

## Chapter 7A

# Client money distribution and transfer



## 7A.1 Application and purpose

### Application

**7A.1.1** **R** Subject to **■ CASS 7A.1.1A R**, this chapter (the *client money distribution and transfer rules*) applies to a *firm* that holds *client money* which is subject to the *client money rules* when a pooling event occurs.

**7A.1.1A** **R** The *client money distribution and transfer rules* do not apply to any *client money* held by a *trustee firm* under **■ CASS 7.10.34R** to **■ CASS 7.10.40G**.

**7A.1.1B** **G** As a result of **■ CASS 7A.1.1A R**, the *client money distribution and transfer rules* relating to *primary pooling events* and *secondary pooling events* will not affect any *client money* held by a *firm* in its capacity as *trustee firm*. Instead, the treatment of that *client money* will be determined by the terms of the relevant instrument of trust or by applicable law. However, the *client money distribution and transfer rules* do apply to a *firm* for any *client money* that it holds other than in that capacity which is subject to the *client money rules*.

### Purpose

**7A.1.2** **G** The *client money distribution and transfer rules* set out the required treatment of *client money* on the occurrence of a pooling event so that where:

- (1) for example, a *firm fails* (but also in other situations where a primary pooling event occurs), the rules in **■ CASS 7A.2** (Primary pooling events) facilitate the return or transfer of *client money*; and
- (2) a *person* at which the *firm* holds *client money fails*, the rules in **■ CASS 7A.3** (Secondary pooling events) allocate any loss of *client money* among certain of the *firm's clients*.



## 7A.2 Primary pooling events

### Failure of the authorised firm: primary pooling event

- 7A.2.1 **G** [deleted]
- 7A.2.2 **R** A *primary pooling event* occurs:
- (1) on the *failure* of the *firm*;
  - (2) on the vesting of assets in a trustee in accordance with an '*assets requirement*' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act*;
  - (3) on the coming into force of a *requirement* or *requirements* which, either separately or in combination:
    - (a) is or are for all *client money* held by the *firm*; and
    - (b) require the *firm* to take steps to cease holding all *client money*; or
  - (4) when the *firm* notifies the *FCA*, in accordance with **■ CASS 7.15.33 R** (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.
- 7A.2.3 **R** **■ CASS 7A.2.2R (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.
- 7A.2.3A **R** If a *primary pooling event* occurs in circumstances where the *firm* had, before the *primary pooling event*, reduced its *margin*ed transaction requirement by utilising *approved collateral* under **■ CASS 7.16.33 R** , it must immediately liquidate this *approved collateral* and place the proceeds in a *client bank account* that relates to the relevant notional *pool* under **■ CASS 7A.2.4R(1)** (Pooling and distribution or transfer)
- 7A.2.3B **R** **■ CASS 7A.2.7-AR** (Client money received after the failure of the firm) does not apply to the proceeds under **■ CASS 7A.2.3A R**.

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7A.2.3C

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The proceeds of the assets realised under ■ CASS 7A.2.3A R:

- (1) will form part of the relevant notional *pool of client money* (see ■ CASS 7A.2.4R(1A)(a)(i) (Pooling and distribution or transfer); and
- (2) must be distributed or transferred on behalf of *clients* in accordance with this chapter.

#### Client money reconciliations after a primary pooling event

7A.2.3D

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- (1) If a special administrator has been appointed to the *firm* under the *IBSA Regulations* then they will be required to carry out a reconciliation under regulation 10H of the *IBSA Regulations*.
- (2) Notwithstanding regulation 10H of the *IBSA Regulations*, ■ CASS 7.15 has application to a *firm* after a *primary pooling event*, meaning, for example, that ongoing compliant record-keeping is required (see ■ CASS 7.15.15R(4) (Internal client money reconciliations) and ■ CASS 7.15.26AR (Frequency of external reconciliations after a primary pooling event)).

#### Pooling and distribution or transfer

7A.2.4

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If a *primary pooling event* occurs, then:

- (1) (a) in respect of a *sub-pool*, the following is treated as a single notional *pool of client money* for the beneficiaries of that *pool*:
  - (i) any *client money* held in a *client bank account* of the *firm* relating to that *sub-pool*; and
  - (ii) any *client money* held in a *client transaction account* of the *firm* relating to that *sub-pool*, except for *client money* held in a *client transaction account* at an *authorised central counterparty* or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*;
- (b) in respect of the *general pool*, the following is treated as a single notional *pool of client money* for the beneficiaries of the *general pool*:
  - (i) any *client money* held in any *client bank account* of the *firm*;
  - (ii) any *client money* held in a *client transaction account* of the *firm*, except for *client money* held in a *client transaction account* at an *authorised central counterparty*, or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*; and
  - (iii) any *client money* identifiable in any other account held by the *firm* into which *client money* has been received;

except, in each case, for *client money* relating to a *sub-pool* which falls under sub-paragraphs (1)(a)(i) or (ii); and

