7 R and CASS 7.6.8 R will continue to apply to that *firm* as they were in force as at 30 November 2014.<br><br>(3)(a) In order for a *firm* within (1) to operate an internal reconciliation that is not a *standard method of internal client money reconciliation* on 1 June 2015 it | From 1 December 2014 to 31 May 2015 | 1 December 2014 |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | must, before that date, have complied with CASS 7.6.6AR (1)(b) and (c).<br><br>(3)(b) A *firm* within paragraph (1) that materially changes its internal reconciliation method that is not a *standard method of internal client money reconciliation* on or after 1 December 2014 must, notwithstanding (1), comply with the *rule* in column (2) from the date it makes these material changes.<br><br>(4) In order for any *firm* not within (1) to operate an internal reconciliation that is not a *standard method of internal client money reconciliation* on 1 December 2014 it must, before that date, have complied with CASS 7.6.6AR (1)(b) and (c). | | |
| 10E | The changes to CASS 7.8 in Part 2 of Annex C of the Client Assets Sourcebook (Amendment No 5) Instrument 2014 | R | (1) Where the conditions in (2) are met in respect of a *firm's client bank account* or *client transaction account*, the changes effected by the provisions in the Annex listed in column (2) do not apply to the *firm* in respect of the *client bank account* or *client transaction account* and therefore the provisions in CASS 7.8.1 R and CASS 7.8.2 R amended by that Annex will continue to apply as they were in force as at 31 November 2014. | From 1 December 2014 to 1 June 2015 | 1 December 2014 |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | (2) The conditions are: (a) the *client bank account* or *client transaction account* was opened by the *firm* before 1 December 2014; (b) the firm complied with CASS 7.8.1 R or CASS 7.8.2 R (as appropriate) in respect of the *client bank account* or *client transaction account* before 1 December 2014; and (c) the *client bank account* or *client transaction account* is not transferred to another *person* during the period in column (5). | | |
| 10EA | The changes to *CASS* in Annex A of the Client Assets (Term Deposits) Instrument 2018 | R | The changes effected by the provisions in the Annex listed in column (2) do not apply to any *firm* in respect of which:<br>(1) prior to 22 January 2018 the *FCA* has directed under s.138A of the *Act* that CASS 7.13.13R(3) be applied with modifications; and<br>(2) such a direction is in effect on 22 January 2018. | From 22 January 2018 to the date on which the relevant direction referred to in column (4) ceases to have effect. | 22 January 2018 |
| 10F | CASS 7.18.3(3) | R | A *firm* will not be in breach of the requirement under this *rule* to not allow the relevant *person* to hold any *client money* in a *client transaction account* maintained by that *person* for the *firm* unless the *firm* has received a duly countersigned *client transaction account acknowledgement letter* from that *person*, provided that:<br>(i) the breach is only in respect of a failure to use the template in CASS 7 Annex 3R, where such failure results only from amendments to the template made under the Client Assets (Indirect Clearing) Instrument 2017; and<br>(ii) the relevant *client transaction account* is identified in a letter that was countersigned and returned to the *firm* before 3 January 2018, and which met the requirements of CASS 7.18.3R(3) immediately before the Client Assets (Indirect Clearing) Instrument 2017 came into force. | 3 January 2018 to 3 March 2018 | 1 June 2015 |
| 11 | CASS 7 and CASS 7A | R | Expired | | |
| 12 | CASS 7 and CASS 7A | R | (1) The rules in column (2) apply to an *operator of an electronic system in relation to lending* where the *FCA* or *PRA* has granted an application made by the *firm* for *Part 4A permission* and an *interim permission* the *firm* was treated as having has ceased to have effect. | Indefinitely | 1 April 2014 |
| | | | (2) The rules in column (2) apply in rela- | | |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | tion to *money* held by the *firm* on the date on which the written notice given by the *FCA* or *PRA* under section 55V(5) of the *Act* takes effect, to the extent that such *money* was received, or is held in the course of or in connection with the *operation of an electronic system in relation to lending* carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be *money* which was received, or held in the course of or in connection with the *operation of an electronic system in relation to lending*). | | |
| 12A | CASS 9.4 | R | *Firms* need not comply with this *rule* in respect of a business relationship with a particular *client* consisting of the provision of either or both *MiFID business* or *designated investment business* services that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. *Firms* must comply with this *rule* in respect of any such relationship that is entered into on or after 1 December 2014. | From 1 December 2014 to 1 June 2015 | 1 December 2014 |
| 13 | CASS 11 | R | (1) CASS 11 does not apply to a *CASS debt management firm* which is a *not-for-profit debt advice body* treated as having | Indefinitely | 1 April 2014 |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| | | | *Part 4A permission* on and after 1 April 2014 by virtue of article 60 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 until 1 October 2014, if the *firm* acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014. | | |
| | | | (2) CASS 11 applies in relation to *money* held by a *CASS debt management firm* within (1) on 1 October 2014 to the extent that such *money* was received, or is held on behalf of an individual, in the course of or in connection with *debt management activity* carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be a *debt management activity*). | | |
| 14 | CASS 11 | R | (1) This *rule* applies to a *CASS debt management firm* where the *FCA* or *PRA* has granted an application made by the *firm* for *Part 4A permission* and an *interim permission* the *firm* was treated as having has ceased to have effect. | Indefinitely | 1 April 2014 |
| | | | (2) CASS 11 applies in relation to *money* held by the *CASS debt management firm* on the date on which the written notice given by the *FCA* or *PRA* under section 55V(5) of the *Act* takes effect, to the extent that such *money* was received, or is held on behalf of an individual, in the course of or in connection with *debt management activity* carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be a *debt management activity*). | | |
| (15) | CASS 13 | R | CASS 13 applies in relation to *money* held by the *firm* on 1 April 2019 to the extent that such *money* was received or is held on behalf of an individual, in the course of or in connection with the performance of activities which were: | Indefinitely | 1 April 2019 |
| | | | (a) carried on before 1 April 2019; and | | |
| | | | (b) would, if carried on after that date, be *regulated claims management activities*. | | |

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| (16) | CASS 13 | G | The *rule* in (15) applies to the *firm* irrespective of whether it has a *claims management temporary permission* or a *Part 4A permission*. | Indefinitely | 1 April 2019 |

# Client Assets

# Schedule 1
# Record keeping requirements

**Sch 1.1 G**

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

**Sch 1.2 G**

It is not a complete statement of those requirements and should not be relied on as if it were.

