

Chapter 7

Client money rules

7.19 Clearing member client money sub-pools

7.19.1

G

- (1) Under **■ CASS 7.17.2R(2)**, a *firm* acts as *trustee* for all *client money* received or held by it for the benefit of the *clients* for whom that *client money* is held, according to their respective interests in it.
- (2) A *firm* that is also a *clearing member* of an *authorised central counterparty* may wish to segregate *client money* specifically for the benefit of a group of *clients* who have chosen to clear positions through a *net margined omnibus client account* maintained by the *firm* with that *authorised central counterparty*, where that segregation might facilitate the *porting* of *client* positions recorded in that *net margined omnibus client account*. To segregate *client money* (that would otherwise be held in the *general pool*) for a specific group of *clients* clearing positions through a particular *net margined omnibus client account*, a *clearing member firm* may, in accordance with these rules, create a *sub-pool* of *client money*.
- (3) Upon the occurrence of a *primary pooling event*, the *client money* for:
 - (a) the *general pool*, should be distributed in accordance with **■ CASS 7A** to the *clients* for whom the *firm* receives or holds *client money* in that *general pool*; and
 - (b) a *sub-pool*, should either be:
 - (i) transferred to facilitate *porting*; or
 - (ii) distributed to the *clients* who are beneficiaries of that *sub-pool*, according to their respective interests under **■ CASS 7A.2.4R (2)(a)**.
- (4) All *client money* is received or held by the *firm* as *trustee* for the *clients* of the *firm*. However, a *clearing member* of an *authorised central counterparty* who clears *client* positions through a *net margined omnibus client account* may organise its affairs (with the consent of the relevant *clients*) in such a way that those *clients* need not share in the *general pool* of *client money* following a *primary pooling event*, save to the extent that such *clients* otherwise have an interest in the *general pool*.

7.19.2

R

Where a *firm* creates a *sub-pool* for a particular *net margined omnibus client account*, it must not clear positions through that *omnibus client account* for *clients* who are not beneficiaries of that *sub-pool*.

Internal controls

- 7.19.3 **R** A firm wishing to establish a *sub-pool* must establish and maintain adequate *internal controls* necessary to comply with the *firm's* obligations under ■ CASS 7 for the *general pool* and each *sub-pool* that it may establish.

Records

- 7.19.4 **R** Where a *firm* establishes one or more *sub-pools*, ■ CASS 7.15 (Records, accounts and reconciliations) shall be read as applying separately to the *firm's general pool* and each *sub-pool*.
- 7.19.5 **G** A *firm* that establishes one or more *sub-pools* must establish and maintain adequate internal controls and records in accordance with ■ CASS 7.15 (Records, accounts and reconciliations) to conduct internal and external reconciliations for each *sub-pool* and the *general pool* individually.
- 7.19.6 **R**
- (1) The records maintained for a *sub-pool* under ■ CASS 7.19.4 R must identify all the *client* beneficiaries of that *sub-pool*.
 - (2) The beneficiaries of each *sub-pool* are those *clients*:
 - (a) from whom the *firm* has received a signed *sub-pool disclosure document* in accordance with ■ CASS 7.19.11 R;
 - (b) for whom the *firm* maintains, previously maintained or is in the process of establishing a *marginised transaction(s)* in the relevant *net marginised omnibus client account* at the *authorised central counterparty*; and
 - (c) to whom any *client equity balance* or other *client money* is required to be segregated for the *client* by the *firm* in respect of the *marginised transactions* under (2)(b) from that *sub-pool*.
- 7.19.7 **R**
- (1) For each *sub-pool* that the *firm* establishes, it must maintain a record of:
 - (a) the name of the *sub-pool*;
 - (b) the particular *net marginised omnibus client account* at an *authorised central counterparty* to which the *sub-pool* relates;
 - (c) each *client bank account* and each *client transaction account* (other than the *net marginised omnibus client account*) maintained for the *sub-pool*, including the unique identifying reference or descriptor under ■ CASS 7.19.13 R (2); and
 - (d) the applicable *sub-pool disclosure document* for the *sub-pool*.
- 7.19.8 **R** The *firm* must maintain an up-to-date list of all the *sub-pools* it has created.

