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);

5

(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.

5

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.

5

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]

[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.

5

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]

5.8 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 (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; (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*; (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.