- (1A) (a) a notional *pool* under paragraph (1) shall also include any *client money* that is:
- (i) transferred by the *firm* under regulation 10H(3) of the *IBSA Regulations* to a *client bank account* that is included in that *pool* under paragraph (1);
  - (ii) paid under ■ CASS 7A.2.3AR into a *client bank account* that is included in that *pool* under paragraph (1);
  - (iii) paid under ■ CASS 7A.2.4R(3)(b) or ■ CASS 7A.2.4R(3)(d) into a *client bank account* or *client transaction account* that is included in that *pool* under paragraph (1);
  - (iv) (subject to sub-paragraph (b)) otherwise received after the *primary pooling event* into a *client transaction account* that is included in that *pool* under paragraph (1) where the receipt is in relation to a *margined transaction* that the *firm* had entered into through the use of that *client transaction account* and which had not *closed out* before *primary pooling event*; and
  - (v) paid under ■ CASS 7.15.29R(1) (Reconciliation discrepancies) after the *primary pooling event* into a *client bank account* that is included in that *pool* under paragraph (1); and
- (b) the *firm* must not transfer any *client money* in a notional *pool* under sub-paragraphs (1)(a) or (b) to a *client transaction account* except where necessary to comply with sub-paragraph (2)(b);
- (c) a notional *pool* under paragraph (1) shall cease to include *client money* from the point at which it is:
- (i) transferred by the *firm* under regulation 10H(4) of the *IBSA Regulations* from a *client bank account* that is included in that *pool* under paragraph (1); or
  - (i) paid out after the *primary pooling event* from a *client transaction account* that is included in that *pool* under paragraph (1) where the payment is in relation to a *margined transaction* that the *firm* had entered into through the use of that *client transaction account* and which had not *closed out* before *primary pooling event*.
- (2) the *firm* must, as soon as reasonably practicable:
- (a) (subject to paragraph (4)) distribute *client money* comprising a notional *pool* in accordance with ■ CASS 7.17.2 R , so that each *client* who is a beneficiary of that *pool* receives a sum which is rateable to the *client money* entitlement calculated in accordance with ■ CASS 7A.2.5R (Client money entitlements); or
  - (b) (where applicable) transfer *client money* comprising a *sub-pool* to effect or facilitate *porting* of positions held for the *clients* who are beneficiaries of that *sub-pool*; and
- (3) if, in connection with a *regulated clearing arrangement*, *client money* is remitted directly to the *firm* either from an *authorised central counterparty* or from a *clearing member* as part of that *person's*

default management procedures, then, as soon as reasonably practicable:

- (a) any such remittance in respect of a *client transaction account* that is an *individual client account* does not form a part of any notional *pool* under ■ CASS 7A.2.4R(1) and must be distributed to the relevant *client* subject to ■ CASS 7.17.2R (4) ;
- (b) subject to sub-paragraphs (3)(c) and (d), any such remittance in respect of a *client transaction account* that is an *omnibus client account* must form part of the notional *pool* under ■ CASS 7A.2.4R(1)(b) and be subject to distribution in accordance with ■ CASS 7A.2.4R(2)(a);
- (c) any such remittance in respect of a *client transaction account* that is an *omnibus client account* must be distributed to the relevant *clients* for whom that *omnibus client account* is held if:
  - (i) no *client money* in excess of the amount recorded in that *omnibus client account* is held by the *firm* as margin in relation to the positions recorded in that *omnibus client account*; and
  - (ii) the amount of such remittance attributable to each *client* of the *omnibus client account* is readily apparent from information provided to the *firm* by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*;

in which case the amount of such remittance does not form a part of any notional *pool* under ■ CASS 7A.2.4R(1) and must be distributed to each such *client* in accordance with the information provided by the *authorised central counterparty* or *clearing member* subject to ■ CASS 7.17.2R (4) ; and

- (d) any such remittance in respect of a *client transaction account* that is a *net margined omnibus client account* in respect of which the *firm* maintains a *sub-pool* must form part of such *sub-pool* under ■ CASS 7A.2.4R(1)(a) to be distributed in accordance with ■ CASS 7A.2.4R (2)(a); and
- (4) as an alternative to distributing a *client's client money* in a notional *pool* to the relevant *client* under ■ CASS 7A.2.4R(2)(a) and in respect of *client money* that that is not required to be transferred under ■ CASS 7A.2.4R(2)(b), a *firm* (Firm A) may on its own initiative transfer some or all of that *client's client money* in the relevant notional *pool* to any other *person* (Firm B) for safekeeping on behalf of the *client* provided that:
- (a) as a consequence of any such transfer, Firm A does not distribute to any other *client* whose *client money* is in that notional *pool*, or transfer on behalf of any such other *client* to another *person*, an amount of *money* that would be less than that which such other *client* was entitled to have distributed or transferred under this *rule*;
  - (b) unless Firm A is able to rely on regulation 10B(3)(b) of the *IBSA Regulations* for the transfer to Firm B to have effect without the consent of the *client*, either:
    - (i) Firm A has the specific consent of the *client* to the transfer to Firm B; or

