

## 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*).

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**Review and replacement of client bank account  
acknowledgement letters**

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- 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**  
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**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).
- 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 [ <i>name of approved bank</i> ] systems
[ <i>Claims Management Firm Client Bank Account</i> ]	[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.

