Chapter 7

Client money rules

Guidance notes for acknowledgement letters (CASS 7.18)

Introduction

1 This annex contains *guidance* on the use of the templates for *acknowledgement letters* in ■ CASS 7 Annex 2, ■ CASS 7 Annex 3 and ■ CASS 7 Annex 4.

2 Unless stated otherwise, a reference to 'counterparty' in this annex is:

(a) in the context of a *client bank account acknowledgement letter* (and ■ CASS 7 Annex 2), to the relevant *bank*;

(b) in the context of a *client transaction account acknowledgement letter* (and ■ CASS 7 Annex 3), to the relevant exchange, *clearing house*, *intermediate broker*, *OTC* counterparty or other *person* (as the case may be); and

(c) in the context of an *authorised central counterparty acknowledgement letter* (and ■ CASS 7 Annex 4), to the relevant *authorised central counterparty*.

General

3 Under ■ CASS 7.18.2 R (2) and ■ CASS 7.18.3 R (3), *firms* are required to have in place a duly signed and countersigned *acknowledgment letter* for a *client bank account* or *client transaction account* (respectively) before they are allowed to hold or receive *client money* in or into the *client bank account*, or allow the relevant *person* to hold any *client money* on the *client transaction account* (respectively).

4 However, a *firm* may place *client money* at an *authorised central counterparty* in connection with a *regulated clearing arrangement* if it has provided the relevant *authorised central counterparty* with a signed and completed *authorised central counterparty acknowledgement letter* (see ■ CASS 7.8.3 R).

5 For each *client bank account* or *client transaction account*, a *firm* is required to complete, sign and send to the counterparty an *acknowledgment letter* identifying that account and in the form set out in ■ CASS 7 Annex 2 (Client bank account acknowledgment letter template), ■ CASS 7 Annex 3 (Client transaction account acknowledgment letter template) or ■ CASS 7 Annex 4 (Authorised central counterparty acknowledgment letter), as appropriate.

6 When completing an *acknowledgment letter* using the appropriate template, a *firm* is reminded that it must not amend any of the text which is not in square brackets (*acknowledgment letter fixed text*). A *firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the necessary wording, in either case as appropriate. The notes below give further guidance on this.

Clear identification of relevant accounts

7 A *firm* is reminded that for each *client bank account* or *client transaction account* it needs to have in place an *acknowledgement letter*. Accordingly, it is important that it is clear to which account or accounts each *acknowledgement letter* relates. As a result, the templates in ■ CASS 7 Annex 2, ■ CASS 7 Annex 3 and ■ CASS 7 Annex 4 require that the *acknowledgement letter* include the full title and at least one unique identifier, such as a sort code and account

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number, deposit number, reference code or pool ID, for each *client bank account* or *client transaction account* to which the letter relates.

8 The title and unique identifiers included in an *acknowledgement letter* for a *client bank account* or *client transaction account* should be the same as those reflected in both the records of the *firm* and the relevant counterparty, as appropriate, for that account. Where a counterparty's systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

(a) the account may continue to be appropriately identified in accordance with the requirements of ■ CASS 7 (eg, 'designated' may be shortened to 'des', 'designated fund' may be shortened to 'des fnd', 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct', etc); and

(b) when completing an *acknowledgement letter*, such letter must include both the long and short versions of the account title.

9 A *firm* should ensure that all relevant account information is contained in the space provided in the body of the *acknowledgement letter*. Nothing should be appended to an *acknowledgement letter*.