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- (ii) (A) there is a written agreement between Firm A and the *client* which provides that Firm A may transfer the *client's client money* to another *person*; and
  - (B) Firm A can lawfully rely on that provision to achieve the transfer under this *rule*;
- (c) Firm A has, in advance of the transfer under this *rule*, either:
  - (i) obtained a contractual undertaking from Firm B that the *money* transferred will be held by Firm B as *client money* in accordance with the *client money rules*; or
  - (ii) where the *client money rules* do not apply to Firm B, or where they do apply but Firm B is able to hold the *money* transferred other than as *client money*, satisfied itself, having exercised all due skill care and diligence in its assessment, that Firm B will apply adequate measures to protect the *money* transferred;
- (d) where regulation 10C(3) of the *IBSA Regulations* does not apply, Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B will return the money to the *client* at the *client's* request; and
- (e) Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B will notify the *client*, within 14 *days* of the transfer of that *client's* balance having commenced:
  - (i) of the applicable regulatory regime under which the *money* will be held by Firm B;
  - (ii) either:
    - (A) of any relevant compensation scheme limits that may apply in respect of Firm B's handling of the transferred *money*; or
    - (B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and
  - (iii) where regulation 10C(3) of the *IBSA Regulations* does not apply, that the *client* has the option of having its *money* returned to it by Firm B.

**7A.2.4A-2** G Where regulation 10C(3) of the *IBSA Regulations* does apply, Firm A should, in advance of the transfer under ■ CASS 7A.2.4R(4), obtain a contractual undertaking from Firm B that:

- (1) Firm B will comply with the *client's* request for a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*; and
- (2) Firm B will notify the *client*, within 14 *days* of the transfer of that *client's safe custody asset* having commenced, that the *client* can demand a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*.

**7A.2.4A-1** G Under ■ CASS 7A.2.4R(1)(b)(i) a *firm* should include the balances of *client money* referred to at ■ CASS 7.13.40AR(2), ■ CASS 7.13.53AR(2) and ■ CASS 7.13.72AR(2) in the relevant *pool*.

7A.2.4A G

- (1) Under *EMIR*, where a *firm* that is a *clearing member* of an *authorised central counterparty* defaults, the *authorised central counterparty* may:
  - (a) *port client* positions where possible; and
  - (b) after the completion of the default management process:
    - (i) return any balance due directly to those *clients* for whom the positions are held, if they are known to the *authorised central counterparty*; or
    - (ii) remit any balance to the *firm* for the account of its *clients* if the *clients* are not known to the *authorised central counterparty*.
- (1A) Under the *EMIR L2 Regulation* or the *MiFIR indirect clearing RTS*, where a *firm* acting in connection with a *regulated clearing arrangement* for a *client* (who is also an *indirect client*) defaults, the *clearing member* with whom the *firm* has placed *client money* of the *indirect client*, may, in accordance with the *EMIR indirect clearing default management obligations* or *MiFIR indirect clearing default management obligations*:
  - (a) transfer the positions and assets either to another *clearing member* of the relevant *authorised central counterparty* or to another *firm* willing to act for the *indirect client*; or
  - (b) liquidate the assets and positions of the *indirect clients* and remit all monies due to the *indirect clients*.
- (1B) For the avoidance of doubt, 'relevant *clients*' in the case of ■ CASS 7A.2.4R (3)(a) and ■ CASS 7A.2.4R (3)(c) includes a *client* who is also an *indirect client*.
- (2) Where any balance remitted from an *authorised central counterparty* or, in the case of *indirect clients*, a *clearing member*, to a *firm* is *client money*, ■ CASS 7A.2.4R (3) provides for the distribution of remittances from either an *individual client account* or an *omnibus client account*.
- (3) Remittances received by the *firm* falling within ■ CASS 7A.2.4R (3)(a) and ■ CASS 7A.2.4R (3)(c) should not be pooled with *client money* held in any *client bank account* operated by the *firm* at the time of the *primary pooling event*. Those remittances should be segregated and promptly distributed to each *client* on whose behalf the remittance was received.
- (4) For the avoidance of doubt, in respect of a *regulated clearing arrangement*, any *client money* remitted by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*, to the *firm* pursuant to ■ CASS 7A.2.4R (3) should not be treated as *client money* received after the *failure* of the *firm* under ■ CASS 7A.2.7-AR (Client money received after a primary pooling event).
- (5) The *firm's* obligation to its *client* in respect of *client money* held in a *sub-pool* is discharged to the extent that the *firm* transfers that *client money* to facilitate *porting* in accordance with ■ CASS 7.11.34R (8) .