**Sch 1.3 G**

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 1A.3.3 R | Allocation of the *CASS* oversight responsibilities in CASS 1A.3.1 R, of the *CASS operational oversight function*, or of the responsibilities in CASS 1A.3.1C R (2), as relevant | The *person* to whom the *CASS* oversight responsibilities have been allocated, subject to the provisions of CASS 1A.3.3 R, to whom the *CASS operational oversight function* has been allocated in accordance with CASS 1A.3.1A R, or to whom the responsibilities in CASS 1A.3.1C R (2) have been allocated | Upon allocation | 5 years (from the date the record was made) |
| | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 5.1.1 R (4) | Record of election of compliance with specified *CASS* rules | Record of compliance with specified *CASS* rules | Not specified | Not specified |
| CASS 5.2.3 R (2) | Holding *client money* as agent | The terms of the agreement | Not specified | Six years |
| CASS 5.4.4 R (2) | Adequacy of systems and controls | Written confirmation of adequate systems and controls from its auditor | Not specified | Not specified |
| CASS 5.5.84 R | *Client money* calculation | Whether the *firm* calculates its *client money* requirements according to CASS 5.5.84 R or CASS 5.5.84 R | Not specified | Not specified |
| CASS 5.5.84 R | Transactions and commitments for *client money* | Explanation of the *firm's* transactions and commitments for *client money* | Not specified | Three years |
| CASS 5.8.3 R (1) | Client's title to a *contract of insurance* | Identity of such *documents* and/or property and dates received and delivered to *client* | Not specified | Three years |
| CASS 6.1.6BR (3) | Written agreement regarding any arrangement relating to a *TTCA* | The agreement | When agreement made | From the date the agreement is entered into and until five years after the agreement is terminated |
| CASS 6.1.8AR(1) and (2) | *Client's* communication to *firm* of wish to terminate *TTCA* | *Client's* communication of wish to terminate *TTCA* | When communication made | Five years (from date of communication) |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 6.1.8AR (4) | *Firm's* response to *client's* wish to terminate *TTCA* | *Firm's* response to *client's* wish to terminate *TTCA* | When notification given | Five years (from date of communication) |
| CASS 6.1.12R(5) | *Firm's* segregation of *money* as *client money* under this rule | Description of *safe custody asset* in question, identity of relevant *client*, amount of *money* segregated | Maintain up to date | Not specified (see default provision CASS 6.6.7R) |
| CASS 6.1.12E R | *Client's* agreement to *firm's* use of exemption in CASS 6.1.12 R | *Client's* written agreement | At the time of *client's* agreement | During the time the *firm* makes use or intends to make use of the exemption in CASS 6.1.12 R in respect of that *client's safe custody assets* |
| CASS 6.1.16CR (3) | A *personal investment firm* that temporarily holds a *client's designated investments* which is not in the course of *MiFID business* | Client details and any actions taken by the firm | | 5 years (from the making of the record) |
| CASS 6.1.16K R | Client custody assets which the firm has arranged for another to hold or receive | Full details | On receipt | 5 years |
| | | | | [deleted] |
| CASS 6.2.15 R | *Safe custody assets* divested by the *firm* under CASS 6.2.10 R | Details of asset divested, relevant documentation and the *firm's* attempts to contact the *client* concerned | When asset divested | Indefinite |
| CASS 6.3.2AR (1) | Appropriateness of a *firm's* selection of a third party | Grounds upon which a *firm* satisfies itself as to the appropriateness of the *firm's* selection of a third party to hold *safe custody assets* belonging to *clients* | Date of the selection | 5 years (from the date the *firm* ceases to use the third party to hold *safe custody assets* belonging to *clients*) |
| CASS 6.3.2AR (2) | A *firm's* periodic review into the selection and appointment of a | Date of review, actions taken by the *firm* in reviewing the selection and | On the date of the review | Five years (from the date the *firm* ceases to use the third |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
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| | third party under CASS 6.3.1 R | appointment of a third party under CASS 6.3.1 R, and grounds upon which the *firm* continues to be satisfied of appropriateness of its selection of that third party to hold *safe custody assets* belonging to *clients* | | party to hold *safe custody assets* belonging to *clients*) |
| CASS 6.3.6AR(2) | Granting of security interests, liens or rights of set-off | Recording of the granting of security interests, liens or rights of set-off in the *firm's* books and records | On the *firm's* granting, or where the *firm* has been informed of the granting | Not specified (see default provision CASS 6.6.7R) |
| CASS 6.4.3 R | Details of *clients* and *safe custody assets* used for the *firm's* own account or the account of another *client* of the *firm* | Details of the *client* on whose instructions the use of the *safe custody assets* has been effected and the number of *safe custody assets* used belonging to each *client* | Maintain up to date records | Not specified (see default provision CASS 6.6.7R) |
| CASS 6.6.2 R | *Safe custody assets* held for each *client* and the *firm's* own *applicable assets* | All that is necessary to enable the *firm* to distinguish *safe custody assets* held for one *client* from *safe custody assets* held for any other *client*, and from the *firm's* own *applicable assets* | Maintain up to date records | Not specified (see default provision CASS 6.6.7R) |
| CASS 6.6.3 R | *Safe custody assets* held for *clients* | Accurate records which ensure theircorrespondence to the *safe custody assets* held for clients | Maintain up to date records | Not specified (see default provision CASS 6.6.7R) |
| CASS 6.5.2A R | | | | [deleted] |
| CASS 6.5.3 R | | | | [deleted] |
| CASS 6.6.4 R | *Client specific safe custody asset record* | *Client specific safe custody asset record* | Maintain up to date | Not specified (see default provision CASS 6.6.7R) |
| CASS 6.6.6R | *Client* agreements that in | A copy of every executed *client* | Not specified | Not specified (see default pro- |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | clude a *firm's* right to use *safe custody assets* for its own account | agreement that includes a *firm's* right to use *safe custody assets* for its own account | | vision CASS 6.6.7R) |
| CASS 6.6.7R | Default record keeping provisions for CASS 6 | Refer to the rule concerned | Refer to the rule concerned | Five years from the later of:<br>(1) the date it was created; and<br>(2) if it has been modified since the date in (1), the date it was most recently modified |
| CASS 6.6.8 R | *Internal custody record checks*, *physical asset reconciliations* and *external custody reconciliations* carried out by the *firm*. | Date and actions the *firm* took when carrying out the relevant process; a list of the discrepancies the *firm* identified and the actions the *firm* took to resolve those discrepancies | Immediate | Not specified (see default provision CASS 6.6.7 R) |
| CASS 6.6.16 R | *Aggregate safe custody asset record* | All the *safe custody assets* the *firm* holds for its *clients*, including those deposited with third parties under CASS 6.3 and any *physical safe custody assets* | Maintain up to date if the *firm* wishes to use the *internal custody reconciliation method* | Not specified (see default provision CASS 6.6.7 R) |