Sub-pool disclosure document

- 7.19.9 **R**
- (1) A *firm* wishing to establish a *sub-pool* must prepare a *sub-pool disclosure document* for each *sub-pool*.
 - (2) The *sub-pool disclosure document* for each *sub-pool* must:

- (a) identify the *sub-pool* by name, as stated in its records under ■ CASS 7.19.7 R, the *net margined omnibus client account* and the *authorised central counterparty* to which the *sub-pool disclosure document* relates;
- (b) contain a statement that the *client* consents to the *firm* receiving and holding the *client's client money* in the *sub-pool*;
- (c) contain a statement that, in the event of the *failure* of the *firm*, the *firm* is directed by the *client* to use any *client money* held by the *firm* in the *sub-pool* to facilitate the *porting* of the positions recorded in that *net margined omnibus client account*; and
- (d) a statement reminding the *client* that, in the event of the *failure* of the *firm*, if *porting* is not effected or if *porting* is effected but any money in the *sub-pool* is not used to facilitate *porting*, the *client* beneficiaries of the *sub-pool* will be entitled to a distribution of any *client money* held for that *sub-pool* in line with ■ CASS 7A. However, the *client* beneficiaries will not have a claim on any other *pool* of *client money*, except to the extent that the *client* is a beneficiary of another *pool*.

7.19.10 **G** In preparing a *sub-pool disclosure document* under ■ CASS 7.19.9 R (1), a *firm* may use the template in ■ CASS 7 Annex 6.

- 7.19.11 **R**
- (1) Before receiving or holding *client money* for a *client* for a *sub-pool*, a *firm* must:
 - (a) provide to the *client* a copy of the *sub-pool disclosure document* applicable to that *sub-pool*; and
 - (b) obtain a signed copy of that *sub-pool disclosure document* from the *client*.
 - (2) A *firm* must provide the beneficiary of a *sub-pool* with a copy of its signed *sub-pool disclosure document* applicable to that *sub-pool* upon the beneficiary's request.

Segregation and operation of sub-pools

7.19.12 **R** Where a *firm* establishes one or more *sub-pools*, ■ CASS 7.13 (Segregation of client money) is to be read as applying separately to the *firm's general pool* and each *sub-pool*.

- 7.19.13 **R**
- (1) A *firm* must not hold *client money* for a *sub-pool* in a *client bank account* or a *client transaction account* used for holding *client money* for any other *sub-pool* or the *general pool*.
 - (2) A *firm* that establishes a *sub-pool* must ensure that the name of each *client bank account* and each *client transaction account* (other than the *net margined omnibus client account*) maintained for that *sub-pool* includes a unique identifying reference or descriptor that enables the account to be identified with that *sub-pool*.
 - (3) Where a *client* of the *firm* is a beneficiary of the *general pool* and wishes to become a beneficiary of a *sub-pool*, the *client* in question shall become a beneficiary of the relevant *sub-pool* when :

- (a) the *firm* has obtained the signed *sub-pool disclosure document* from that *client* in accordance with ■ CASS 7.19.11 R (1); and
 - (b) the *firm* has either:
 - (i) transferred the relevant amount of *client money* for that *client* from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for the relevant *sub-pool*; or
 - (ii) if the *firm* is not making a transfer of *client money* from the *general pool*, when it has received that *client's money* in a *client bank account* maintained for the relevant *sub-pool*.
- (4) Where a *client* of the *firm* is a beneficiary of the *general pool* and wishes to become a beneficiary of a *sub-pool*, the *firm* must ensure that it does not transfer *client money* from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for a *sub-pool* in accordance with ■ CASS 7.19.13 R (3)(b)(i), unless the amount of *client money* held for the *general pool* is sufficient, immediately after that transfer, to satisfy the *firm's client money* obligations to the remaining beneficiaries of the *general pool*.
- (5) A *client* of the *firm* who is a beneficiary of a *sub-pool* ceases to be a beneficiary of that *sub-pool* when:
- (a) the *firm* has settled the amount owing to that *client* for all of the *marginied transactions* cleared through the related *net marginied omnibus client account* and no longer holds any *client money* for that *client* in that *sub-pool*, and so ■ CASS 7.19.6 R (2)(b) and ■ CASS 7.19.6 R (2)(c) no longer apply for that *client*; or
 - (b) the *firm* has complied with (i) or (ii), and in either case (iii):
 - (i) the *firm* has received a written instruction from the *client* stating that the *client* no longer wishes to have its positions cleared through the *net marginied omnibus client account* or its *client money* held in that *sub-pool*, or the *firm* has notified the *client* under ■ CASS 7.19.18 R that it is making a material change to a *sub-pool*; or
 - (ii) the *firm* has closed or moved that *client's positions* to an account other than the *net marginied omnibus client account* referable to that *sub-pool*; and
 - (iii) the *firm* has either transferred the relevant amount of *client money* for that *client* from a *client bank account* maintained for the relevant *sub-pool* to a *client bank account* maintained by the *firm* for the *general pool* (or, if applicable, another *sub-pool*), or transferred the amount owing to that *client* for all of the *marginied transactions* cleared through the related *net marginied omnibus client account* and no longer holds any *client money* for that *client* in that *sub-pool*.
- (6) In relation to the transfer of *client money* under ■ CASS 7.19.13 R (5)(b)(iii), a *firm* must ensure that it does not transfer *client money* from a *client bank account* maintained for a *sub-pool*, unless the amount of *client money* held for the *sub-pool* is sufficient, immediately after that transfer, to satisfy the *firm's client money* obligations to the remaining beneficiaries of that *sub-pool*.