7A.2.4B G

- (1) The restrictions on transfers of *client money* at ■ CASS 7A.2.4R(4) are each of the type referred to at regulation 10B(4) of the *IBSA Regulations* as "a restriction in client money rules".



- (2) Where Firm A has complied with the restrictions at ■ CASS 7A.2.4R(4) for any transfers to Firm B, any *money* transferred to Firm B ceases to be *client money* held by Firm A (see ■ CASS 7.11.34R(2)(e) (Discharge of fiduciary duty)).
- (3) But any *money* returned by Firm B to Firm A in the event of a 'reverse transfer' will be subject to the *client money rules* and *client money distribution and transfer rules* as applied to Firm A, and should be treated by Firm A in accordance with ■ CASS 7A.2.7-AR (Client money received after the failure of the firm).

### Client money entitlements

7A.2.5

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- (-2) (a) Subject to paragraph (-2)(b), each *client's* entitlement to *client money* in a notional *pool* is calculated with reference to the *client money requirement* as shown by an *internal client money reconciliation* carried out in accordance with ■ CASS 7.15.15R(4)(a) (Internal client money reconciliations) as at the *primary pooling event*.
- (b) If, as at the *primary pooling event*, the *firm* had entered in to one or more cleared *marginied transactions* through the use of a *client transaction account* at a *clearing house* that had not *closed out* as at the *primary pooling event*, the *client money requirement* under (-2)(a) must be calculated as follows:
  - (i) ■ CASS 7.16.28R does not apply in respect of those cleared *marginied transactions*; and
  - (ii) subject to ■ CASS 7.16.30R, in respect of those cleared *marginied transactions* a *client's equity balance* is instead the amount which the *firm* is liable to pay to the *client* (or the *client* to the *firm*) under the *client money rules* for *marginied transactions* following the *close out* of those *marginied transactions*. This balance should include any cash margin the *firm* has received from the *client* in connection with those transactions.
- (-1) Each *client's client equity balance* following any adjustments under paragraph (-2) must be reduced by:
  - (a) any amount paid by:
    - (i) an *authorised central counterparty* to a *clearing member* other than the *firm* in connection with a *porting arrangement* in accordance with ■ CASS 7.11.34R (6) in respect of that *client*; and
    - (ii) a *clearing member* to another *clearing member* or *firm* (other than the *firm*) in connection with a transfer in accordance with ■ CASS 7.11.34R (8);
  - (b) any amount paid by:
    - (i) an *authorised central counterparty* directly to that *client*, in accordance with ■ CASS 7.11.34R (7); and
    - (ii) a *clearing member* directly to an *indirect client* in accordance with ■ CASS 7.11.34R (9); and
  - (c) any amount that must be distributed to that *client* by the *firm* in accordance with ■ CASS 7A.2.4R (3)(a) or ■ (c).

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7A.2.5A G

- (1) When, in respect of a *client* who is a beneficiary of a *pool* and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a positive *individual client balance* and a negative *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *individual client balance* for that *client*.
- (2) When, in respect of a *client* who is a beneficiary of a *pool* and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a negative *individual client balance* and a positive *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *client equity balance* for that *client*.

- (1) (a) The effect of ■ CASS 7A.2.5R(-2)(b) is that the *client equity balance* for the relevant cleared *marginied transaction* is with reference to the eventual *close out* or 'hindsight' value of the transaction, instead of being a notional balance as at the *primary pooling event* under ■ CASS 7.16.28R.
- (b) ■ CASS 7A.2.5R(-2)(b) applies in respect of cleared *marginied transactions* that a *firm* had entered into for any *client*, including for *indirect clients* where the *firm* is itself a *client* of a *clearing member*.
- (2) In cases where ■ CASS 7A.2.5R(-2)(b) does not apply, the *client equity balance* for a *marginied transaction* will be the notional balance as at the *primary pooling event* under ■ CASS 7.16.28R.