| CASS 6.6.30 R | *Rolling stock method* for *physical asset reconciliations* | *Firm's* reasons for concluding that this method is adequately designed to mitigate risk of records being manipulated or falsified | Before using this method | Five years (from the date the *firm* ceases to use this method) |
| CASS 6.6.45 R | Frequency of the *firm's internal custody record checks*, *physical asset reconciliations* and *external custody reconciliations* | Sufficient to show and explain decision taken under CASS 6.6.44 R when determining frequency | Immediate | (1) Subject to (2), indefinitely.<br>(2) For any decision which is superseded by a subsequent decision, five years from the subsequent |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | | | | decision (with (1) applying to the subsequent decision). |
| CASS 6.6.46R (2) | Review of frequency if the *firm's internal custody record checks*, *physical asset reconciliations* and *external custody reconciliations* | Date of each review and the actions the *firm* took in reviewing the frequency at which it conducts the relevant process | Immediate | Not specified (see default provision CASS 6.6.7 R) |
| CASS 6.6.54R (2)(a) | Actions taken by the *firm* to resolve *shortfall* under this rule | Actions taken, description of *shortfall*, identity of affected *client(s)*, applicable *assets* appropriated to cover the *shortfall*. Update when discrepancy resolved. | Maintain up to date | Not specified (see default provision CASS 6.6.7 R) |
| CASS 6.6.54R (2)(b) | Actions taken by the *firm* to resolve *shortfall* under this rule | Actions taken, description of *shortfall*, identity of affected *client(s)*, amount of *money* appropriated to cover the *shortfall*. Update when discrepancy resolved. | Maintain up to date | Not specified (see default provision CASS 6.6.7 R) |
| CASS 6.7.6R | Any *safe custody asset* disposed of in accordance with CASS 6.7.2R | (i) The *safe custody asset* that was disposed of;<br>(ii) the value of the consideration received for the *safe custody asset* disposed of;<br>(iii) the name and contact details of the *client* to whom the *safe custody asset* was allocated, according to the *firm's* records at the time of making the record; and<br>(iv) efforts applied by the *firm* to determine the *client's* correct contact details | At the time of the disposal | Indefinite |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | | under CASS 6.7.4E(1)(a) or, if being relied on, for the purposes of CASS 6.2.10R(4). | | |
| CASS 7.10.3R(3) | Record of election to comply with the *client money chapter* | Record of election to comply with the *client money chapter*, including the date from which the election is to be effective | Date of the election | 5 years (from the date the *firm* ceases to use the election) |
| CASS 7.10.31 R | Record of election in relation to CASS 7.10.30R | Record of election in relation to CASS 7.10.30R | Date of election | Not specified (see default provision CASS 7.15.5R(3)) |
| CASS 7.10.35 R | *Trustee firm's* election to comply, or to cease to comply, with specific CASS 7 provisions | Relevant provisions, date of election and of any decision to cease to comply | When election made or decision taken to cease to comply | 5 years after ceasing to use the election |
| CASS 7.10.38 R | *Trustee firm's* election to comply, or to cease to comply, with specific CASS 7 provisions | Relevant provisions, date of election and of any decision to cease to comply | When election made or decision taken to cease to comply | 5 years after ceasing to use the election |
| CASS 7.11.3R(3) | Written agreement regarding any arrangement relating to a *TTCA* | The agreement | When agreement made | From the date the agreement is entered into and until five years after the agreement is terminated |
| CASS 7.11.20R | *Client's* agreement to *firm's* use of exemption in CASS 7.11.14R | *Client's* written agreement | At the time of *client's* agreement | During the time the *firm* makes use or intends to make use of the exemption in CASS 7.11.14R in respect of that *client's* monies |
| CASS 7.11.24R | *Client's* agreement to *firm's* use of the delivery versus payment exemption in CASS 7.11.21R | *Client's* written agreement | At the time of *client's* agreement | During the time the *firm* makes use, or intends to make use, of the exemption in CASS 7.11.21R in respect of that *client's* monies |
| CASS 7.11.55 R | *Client money* paid to charity by the *firm* un- | Details of balances released, relevant docu- | When balance released | Indefinite |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | der CASS 7.11.50R(4) | mentation and the *firm's* attempts to contact the *client* concerned | | |
| CASS 7.11.57R (4) | *Client money* paid to charity by the *firm* under this *rule* | Records of all balances released from *client bank accounts*, including the information in CASS 7.11.55R(1)(a) and CASS 7.11.55R(1)(b) | When balance released | Not specified (see default provision CASS 7.15.5R(3)) |
| CASS 7.13.14BR | The *firm's* written policy produced under CASS 7.13.14AR(1)(a) in respect of the *firm's* use of *client bank accounts* under CASS 7.13.13R(3A)(b), and subsequent versions of it | (i) For each of the *firm's* business lines, the maximum proportion of the *client money* held by the *firm* under CASS 7.13.3R(1) to (3) in respect of the business line that the *firm* considers would be appropriate to hold in such accounts;<br>(ii) the *firm's* rationale for reaching its conclusion(s) under (i); and<br>(iii) the means by which the firm will comply with CASS 7.13.14AR(2)(a), having regard to CASS 7.13.14CE. | On the date it creates the version of the policy | Five years after the earlier of:<br>(1) the date on which the version of the policy was superseded; and<br>(2) the date on which the *firm* ceased to use *client bank accounts* under CASS 7.13.13R(3A)(b). |
| CASS 7.13.25R(1) | Appropriateness of a *firm's* selection of a third party | Grounds upon which a *firm* satisfies itself as to the appropriateness of the *firm's* selection of a third party to hold *client money* | Date of the selection | 5 years (from the *firm* ceases to use the third party to hold *client money*) |
| CASS 7.13.32R(3) | Physical receipts | Physical receipt of *money* | When the *firm* receives *client money* in the form of cash, a cheque or other payable order | Not specified (see default provision CASS 7.15.5R(3)) |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 7.13.33R(3) | Future dated cheque | Receipt of *money* | When the *firm* receives *client money* in the form of a cheque that is dated with a future date | Not specified (see default provision CASS 7.15.5R(3)) |
| CASS 7.13.55R | *Firm's* adoption of the alternative approach | Reasons for concluding that the normal approach would lead to greater risk to *client money*, adopting the alternative approach would not result in undue risk to *client money*, the alternative approach is appropriate for use by the particular business line, and the *firm* has adequate systems and controls | Before adopting alternative approach | Five years after it ceases to use the alternative approach in connection with that business line |
| CASS 7.4.19A R to CASS 7.4.19C R | | | | [deleted] |
| CASS 7.15.2 R | *Client money* held for each client and the *firm's* own *money* | All that is necessary to enable the *firm* to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from the *firm's* own *money* | Maintain up to date records | Five years (from the date the record was made) |
| CASS 7.15.3 R | *Client money* held for each *client* | Accurate records to ensure the correspondence between the records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* | Maintain up to date records | Five years (from the date the record was made) |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 7.15.5R(3) | Default record keeping provision for CASS 7 | Refer to the rule concerned | Refer to the rule concerned | Five years from the later of:<br><br>(1) the date it was created; and<br><br>(2) if it has been modified since the date in (1), the date it was most recently modified |