10 In the space provided in the template letters for setting out the account title and unique identifiers for each relevant account/deposit, a *firm* may include the required information in the format of the following table:

Full account title	Unique identifier	Title reflected in [*name of bank*] systems
[*Investment Firm Client Bank Account*]	[*00-00-00 12345678*]	[*INV FIRM CLIENT A/C*]

11 Where an *acknowledgement letter* is intended to cover a range of *client bank account*s or *client transaction accounts*, some of which may not exist as at the date the *acknowledgement letter* is countersigned by the relevant *person* (or, in the case of an *authorised central counterparty acknowledgement letter*, the date it is sent by the *firm* to the relevant *authorised central counterparty*), a *firm* should set out in the space provided in the body of the *acknowledgement letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (eg, with the word 'client' in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (eg, all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in ■ CASS 7 Annex 2 which allows a *firm* to include the account title and a unique identifier for each relevant account, a *firm* should include a statement to the following effect:

Any account open at present or to be opened in the future which contains the term ['client'] [insert appropriate abbreviation of the term 'client' as agreed and to be reflected in the Bank's systems] in its title and which may be identified with [the following [insert common unique identifier]][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].

Signature and countersignatures

12 A *firm* should ensure that each *acknowledgement letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or its counterparty may require more than one signatory).

13 An *acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in ■ CASS 7.19 . However, where electronic signatures are used, a *firm* should consider whether, under ■ CASS 7.13.8 R and taking into account the

governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the letter.

Completing an acknowledgment letter

14 A *firm* should use at least the same level of care and diligence when completing an *acknowledgement letter* as it would in managing its own commercial agreements.

15 A *firm* should ensure that each *acknowledgement letter* is legible (eg, any handwritten details should be easy to read), produced on the *firm's* own letter-headed paper, dated and addressed to the correct legal entity (eg, where the counterparty belongs to a group of companies).

16 A *firm* should also ensure each *acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).

17 A *firm* should similarly ensure that no square brackets remain in the text of each *acknowledgement letter* (ie, after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the templates in ■ CASS 7 Annex 2, ■ CASS 7 Annex 3 and ■ CASS 7 Annex 4) and that each page of the *acknowledgement letter* is numbered.

18 A *firm* should complete an *acknowledgement letter* so that no part of the letter can be easily altered (eg, the letter should be signed in ink rather than pencil).

19 In respect of a *client bank account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (l) and (m) of the template in ■ CASS 7 Annex 2R) or a *client transaction account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (k) and (l) of the template in ■ CASS 7 Annex 3 R), the letter should reflect a *firm's* agreement with its counterparty that the laws of a particular jurisdiction will govern the *acknowledgement letter* and that the courts of that same jurisdiction will have non-exclusive jurisdiction to settle any disputes arising out of, or in connection with, the *acknowledgement letter*, its subject matter or formation.

20 If a *firm* does not, in any *client bank account acknowledgement letter* or *client transaction account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

   (a) the law and the jurisdiction under which either the *firm* or the relevant counterparty are organised; and

   (b) that specified in the underlying agreement/s (eg, banking, custody or clearing services agreement) with the relevant counterparty;

then the *firm* should consider whether it is at risk of breaching either ■ CASS 7.18.6 R (3) or, in the case of a *client bank account acknowledgement letter*, ■ CASS 7.13.8 R .

21 The *FCA* recognises that some *firms* and their counterparties may wish to clarify through additional words in the governing law provision (see paragraph (l) of the template in ■ CASS 7 Annex 2 and paragraph (k) of the template in ■ CASS 7 Annex 3) that they are agreeing that the substantive law of the governing jurisdiction shall apply and that their intention is that a court should not decide to apply the substantive provisions of some other law instead of the parties' chosen governing law (a 'renvoi'). Where this is the case *firms* are permitted to insert additional text that seeks to provide increased legal certainty in the space provided. There is no restriction as to what additional words may be used (eg, additional words such as "*without regard to the principles of choice of law*" may be appropriate in the circumstances), but a *firm* should at all times have regard to the need to comply with ■ CASS 7.18.6 R (3) . However, for the

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majority of *firms* the *FCA* does not expect additional wording for the governing law provision to be necessary. This is likely to be the case where only a court that is subject to 'Rome I' (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008) is likely to accept jurisdiction over a dispute arising out of or in connection with the relevant *acknowledgement letter*.

Authorised signatories

22 A *firm* is required, under ■ CASS 7.18.9 R , to use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant counterparty.

23 If an individual that has countersigned an *acknowledgement letter* does not provide the *firm* with sufficient evidence of his/her authority to do so then the *firm* is expected to make appropriate enquires to satisfy itself of that individual's authority.