7A.2.6 G

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**Closing a client money pool**

7A.2.6A R

- (1) Before a *firm* ceases to treat a balance of *client money* in a notional *pool* as *client money* by transferring it to itself under ■ CASS 7.17.2R(5) it must:
  - (a) (subject to paragraph (2)) attempt to distribute the balance to the relevant *client* or transfer it to another *person* for safekeeping on behalf of the *client* in accordance with ■ CASS 7A.2.4R (Pooling and distribution or transfer);
  - (b) (subject to paragraph (3)) take reasonable steps to notify any *client* in respect of whom the *firm* has evidence that the *money* may belong, of the *firm's* proposed course of action;
  - (c) where the *firm* has *failed*, apply any of the following types of balances of *client money* in the notional *pool* towards any costs incurred in accordance with ■ CASS 7.17.2R(4), including any costs incurred under paragraph (1)(d):
    - (i) *client money* allocated to a *client* for which, following the steps taken by the *firm* to satisfy paragraph (1)(b), the *client* to whom the *client money* belongs has not provided the *firm* with instructions that would enable the *firm* to make a distribution or transfer under paragraph (1)(a); or

- (ii) *client money* belonging to a *client* who, in response to a notification made under paragraph (1)(b), has confirmed to the *firm* that it disclaims the benefit of the statutory trust under ■ CASS 7.17.2R in relation to the *client money*; or
- (iii) *client money* that, following the steps taken by the *firm* to satisfy paragraph (1)(b), is unallocated to any *client* in the *firm's* records and accounts; and
- (d) immediately before transferring the balances of *client money* under paragraph (1)(c) to the *firm* itself, apply them towards making good any outstanding *shortfall* in the notional *pool*, and subsequently distribute or transfer them in accordance with ■ CASS 7A.2.4R to or on behalf of *clients* for whom the *firm* is able to make such distributions or transfers.

(2) A *firm* is not required to attempt to return or transfer the balance of *client money* under paragraph (1)(a) where the *client* to whom the balance belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under ■ CASS 7.17.2R in relation to the balance *client money*.

(3) A *firm* is not required to notify a *client* under paragraph (1)(b) where:

- (a) the *firm* is able to distribute the *client money* to the relevant *client* or transfer it to another *person* on behalf of the *client* in accordance with ■ CASS 7A.2.4R (Pooling and distribution or transfer);
- (b) the *client* to whom the balance of *client money* belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under ■ CASS 7.17.2R in relation to the balance *client money*;
- (c) in respect of a *client* for whom the *firm* has evidence that they were a *retail client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that *client* in the notional *pool* is £25 or less when calculated under ■ CASS 7A.2.5R (Client money entitlements); or
- (d) in respect of a *client* for whom the *firm* has evidence that they were a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that *client* is £100 or less when calculated under ■ CASS 7A.2.5R (Client money entitlements).

**7A.2.6B** G

- (1) A *firm* may propose to cease to treat a balance of *money* as *client money* under ■ CASS 7A.2.6AR(1) where the *firm* is using the procedure under regulation 12C of the *IBSA Regulations* to set a 'hard bar date' by giving a 'hard bar date notice', or another similar procedure in accordance with the legal procedure for the *firm's failure*.
- (2) In any case, a *firm* should consider the whether its obligations under law (including trust law) or any agreement permit it to cease to treat a balance of *money* as *client money* in the way in which it proposes to do so.
- (3) Balances of *client money* under ■ CASS 7A.2.6AR(1)(c)(iii) include any remaining amount of those that the *firm* is holding to comply with:

7A.2.6C

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- (a) ■ CASS 7.13.41R (Prudent segregation);
  - (b) ■ CASS 7.13.65R(1) (The alternative approach to client money segregation); and
  - (c) ■ CASS 7.13.73R(1) (Use of the normal approach in relation to certain regulated clearing arrangements).
- (1) Reasonable steps in ■ CASS 7A.2.6AR(1)(b) include the following course of conduct:
- (a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;
  - (b) for a *client* for whom the *firm* has evidence that it was a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*:
    - (i) writing to the *client* at the last known address either by post or by electronic mail:
      - (A) to inform it of the *firm's* intention to no longer treat the balance as *client money*;
      - (B) to inform it of the consequences of the *firm's* proposed course of action in relation to the *client's* ability to assert an ownership right to that *money*; and
      - (C) to invite the *client* to submit a claim for the *money*; and
    - (ii) where the *client* has not responded within 28 *days* of the communication under sub-paragraph (i), attempting to communicate the information in sub-paragraph (i) to the *client* on at least one further occasion by any means other than that used in (i) including by post, electronic mail, telephone or media advertisement; and
  - (c) for any other *client*:
    - (i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and
    - (ii) where the *client* has not responded within 28 *days* of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the *client* on at least one further occasion by any means other than one in respect of which the *firm* has obtained positive confirmation that the *client* is not receiving such communications.
- (2) Compliance with paragraph (1) may be relied on as tending to establish compliance with ■ CASS 7A.2.6AR(1)(b).
- (3) Contravention of paragraph (1) may be relied on as tending to establish contravention of ■ CASS 7A.2.6AR(1)(b).

7A.2.6D

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For the purpose of ■ CASS 7A.2.6CE(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including:

- (1) telephoning the *client*;
- (2) searching internal and/or public records;

- (3) media advertising;
- (4) mortality screening; and
- (5) using credit reference agencies or tracing agents.