| CASS 7.15.18R | Internal reconciliation of *client money* balances | The *firm's* reasons for concluding that the method of *internal client money reconciliation* it proposes to use meets the criteria at CASS 7.15.18R(1)(a) | Before the *firm* uses a *non-standard method of internal client money reconciliation* or materially changes its method | Not specified (see default provision CASS 7.15.5R(3)) |
| CASS 7.18.10R(1) | *Acknowledgment letters* | Countersigned *acknowledgment letter* | From date of receipt | 5 years from closure of last account to which the *acknowledgment letter* relates |
| CASS 7.18.10R(2) | *Acknowledgment letters* | Copy of *acknowledgment letter* sent to *authorised central counterparty* under CASS 7.8.3R (1) | From date *firm* sends the letter | 5 years from closure of last account to which the *acknowledgment letter* relates |
| CASS 7.18.11R | *Acknowledgment letters* | Any other documentation or evidence the *firm* believes necessary to demonstrate compliance with CASS 7.8 | None specified | None specified (see default provision CASS 7.6.4 R) |
| CASS 7.10.7ER | The election made under CASS 7.10.7AR | The election including the date from which the election is to be effective and, if the *firm* cancels the election, the date from which the election is to cease to be effective | At the time of the election and, if the *firm* cancels the election, at the time it is cancelled | Five years after ceasing to use the election |
| CASS 7.11.9R (2) | *Client's* communication to *firm* of wish to terminate TTCA | *Client's* communication of wish to terminate TTCA | When communication made | Five years (from date of communication) |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 7.11.9R (4) | *Firm's* response to *client's* wish to terminate TTCA | *Firm's* response to *client's* wish to terminate TTCA | When notification given | Five years (from date of notification) |
| CASS 7.11.20 R | | | | [deleted] |
| CASS 7.11.24 R | | | | [deleted] |
| CASS 7.13.25R (2) | *Firm's* periodic review into selection and appointment of third party under CASS 7.13.8 R. | Date of each review, actions the *firm* took in reviewing the selection and appoint of a third party under CASS 7.13.8 R, and the grounds upon which the *firm* continues to be satisfied of appropriateness of its selection of that third party to hold *client money* | Date of review | Five years (from date of review) |
| CASS 7.13.25R (3) | *Firm's* periodic review under CASS 7.13.22 R. | Fact of review, its considerations and conclusions | Date of review | Five years (from date of review) |
| CASS 7.13.36 R | Unallocated *client money* | Fact that the balance treated as unallocated *client money* | When firm is unable to immediately identify *money* as *client money* or its own *money* and it treats the balance as *client money* | Pending *firm's* allocation of the *client money* concerned to an individual *client* |
| CASS 7.13.50 R; CASS 7.13.51 R | Prudent segregation record | Details of *money* segregated under CASS 7.13.41 R required by these rules | Maintain up to date | Five years (after the *firm* ceases to retain *money* as *client money* under CASS 7.13.41 R) |
| CASS 7.13.66 R; CASS 7.13.67 R | *Alternative approach mandatory prudent segregation record* | Details of *money* segregated under CASS 7.13.65 R required by these rules | Maintain up to date | Five years (after the *firm* ceases to retain *money* as *client money* under CASS 7.13.65 R) |
| CASS 7.13.74 R; CASS 7.13.75 R | *Clearing arrangement mandatory prudent segregation record* | Details of *money* segregated under CASS 7.13.73R (3)(a) required by these rules | Maintain up to date | Five years (after the *firm* ceases to retain *money* as *client money* under CASS 7.13.73R (3)(a)) |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 7.15.5R (1) | Total amount of *client money* the *firm* should be holding for each *client* | Total amount of *client money* the *firm* should be holding for each *client* | Maintain up to date | Not specified (see default provision CASS 7.15.5R (3)) |
| CASS 7.15.5R (2) | Transactions and commitments for *client money* | Sufficient to show and explain transactions and commitments | Maintain up to date | Not specified (see default provision CASS 7.15.5R (3)) |
| CASS 7.15.7 R | *Internal client money reconciliations* and *external client money reconciliations* conducted carried out by the *firm* | Date, actions the *firm* took in carrying out the relevant process, and the outcome of its calculation of its *client money requirement* and *client money resource* Fact of each reconciliation and review of the *firm's* arrangements for complying with CASS 7.15.5 R to CASS 7.15.7 R | Immediate | Not specified (see default provision CASS 7.15.5R (3)) |
| CASS 7.15.9 R | Receipts of client money | Appropriate to account for all receipts of *client money* in the form of cash, cheque or other payable order not yet deposited in a *client bank account* | Maintain up to date | Not specified (see default provision CASS 7.15.5R(3)) |
| CASS 7.15.24 R | Frequency of the *firm's external client money reconciliations* | Sufficient to show and explain decision taken under CASS 7.15.23 R when determining frequency | Immediate | (1) Subject to (2), indefinitely.<br><br>(2) For any decision which is superseded by a subsequent decision, five years from the subsequent decision (with (1) applying to the subsequent decision). |
| CASS 7.15.26R (2) | Review of frequency of the *firm's external client money reconciliations* | Date of each review and the actions the *firm* took in reviewing the frequency at which it carries out the *external* | Not specified | Not specified (see default provision CASS 7.15.5R (3)) |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | | *client money reconciliations* | | |
| CASS 7.19.6 R | For each *sub-pool* established by the *firm* | All the *client* beneficiaries of that *sub-pool* | From the date on which the *sub-pool* is created | Five years following the date on which *client money* was last held by the *firm* in relation to the *sub-pool* to which the record applied |
| CASS 7.19.7 R | For each *sub-pool* established by the *firm* | (a) The name of the *sub-pool*<br><br>(b) The identity of the *net margined omnibus account* to which the *sub-pool* relates;<br><br>(c) Each *client bank account* and each *client transaction account* maintained for the *sub-pool*;<br><br>(d) the applicable *sub-pool disclosure document* for the *sub-pool*. | Prior to the date on which the *firm* intends to receive or hold client money for that *sub-pool* | Five years following the date on which *client money* was last held by the *firm* in relation to the *sub-pool* to which the record applied |
| CASS 7.19.8 R | For each *sub-pool* established by the *firm* | A list of all the *sub-pools* the *firm* has created. | From the date on which the *sub-pool* is created | Five years following the date on which *client money* was last held by the *firm* in relation to the *sub-pool* to which the record applied |
| CASS 7.19.9 R | For each *sub-pool* established by the *firm* | A *sub-pool disclosure document* | At the time of establishing the relevant *sub-pool* | Five years following the date on which *client money* was last held by the *firm* in relation to the *sub-pool* to which the *sub-pool disclosure document* applied |