24 Evidence of an individual's authority to countersign an *acknowledgement letter* may include a copy of the counterparty's list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *acknowledgement letter*.

25 A *firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *acknowledgement letter* as the *firm* would seek when managing its own commercial arrangements.

Third party administrators

26 If a *firm* uses a third party administrator ('TPA') to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgement letter*, the text "[Signed by [*Name of Third Party Administrator*] on behalf of [*CASS Firm*]]" should be inserted to confirm that the *acknowledgement letter* was signed by the TPA on behalf of the *firm*.

27 In these circumstances, the *firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgement letter* on the *firm's* behalf. A *firm* should also ensure that the *acknowledgement letter* continues to be drafted on letter-headed paper belonging to the *firm*.

Designated client bank accounts and designated client fund accounts

28 A *firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that (i) all *client bank accounts* include the term 'client' in their title; and (ii) all *designated client bank accounts* or *designated client fund accounts* include, as appropriate, the terms 'designated' or 'designated fund' in their title, or in each case an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition.

29 All references to the term "Client Bank Account[s]" in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.

Indirect clearing arrangements

30 For use with *client transaction accounts* maintained with a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement*, the square-bracketed text in paragraph (d) of the template letter in ■ CASS 7 Annex 3 should remain in the letter, and, depending on the instruments being indirectly cleared using those *client transaction accounts*,

should include the reference to either or both the *EMIR indirect clearing default management obligations* and the *MiFIR indirect clearing default management obligations*.

31 All references to the term "Client Transaction Account[s]" in a *client transaction account acknowledgement letter* should be made consistently in either the singular or plural, as appropriate.

Direct clearing arrangements

32 For use with *client transaction accounts* maintained with an *authorised central counterparty* in respect of a *regulated clearing arrangement*, a *firm* may identify whether each account is an *omnibus client account* or an individual client account in the space provided in the body of the template letter in ■ CASS 7 Annex 4. For example, if using the table mentioned in paragraph 10 above, a *firm* may include an additional column in which for each account it includes the reference "Individual Client Account" or "Omnibus Client Account", as appropriate.

33 All references to the term "Client Transaction Account[s]" in an *authorised central counterparty acknowledgement letter* should be made consistently in either the singular or plural, as appropriate.

Money market deposits

34 The *client bank account acknowledgement letter* in ■ CASS 7 Annex 2 may be used with money market deposits identified as being *client money.*

35 A *firm* should ensure that *client money* placed in a money market deposit is clearly identified as *client money* (see ■ CASS 7.13.15 G).

36 Before a *firm* places *client money* in a money market deposit, it must have a *client bank account acknowledgement letter* for that deposit. If the unique identifier which will be associated with a money market deposit consisting of *client money* is unable to be included in a *client bank account acknowledgement letter* before it is duly countersigned and returned to the *firm*, a *firm* should set out in the body of the letter: (a) the title and other account information for the *client bank account* from which the deposits will be placed with the bank; and (b) how the *firm* will notify the bank that a money market deposit placed with it consists of *client money* (eg, by the inclusion of the words 'Client Money Deposit'). For example, in the space provided in the template letter in ■ CASS 7 Annex 2 which allows a *firm* to include the account title and a unique identifier for each relevant account/deposit, a *firm* should include a statement to the following effect:

> **[[CASS Firm] money market deposits placed from [title of relevant [client bank account], [sort code], [account number]] and identified with the reference '[Client Money Deposit]' as being client money)]**

37 A *firm* which operates the alternative approach to *client money* segregation (see ■ CASS 7.13.62 R) might not make deposits of *client money* in a money market deposit from another *client bank account*. In these circumstances, the *firm* need only include in the body of the letter how the *firm* will notify the bank that a money market deposit placed with it consists of *client money*. For example, the relevant space in the template letter in ■ CASS 7 Annex 2 may set out that:

> **[[CASS firm] money market deposits identified with the reference '[Client Money Deposit]' as being client money]**