**7A.2.6E** **R** If the *firm* undertook a tracing exercise for the purposes of ■ CASS 7.11.50R(3) (Allocated but unclaimed client money) before the *primary pooling event* but had not made the charity payment under that *rule* by the time of the *primary pooling event* then the findings of that exercise may be relied on for the purposes of ■ CASS 7A.2.6CE(1)(a).

**7A.2.6F** **R**

- (1) A *firm* must make a record of any balance under ■ CASS 7A.2.6AR(1)(c)(i) or (ii) which is to be applied towards any costs or towards any *shortfall* in the relevant notional *pool* in accordance with ■ CASS 7A.2.6AR(1)(c) or (d) respectively, immediately before taking such steps.
- (2) The record under paragraph (1) must state:
  - (a) the amount of the balance of *client money*;
  - (b) the name and contact details of any *client* to whom that balance was allocated according to the *firm's* records at the time of making the record under this *rule*; and
  - (c) either:
    - (i) the efforts applied by the *firm* to determine the *client's* correct contact details under ■ CASS 7A.2.6CE(1)(a); or
    - (ii) if being relied on under ■ CASS 7A.2.6ER, the efforts applied by the *firm* to determine the *client's* correct contact details for the purposes of ■ CASS 7.11.50R(3) (Allocated but unclaimed client money).
- (3) A *firm* must keep the record under (1) indefinitely.

**Client money received after a primary pooling event**

**7A.2.7** **R** [deleted]

**7A.2.7-A** **R**

- (1) This *rule* applies in respect of *client money* received by a *firm* after a *primary pooling event* that does not form part of a notional *pool*.
- (2) Where the *firm* is using the normal approach under ■ CASS 7.13.6R (The normal approach), *client money* to which this *rule* applies must be received into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under ■ CASS 7A.2.4R(1) (Pooling and distribution or transfer).
- (3) (a) This paragraph applies in respect of *client money* that is received by a *firm* into an account other than a *client bank account* as required under ■ CASS 7.13.62R (The alternative approach to client money segregation) or as permitted under ■ CASS 7.13.72R (Use of

the normal approach in relation to certain regulated clearing arrangements).

(b) To the extent the *firm* makes any transfers from its own account to a *client bank account* under ■ CASS 7.13.62R(3) (The alternative approach to client money segregation) or ■ CASS 7.13.72R(2)(b) (Use of the normal approach in relation to certain regulated clearing arrangements), such transfers must be made into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under ■ CASS 7A.2.4R(1) (Pooling and distribution or transfer).

(4) Subject to paragraphs (5) and (6), a *firm* must promptly return to each relevant *client* all *client money* to which this *rule* applies.

(5) To the extent that *client money* relates to a transaction for a *client* that was concluded before the *primary pooling event* but had not yet settled at the time of the *primary pooling event*, the *firm* may use that *client money* to settle that transaction.

(6) (a) This paragraph applies where *client money* which is not received by the *firm* into a *client transaction account* relates to one or more cleared *margin*ed transactions entered into by the *firm* through the use of a *client transaction account* at a *clearing house*.

(b) Where such transactions have not *closed out* as at the *primary pooling event*, then provided that the *firm* has not *failed*, it may transfer that *client money* to a *client transaction account* with the relevant *clearing house* in accordance with ■ CASS 7.14 (Client money held by a third party) for the purpose of collateralising those *margin*ed transactions.

**7A.2.7A** G A *firm* may open a *client bank account* after a *primary pooling event* for the purposes of complying with ■ CASS 7A.2.7-AR(2) and ■ CASS 7A.2.10AR(2). If it does so it must comply with ■ CASS 7.18.15R regarding *acknowledgement letters*.

**7A.2.7B** G Following a *failure*, ■ CASS 7.17.2R(4) applies in respect of costs properly attributable to the return of a *client's client money* under ■ CASS 7A.2.7-AR(4).

**7A.2.8** G [deleted]

**7A.2.9** R If a *firm* receives a *mixed remittance* after a *primary pooling event* other than where using the alternative approach under ■ CASS 7.13.62R or under a *regulated clearing arrangement* to which ■ CASS 7.13.72R applies, it must:

(1) pay the full sum into a *client bank account* that meets the requirements of ■ CASS 7A.2.7-AR(2); and

(2) pay the *money* that is not *client money* out of that *client bank account* into a *firm's own bank account* within one *business day* of the *day* on which the *firm* would normally expect the remittance to be cleared.

7A.2.10 **G** Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

**Money due to a client from a firm after a primary pooling event**

7A.2.10A **R** A *firm* that is operating the normal approach to segregation under ■ CASS 7.13 (Segregation of client money) which becomes liable to pay *money* to a *client* after a *primary pooling event* must promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

- (1) to, or to the order of, the *client*; or
- (2) into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under ■ CASS 7A.2.4R(1).