- 7.19.14** **R** Save to the extent permitted under **■ CASS 7.13.70 G** a *firm* that receives *client money* to be credited in part to the *general pool* or one *sub-pool* and in part to another *sub-pool* must:
- (1) take the necessary steps to ensure that the full sum is paid directly into a *client bank account* maintained for the *general pool*; and
 - (2) promptly, and in any event no later than one *business day* after receipt, pay the *money* that is not *client money* for the *general pool* out of that *client bank account* and into a *client bank account* maintained for the appropriate *sub-pool*.
- 7.19.15** **G**
- (1) If a *primary pooling event* occurs before *client money* is transferred from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for the appropriate *sub-pool* in accordance with **■ CASS 7.19.14 R (2)**, the amount in question will not form part of that *sub-pool*, including for the purposes of **■ CASS 7A.2.4R (1)**.
 - (2) If a *primary pooling event* occurs before *client money* is transferred from a *client bank account* maintained for a *sub-pool* to a *client bank account* maintained for the *general pool* or another *sub-pool* in accordance with **■ CASS 7.19.13 R (5)**, the amount in question will not form part of the *general pool* or that other *sub-pool*, including for the purposes of **■ CASS 7A.2.4R (1)**, but will remain part of the original *sub-pool*.
- 7.19.16** **R** A *client* for whom a *firm* receives or holds *client money* for a *sub-pool* has no claim to or interest in *client money* received or held for the *general pool* or any other *sub-pool* unless:
- (1) that *client* is a beneficiary of that other *sub-pool*; or
 - (2) the *firm* receives or holds *client money* for that *client* for other business which does not relate to any *sub-pool* (and thus the *client* is a beneficiary of the *firm's general pool*).
- 7.19.17** **R** A *client* for whom a *firm* receives or holds *client money* in more than one *pool* as described in **■ CASS 7.19.16 R (1)** and/or **■ CASS 7.19.16 R (2)** has an interest in a distribution from each such *pool*, and each interest is separate and distinct.
- Material changes to sub-pools**
- 7.19.18** **R** Before making a material change to a *sub-pool*, a *firm* must:
- (1) notify the then current beneficiaries of that *sub-pool* in writing, not less than two months before the date on which the *firm* intends the change to take effect; and
 - (2) include in the notification an explanation of the consequences for the beneficiaries of the proposed change and the options available to them, such as the option of a beneficiary of the affected *sub-pool* to cease to be a beneficiary of that *sub-pool* and to become a

beneficiary of the *firm's general pool* or, if applicable, another *sub-pool*.

7.19.19 **G** A *firm* should keep in mind its obligations under **■ CASS 7.19.11 R (1)(b)** (before receiving or holding *client money* for a *client* in a *sub-pool*, a *firm* must obtain a signed copy of the *sub-pool disclosure document* from the client) when making a material change to a *sub-pool*. A *firm* is also reminded of the conditions under **■ CASS 7.19.13 R (5)(b)** (when a *client* of the *firm* who is a beneficiary of a *sub-pool* ceases to be a beneficiary of that *sub-pool*) if a material change proposed to a *sub-pool* results in a *client* ceasing to be a beneficiary of that *sub-pool*.

7.19.20 **G** The *FCA* would normally consider the dissolution of a *sub-pool*, such that the *firm* no longer operates the *sub-pool* or no longer uses the relevant *net margined omnibus client account* or transfers the business to another *authorised central counterparty*, to be examples of material changes to a *sub-pool*.

7.19.21 **R** Before materially changing a *sub-pool*, a *firm* must provide a copy of the notice provided to clients under **■ CASS 7.19.18 R R** to the *FCA* not less than two months before the date on which the *firm* intends the change to take place.

Notifications

7.19.22 **R** A *firm* that wishes to establish a *sub-pool* of *client money* must notify the *FCA* in writing not less than two months before the date on which the *firm* intends to receive or hold *client money* for that *sub-pool*.

7.19.23 **R** Upon request, a *firm* must deliver to the *FCA* a copy of the *sub-pool disclosure document* for any *sub-pool* established by the *firm*.

7.19.24 **R** A *firm* must inform the *FCA* in writing, without delay, if it has not complied, or is unable to comply with the requirements in **■ CASS 7.19.11 R** or the requirements in **■ CASS 7.19.18 R**.

Record-keeping

7.19.25 **R** The records maintained under this section, including the *sub-pool disclosure documents*, are a record of the *firm* that must be kept in a *durable medium* for at least five years following the date on which *client money* was last held by the *firm* for a *sub-pool* to which those records or the *sub-pool disclosure document* applied.