| CASS 7.19.13R (2) | For each *sub-pool* established by the *firm* | The name of each *client bank account* and each *client transaction account* maintained for the | From the date on which the *client bank account* and *client transaction account* is | 5 years following the date on which *client money* was last held by the *firm* in relation to |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | | *sub-pool*, including a unique identifying reference | maintained for the *sub-pool* | the *sub-pool* to which the record applied |
| CASS 7A.2.6FR | Any balance under CASS 7A.2.6AR(1)(b)(i) or (ii) which has been applied towards any costs incurred in accordance with CASS 7.17.2R or towards any *shortfall* in the relevant notional *pool* in accordance with CASS 7A.2.6AR(1)(b) or (c) respectively | (i) The amount of the balance of *client money*;<br>(ii) the name and contact details of any *client* to whom that balance was allocated according to the *firm's* records at the time of making the record; and<br>(iii) efforts applied by the *firm* to determine the *client's* correct contact details under CASS 7A.2.6CE(1)(a) or, if being relied on, for the purposes of CASS 7.11.50R(3). | Immediately before taking steps to apply the balance towards costs or a *shortfall* in accordance with CASS 7A.2.6AR(1)(b) or (c) respectively | Indefinite |
| CASS 7A.3.8R (3) | *Client money shortfall* | Each *client's* entitlement to *client money shortfall* at the failed bank | Maintain up to date records | Until *client* is repaid |
| CASS 7A.3.10R (3) | *Client money shortfall* | Each *client's* entitlement to *client money shortfall* at the failed bank | Maintain up to date records | Until *client* is repaid |
| CASS 7A.3.11R (3) | *Client money shortfall* | Each *client's* entitlement to *client money shortfall* at the failed bank | Maintain up to date records | Until *client* is repaid |
| CASS 7A.3.17R (3) | *Client money shortfall* | Each *client's* entitlement to *client money shortfall* at the failed intermediate broker, *settlement agent* or OTC counterparty | Maintain up to date records | Until *client* is repaid |
| CASS 8.3.1 R | Adequate records and internal controls in respect of the *firm's* use of *mandates* (see | Up to date list of *firm's mandates* and any conditions regarding the use of *mandates*, all transac- | Maintain current full details | One year after the *firm* ceases to have the *mandate* or, if the *mandate* was held in the |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | CASS 8.3.2 R to CASS 8.3.2C R ) | tions entered into, details of procedures and *internal controls* for giving and receiving of instructions under *mandates*, and important *client* documents held by the *firm*, and, in relation to non-written mandates, the further details required by CASS 8.3.2C R | | course of or in connection with the *firm's MiFID business*, five years after the same date |
| CASS 10.1.3 R | A *firm's CASS resolution pack* | The documents to which CASS 10.2 and CASS 10.3 refer | From the date on which a *firm* becomes subject to CASS 10.1.3 R | None is specified |
| CASS 11.3.6 R | Allocation of *CASS* oversight function in CASS 11.3.1 R or CASS 11.3.2 R, or *CASS operational oversight function* in CASS 11.3.4 R | The *person* to whom (as applicable) the *CASS* oversight responsibilities have been allocated, or to whom the *CASS operational oversight function* has been allocated | Upon allocation | 5 years (from the date the record was made) |
| CASS 11.7.6 R | Appropriateness of a *CASS large debt management firm's* selection of an *approved bank* | Grounds upon which a *CASS large debt management firm* satisfies itself as to the appropriateness of the *firm's* selection of an *approved bank* at which to hold *client money* | Date of the selection | 5 years (from the date the *firm* ceases to use the *approved bank* to hold *client money*) |
| CASS 11.8.8 R | *Client bank account acknowledgement letters* sent in accordance with CASS 11.8.2 R | Each countersigned *client bank account acknowledgement letters* received | On receipt of each letter | 5 years (following closure of the last *client bank account* to which the letter relates) |
| CASS 11.8.9 R | Demonstration that a *CASS debt management firm* has complied with CASS 11.8.2 R to CASS 11.8.7 R | Evidence of such compliance | On compliance with the relevant provision | None specified |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 11.9.5 R | *Money* received from *clients* in the form of cash, cheques or other payable orders | Details of money received | On receipt | None specified |
| CASS 11.9.8 R (2) | Unidentified *client money* under CASS 11.9.8 R (2) | Details of unidentified *client money* held | Being unable to identify *money* as *client money* or its own *money*, and deciding it is reasonably prudent to so record | Until it performs the necessary steps to identify the *money* under CASS 11.9.8 R (1) |
| CASS 11.11.1 R | *Client money* held for each *client* and the *CASS debt management firm*'s own *money* | All that is necessary to enable the *CASS debt management firm* to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from the *firm*'s own *money* | Maintain up-to-date records | None is specified |
| CASS 11.11.3 R | *Client money* held for each *client* | Accurate records to ensure the correspondence between the records and accounts of the entitlement of each *client* for whom the *CASS debt management firm* holds *client money* with the records and accounts of the *client money* the firm holds in *client bank accounts* | Maintain up-to-date records | None is specified |
| CASS 11.11.4 R | Payments made to, for or on behalf of clients by a *CASS debt management firm* and written and oral contact with *clients* and creditors | Details of payments made and of the written or oral contact | Maintain up-to-date records | None is specified |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| CASS 11.12.4 R | A *CASS debt management firm's CASS 11 resolution pack* | The documents to which CASS 11.12.3 R and CASS 11.12.4 R refer. | From the date on which a *CASS debt management firm* becomes subject to CASS 11.12.3 R | None is specified |
| CASS 11.13.12 R (3) | A *CASS large debt management firm's* record of each *client's* shortfall in the event of a *secondary pooling event* | Details of the shortfall | On the secondary pooling event occurring | None is specified |
| CASS 13.2.3R | Allocation of oversight function in CASS 13.2.3R | The person to who the oversight function is allocated | Upon allocation | 5 years (from the date the record was made) |
| CASS 13.5.8R | *Client bank account acknowledgement letters* sent in accordance with CASS 13.5.2R | Each countersigned *client bank account acknowledgement letter* received | On receipt of each letter | 5 years (following closure of the last client bank account to which the letter relates) |
| CASS 13.5.9R | Demonstration that the *firm* has complied with the requirements of CASS 13.5 | Evidence of such compliance | On compliance with the relevant provision | None specified |
| CASS 13.6.5R | *Money* received from *customers* in the form of cash, cheques or other payable orders | Details of money received | On receipt | None specified |
| CASS 13.6.6R(2) | Unidentified *client money* under CASS 13.6.6R(2) | Details of unidentified *client money* held | Being unable to identify *money* as *client money* or its own *money*, and deciding it is reasonably prudent to so record | Until it performs the necessary steps to identify the *money* under CASS 13.6.6R(1) |
| CASS 13.10.1R(1) | *Client money* held for each *customer* and the *firm's* own *money* | All that is necessary to enable the *firm* to distinguish *client money* held for one *customer* from *client money* held for any other *customer* and from | Maintain up-to-date records | None specified |