7A.2.10B **G** Where the *firm* has payment instructions from the *client*, the *firm* should pay the money to the order of the *client*, rather than into a *client bank account*.

**Secondary pooling events**

7A.2.11 **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.



## 7A.3 Secondary pooling events

- 7A.3.1** **R** A *secondary pooling event* occurs on the *failure* of a person to which *client money* held by the *firm* has been transferred under ■ CASS 7.13.3R (1) to ■ CASS 7.13.3R (3) (Depositing client money) or ■ CASS 7.14.2 R (Client money held by a third party).
- 7A.3.2** **R** ■ CASS 7A.3.6 R to ■ CASS 7A.3.12AR do not apply if, on the *failure* of the relevant *person*:
- (1) there is no *secondary pooling shortfall*; or
  - (2) where there is a *secondary pooling shortfall*, the *firm* pays an amount equal to the amount of *client money* which would have been held at that *person* if a *secondary pooling shortfall* had not occurred either:
    - (a) to its *clients* in the appropriate amounts such that they are compensated by the amount of the *secondary pooling shortfall* that they would otherwise be required to bear under this section; or
    - (b) into a *client bank account* at an unaffected bank with the effect that any *shortfall* that would otherwise arise for the purposes of ■ CASS 7.15 (Records, accounts and reconciliations) is avoided.
- 7A.3.3** **G** [deleted]
- 7A.3.4** **G** When a *person* to which *client money* held by the *firm* has been transferred under ■ CASS 7.13.3R(1) to ■ CASS 7.13.3R(3) (Depositing client money) or ■ CASS 7.14.2R (Client money held by a third party) *fails*, and the *firm* decides not to make good any *secondary pooling shortfall* in the amount of *client money* held at that *person* (see ■ CASS 7A.3.2R(2)), a *secondary pooling event* will occur. The *firm* should reflect the *secondary pooling shortfall* that arises in the *general pool* (where the *firm* maintains only a *general pool*) and, where relevant, in a particular *sub-pool* (where the *firm* maintains both a *general pool* and one or more *sub-pools*) in its records of the entitlement of *clients* and of *money* held with third parties under ■ CASS 7.15 (Records, accounts and reconciliations).
- 7A.3.5** **G** The *client money distribution and transfer rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.



**Failure of a bank: pooling**

**7A.3.6** **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, and/or where one or more *designated client bank accounts* or *designated client fund accounts* are held, for the *general pool* or a particular *sub-pool*, then:

- (1) in relation to every *general client bank account* of the *firm* maintained in respect of that *pool*, the provisions of **■ CASS 7A.3.8 R**, **■ CASS 7A.3.13 R** and **■ CASS 7A.3.14 R** will apply;
- (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank for the relevant *pool*, the provisions of **■ CASS 7A.3.10 R**, **■ CASS 7A.3.13 R** and **■ CASS 7A.3.14 R** will apply;
- (3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank for the relevant *pool*, the provisions of **■ CASS 7A.3.11 R**, **■ CASS 7A.3.13 R** and **■ CASS 7A.3.14 R** will apply;
- (4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* for the relevant *pool*, is not pooled with any other *client money* held for that *pool* or any other *pool*; and
- (5) any *money* held in a *designated client fund account* in respect of that *pool*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money* held for that *pool* or any other *pool*.

**7A.3.6A** **G** Depending on the *person* at which the *secondary pooling event* occurs, the types of *client bank accounts* and *client transaction accounts* that are affected by the *secondary pooling shortfall*, and the nature of a *firm's* business with a particular *client*, it is possible that the *client's* overall entitlement to *client money* held by the *firm* may be affected by a combination of **■ CASS 7A.3.8R**, **■ CASS 7A.3.8AR**, **■ CASS 7A.3.10R** and **■ CASS 7A.3.11R**.

**7A.3.7** **R** [deleted]

**Failure of an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty: pooling**

**7A.3.7A** **R** If a *secondary pooling event* occurs as a result of the *failure* of an exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC counterparty*, then, in relation to every *general client bank account* and *client transaction account* of the *firm*, **■ CASS 7A.3.8R** and **■ CASS 7A.3.13R** will apply, and **■ CASS 7A.3.8AR** will additionally apply in the case of the *failure* of an *authorised central counterparty*.

**Failure of a bank, intermediate broker, settlement agent, OTC counterparty, exchange or clearing house: treatment of general client bank accounts and client transaction accounts**

**7A.3.8** **R** *Money* Subject to **■ CASS 7A.3.8AR**, if a *secondary pooling event* occurs as a result of the *failure* of a bank, *intermediate broker*, *settlement agent*, *OTC counterparty*, exchange or *clearing house*, *money* held in each *general client*

*bank account and client transaction account of the firm for the general pool or a sub-pool must be treated as pooled and:*

- (1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *general client bank accounts and client transaction accounts* for the relevant *pool*, that has arisen as a result of the *failure* of the bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, must be borne by all the *clients* of that *pool* whose *client money* is held in such *general client bank account or client transaction account* of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* of the relevant *pool* by the *firm*, to reflect the requirements in paragraph (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 *secondary pooling shortfall* until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to ■ CASS 7.15.3 R (Records and accounts) for that *pool*.

