

## Chapter 5

# Client money: insurance distribution activity

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);

- (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.