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---|---|---|---|---|
| | | the *firm's* own *money* | | |
| CASS 13.10.3R | *Client money* held for each *customer* | Accurate records to ensure the correspondence between the records and accounts of the entitlement of each *customer* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* | Maintain up-to-date records | None is specified |
| CASS 13.10.4R | Payments made to, for or on behalf of *customers* by the *firm* | Details of payments made | Maintain up-to-date records | None is specified |
| CASS 13.11.13R | A record of each *customer's* shortfall in the event of a *secondary pooling event* | Details of the shortfall | On the secondary pooling event occurring | None is specified |

# Client Assets

# Schedule 2
# Notification requirements

**Sch 2.1 G**

| Handbook reference | Matter to be notified | Contents of notification | Trigger event | Time allowed |
|---|---|---|---|---|
| CASS 1A.2.5 R | Election to be treated as a *CASS medium firm* or a *CASS large firm* | The fact of that election | The fact of that election | To be made at least one week before the election is intended to take effect |
| CASS 1A.2.8 R (1) - (3) | | | | [deleted] |
| CASS 1A.2.8 R (4) | | | | [deleted] |
| CASS 1A.2.8A R | | | | [deleted] |
| CASS 1A.2.9 R (1) - (3) | The highest total amount of *client money* and the highest total value of *safe custody assets* held by a *firm*, as more fully described in CASS 1A.2.9 R | The highest total amount of *client money* and *safe custody assets* held by a *firm*, as more fully described in CASS 1A.2.9 R. | The need to comply with CASS 1A.2.9 R (1)-(3) | By the fifteenth *business day* of January unless contrary provision is made in CASS 1A.2.9 R |
| CASS 1A.2.9 R (4) | A *firm's* 'CASS firm type' classification | A *firm's* 'CASS firm type' classification | The need to comply with CASS 1A.2.9 R (4) | At the same time the *firm* makes the notification under CASS 1A.2.9 R (1), (2) or (3) |
| CASS 1A.3.2 R | | | | [deleted] |
| | | | | [deleted] |
| | | | | [deleted] |
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| | | | | [deleted] |
| | | | | [deleted] |

| Handbook reference | Matter to be notified | Contents of notification | Trigger event | Time allowed |
|---|---|---|---|---|
| CASS 5.5.61R | Failure of *bank*, *broker* or *settlement agent* | Full details including whether it intends to make good any *shortfall* that may have arisen in the amounts involved | As soon as the *firm* becomes aware | Immediately |
| CASS 5.5.76R | Inability to perform the calculation required by CASS 5.5.63R(1) | Inability to perform the calculation | Inability to perform the calculation | Immediately |
| CASS 5.5.77R | Inability to make good any *shortfall* identified by CASS 5.5.63R(1) | Inability to make good any *shortfall* in *client money* | Inability to make good any *shortfall* | Immediately |
| CASS 6.6.57R(1) | Inability to comply with the requirements in CASS 6.6.2 R to CASS 6.6.4 R (Records, accounts and reconciliations) | The fact that the *firm* has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that | Non-compliance or inability, in any material respect, to comply with the requirements | Without delay |
| CASS 6.6.57R (2) | Non-compliance or material inability to comply with the requirements in CASS 6.6.2 R (Records, accounts and reconciliations) and/or article 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation | The fact that the *firm* has not complied or is materially unable to comply with the requirements and the reasons for that | Non-compliance or material inability to comply with the requirement | Without delay |
| CASS 6.6.57R(2A) | Non-compliance or material inability to comply with the requirements in CASS 6.6.2R (Records, accounts and reconciliations) or article 13(1)(b) or 13(1)(c) (Safekeeping duties with regard to assets held in | The fact that the *firm* has not complied or is materially unable to comply with the requirements and the reasons for that | Non-compliance or material inability to comply with the requirement | Without delay |

| Handbook reference | Matter to be notified | Contents of notification | Trigger event | Time allowed |
|---|---|---|---|---|
| | custody) of the *UCITS level 2 regulation* | | | |
| CASS 6.6.57R (3) | Inability or material failure to take the steps required under CASS 6.6.54 R for the treatment of shortfalls. | The fact that the *firm* is unable or has materially failed to comply and the reasons for that | Inability or material failure to comply with the requirement | Without delay |
| CASS 6.6.57R (4) | Inability or material failure to conduct an *internal custody record check* under CASS 6.6.11 R to CASS 6.6.19 R | The fact that the *firm* is unable or has materially failed to comply and the reasons for that | Inability or material failure to comply with the requirement | Without delay |
| CASS 6.6.57R (5) | Inability or material failure to conduct a *physical asset reconciliation* in compliance with CASS 6.6.22 R to CASS 6.6.30 R | The fact that the *firm* is unable or has materially failed to comply and the reasons for that | Inability or material failure to comply with the requirement | Without delay |
| CASS 6.6.57R (6) | Inability or material failure to conduct an *external custody record check* in compliance with CASS 6.6.34 R to CASS 6.6.37 R | The fact that the *firm* is unable or has materially failed to comply and the reasons for that | Inability or material failure to comply with the requirement | Without delay |
| CASS 7.10.7AR(2)-(4) | The *firm's* election under CASS 7.10.7AR(1), the effective date and any change to the effective date | The *firm's* election under CASS 7.10.7AR(1) | Making the election or changing the effective date | For a notification under CASS 7.10.7AR(2), at least one *month* before the date on which the *firm's* election is to be effective<br>For a notification of a new effective date under CASS 7.10.7AR(4), the notification must be made before the new effective date. |
| CASS 7.10.7DR(1) | The cancellation of the *firm's* election under CASS 7.10.7AR(1) | The cancellation of the *firm's* election under CASS 7.10.7AR(1) | Cancelling the election | At least one *month* before the date on which the *firm's* election is to cease to be effective |

| Handbook reference | Matter to be notified | Contents of notification | Trigger event | Time allowed |
|---|---|---|---|---|
| CASS 7.11.47 R | The *firm's* intention to transfer *client money* under CASS 7.11.42R and/or CASS 7.11.44R | That intention | Forming the intention | Not less than seven days before the transfer of the *client money* in question |
| CASS 7.13.21CR(1) | Commencement of approach under CASS 7.13.21AR(1) | Notice that the *firm* will start to use the approach under CASS 7.13.21AR(1) | Whenever a decision to use the approach under CASS 7.13.21AR(1) is taken | Upon reaching the decision and before the *firm* starts to use that approach |
| CASS 7.13.21CR(2) | Cessation or continuation of approach under CASS 7.13.21AR(1) | Notice that the *firm* will cease to use the approach under CASS 7.13.21AR(1) | Whenever a decision to cease the approach under CASS 7.13.21AR(1) is taken | Upon reaching the decision |
| CASS 7.13.57 R | *Firm's* intention to adopt the alternative approach for a particular business line | *Firm's* intention to adopt the alternative approach for a particular business line | At least three months prior to adopting the alternative approach for that business line | At least three months prior to adopting the alternative approach for that business line |
| CASS 7.15.18R(1)(b) | *Firm's* intention to use a *non-standard method of internal client money reconciliation* | *Firm's* intention to use a *non-standard method of internal client money reconciliation* | Forming the intention | Before using a *non-standard method of internal client money reconciliation* |
| CASS 7.6.16R (2) | | | | [deleted] |
| CASS 7.15.33R (1) | Inability to comply with CASS 7.15.2 R, CASS 7.15.3 R or CASS 7.15.5R (1), due to materially out of date, inaccurate or invalid internal records and accounts | The fact that the *firm* is unable to comply and the reasons for that | *Firm's* records and accounts are materially out of date, inaccurate or invalid internal so that it is unable to comply | Without delay |
| CASS 7.15.33R (2) | Inability to comply with CASS 7.15.29 R after having carried out an *internal client money reconciliation* | The fact that the *firm* is unable to comply and the reasons for that | *Firm's* records and accounts are materially out of date, inaccurate or invalid internal so that it is unable to comply | Without delay |
| CASS 7.15.33R (3) | Inability or material failure to identify and correct any dis | The fact that the *firm* is unable to comply and the | Inability or material failure to comply | Without delay |

| Handbook reference | Matter to be notified | Contents of notification | Trigger event | Time allowed |
|---|---|---|---|---|
| | crepancies under CASS 7.15.31 R to CASS 7.15.32 R after having carried out an *external client money reconciliation* | reasons for that | | |
| CASS 7.15.33R (4) | Inability or material failure to conduct an *internal client money reconciliation* under CASS 7.15.12 R and CASS 7.15.15 R | The fact that the *firm* is unable to comply and the reasons for that | Inability or material failure to comply | Without delay |
| CASS 7.15.33R (5) | Inability or material failure to conduct an *external client money reconciliation* under CASS 7.15.20 R to CASS 7.15.28 R | The fact that the *firm* is unable to comply and the reasons for that | Inability or material failure to comply | Without delay |
| CASS 7.15.33R (6) | Amount of *client money* segregated in *client bank accounts* materially differing from *client money segregation requirements* during preceding 12 months | The fact of the material difference and the reasons for that | On becoming aware | Without delay |
| CASS 7.19.21 R | Material change to *sub-pool* | Fact of proposed change, risks and consequences to beneficiaries | *Firm* determining that it wishes to make material change to a *sub-pool* | Not less than two months before the date on which the *firm* intends the change to take effect |
| CASS 7.19.22 R | Establishment of a *sub-pool* of *client money* to *FCA* | *Firm* wishes to establish a *sub-pool* of *client money* | *Firm* determining that it wishes to establish a *sub-pool* of *client money* | Not less than two months before the date on which the *firm* intends to receive or hold *client money* for that *sub-pool* |
| CASS 7.19.24 R | Non-compliance, or inability to comply with, with the requirements in | The fact that the *firm* has not complied with, or is unable to comply | Non-compliance with the applicable requirement | Without delay |

| Handbook reference | Matter to be notified | Contents of notification | Trigger event | Time allowed |
|---|---|---|---|---|
| | CASS 7.19.11 R or CASS 7.19.18 R | with, the requirements of CASS 7.19.11 R or CASS 7.19.18 R (as applicable) | | |
| CASS 7A.3.19R (1) | Failure of a third party with which *money* is held – i.e.: bank, *intermediate broker*, *settlement agent* or OTC counterparty or other entity with which it has placed or to which it has passed *client money* | Full details | *Firm* becomes aware of the *failure* of the entity | As soon as the *firm* becomes aware |
| CASS 7A.3.19R (2) | *Failure* of a third party with which money is held – i.e.: bank, *intermediate broker*, *settlement agent* or OTC counterparty or other entity with which it has placed or to which it has passed *client money* | Intentions regarding making good any *shortfall* that has arisen or may arise, and of the amounts involved | *Failure* of third party with which *client money* is held | As soon as reasonably practical |
| CASS 10.1.16 R | If a *firm* has not complied with, or is unable to comply with, CASS 10.1.3 R | The fact of that *firm's* non-compliance or inability to comply with the *rule* in CASS 10.1.3 R | Non-compliance or inability to comply with CASS 10.1.3 R | Immediately (as per CASS 10.1.16 R) |
| CASS 11.2.4 R (1) to CASS 11.2.4 R (3) | The highest total amount of *client money* held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4 R | The highest total amount of *client money* held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4 R | The need to comply with CASS 11.2.4 R (1) to CASS 11.2.4 R (3) | By the fifteenth day of January unless contrary provision is made in CASS 11.2.4 R (1) to CASS 11.2.4 R (4) |
| CASS 11.2.4 R (4) | A *firm's CASS debt management firm* type classification | A *firm's CASS debt management firm* type classification | The need to comply with CASS 11.2.4 R (4) | At the same time as the notification in CASS 11.2.4 R (1) to CASS 11.2.4 R (4) |

| Handbook reference | Matter to be notified | Contents of notification | Trigger event | Time allowed |
|---|---|---|---|---|
| CASS 11.11.30 R (1) | Non-compliance with requirements in CASS 11.11.1 R to CASS 11.11.4 R | Non-compliance with requirements in CASS 11.11.1 R to CASS 11.11.4 R | The non-compliance | Without delay |
| CASS 11.11.30 R (2) | Amount of *money* segregated in *client bank accounts* is materially different from total aggregate of *client money* required to be segregated | The fact that there is a material difference | Awareness of the difference | Without delay |
| CASS 11.11.31 R | A *CASS large debt management firm's* inability or failure to comply with CASS 11.11.23 R, CASS 11.11.28 R, CASS 11.11.13 R or CASS 11.11.25 R | The inability or failure to comply | Awareness of the inability or failure | Without delay |
| CASS 11.12.7 R | A *CASS large debt management firm's* inability or failure to comply with CASS 11.12.2 R or CASS 11.12.6 R | The inability or failure to comply | Awareness of the inability or failure | Without delay |
| CASS 12.2.5 R | *LME bond arrangements* | Issue of an individual letter of credit issued by the *firm* | Upon issue of an individual letter of credit under an *LME bond arrangement* | Immediately |
| CASS 13.10.21R(1) to (5) | The *firm's* inability or failure to comply with CASS 13.10.1R to 13.10.4R, , CASS 13.10.5R, CASS 13.10.15R, CASS 13.10.17R, or CASS 13.10.19R. | The inability or failure to comply | Awareness of the inability or failure | Without delay |
| CASS 13.10.21R(6) | Amount of money segregated in *client bank accounts* is materially different from total aggregate of *client money* required to be segregated | The fact that there is a material difference | Awareness of the difference | Without delay |

# Client Assets

## Schedule 3
## Fees and other required payments

**Sch 3.1 G**

There are no requirements for fees or other payments in *CASS*.

# Client Assets

## Schedule 4
## Powers exercised

**Sch 4.1 G**
[deleted]

**Sch 4.2 G**
[deleted]

# Client Assets

# Schedule 5
# Rights of actions for damages

**Sch 5.1 G**

1. The table below sets out the *rules* in *CASS* contravention of which by an *authorised person* may be actionable under Section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention
2. If a 'Yes' appears in the column headed 'For private person?', the *rule* may be actionable by a 'private person' under Section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A 'Yes' in the column headed 'Removed' indicates that the *FCA* has removed the right of action under Section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. The column headed 'For other person?' indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

**Sch 5.2 G**

| Chapter / Appendix | Section / Annex | Paragraph | Right of action under Section 138D | | | |
|---|---|---|---|---|---|---|
| | | | For private person? | Removed? | For other person? | |
| All *rules* in *CASS* with the status letter "E" | | | No | No | No | |
| All other *rule* in *CASS*. | | | Yes | No | No | |

# Client Assets

# Schedule 6
# Rules that can be waived

**Sch 6.1 G**

As a result of section 138A of the *Act* (Modification or waiver of rules), the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*.