**7A.3.8A** **R**

If a *secondary pooling event* occurs as a result of the *failure* of an *authorised central counterparty*:

- (1) any *money* held in a *client transaction account* that is an *individual client account* at the *failed authorised central counterparty* is not pooled by the *firm* with any of its other *client money*;
- (2) any *money* held in a *client transaction account* that is an *omnibus client account* at the *failed authorised central counterparty* is not pooled by the *firm* with any of its other *client money* provided that:
  - (a) no *client money* in excess of the amount recorded in that *omnibus client account* is held by the *firm* as margin in relation to the positions recorded in that *omnibus client account*; and
  - (b) the *client* or *clients* of the *firm* to whom the amount recorded in that *omnibus client account* relates is or are readily apparent from information provided to the *firm* by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*;
- (3) any *money* held in a *client transaction account* that is a *net margined omnibus client account* at the *failed authorised central counterparty* in respect of which the *firm* maintains a *sub-pool* is not pooled by the *firm* with any of its other *client money*;
- (4) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in an *individual client account* to which paragraph (1) applies must be borne by the *client* whose *client money* was held in that *individual client account*;

- (5) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in an *omnibus client account* to which paragraph (2) applies must either:
  - (a) be borne by all the *clients* whose *client money* is held in that account, rateably in accordance with their entitlements; or
  - (b) if the *firm* is required under applicable law to allocate the *secondary pooling shortfall* other than as under (a), be allocated as required by applicable law;
- (6) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in a *net margined omnibus client account* to which paragraph (3) applies must be borne by all the *clients* whose *client money* is held in the relevant *sub-pool*, rateably in accordance with their entitlements;
- (7) a new *client money* entitlement must be calculated for each relevant *client* of the relevant *pool*, to reflect the requirements in paragraphs (1), (2) and (3), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (8) the *firm* must make and retain a record of each *client's* share of the *secondary pooling shortfall* until the *client* is repaid; and
- (9) the *firm* must use the new *client money* entitlements calculated under paragraph (7) for the purposes of reconciliations pursuant to ■ CASS 7.15.3R (Records and accounts) for the relevant *pool*.

7A.3.9 G The term "which should have been held" is a reference to the relevant *failed person's* failure to hold the *client money* at the time of its *failure*.

7A.3.9A G ■ CASS 7A.3.8AR(5)(b) enables a *firm* to allocate the relevant part of a *secondary pooling shortfall* that arises in an *omnibus client account* under ■ CASS 7A.3.8AR(2) other than on a "pro rata" basis, where this is required by applicable law.

This would include, for example, where applicable law requires the *firm* to attribute a *secondary pooling shortfall* only to a particular *client* or *clients*.

**Failure of a bank: treatment of designated client bank accounts and designated client fund accounts**

7A.3.10 R For each *client* with a *designated client bank account* maintained by the *firm* for the *general pool* or a particular *sub-pool* and held at the *failed* bank:

- (1) any *secondary pooling 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* of the relevant *pool* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their *client money* entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients* of the relevant *pool* 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 *secondary pooling 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 paragraph (2), for the purposes of reconciliations pursuant to ■ CASS 7.15.3 R (Records and accounts) in respect of the relevant *pool*.

7A.3.11 R

*Money held by the firm in each designated client fund account for the general pool or a particular sub-pool with the failed bank must be treated as pooled with any other designated client fund accounts for the general pool or a particular sub-pool as the case may be which contain part of the same designated fund and:*

- (1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *designated client fund accounts* that has arisen as a result of the *failure*, must be borne by each of the *clients* of the relevant *pool* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* of the relevant *pool* by the *firm*, in accordance with paragraph (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 *secondary pooling 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 paragraph (2), for the purposes of reconciliations pursuant to ■ CASS 7.15.3 R (Records and accounts) for the relevant *pool*.

7A.3.12 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.*

7A.3.12A R

*A client whose money was held, or which should have been held, in a designated client fund account with a bank that has failed is not entitled to claim in respect of that money against any other client bank account of the firm that is not part of the same designated fund or against any client transaction account of the firm.*

**Client money received after the secondary pooling event**

7A.3.13 R

*Client money received by the firm after the failure of a bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, that would otherwise have been paid into a client bank account or client*

*transaction account* at that bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, as the case may be, for either the *general pool* or a particular *sub-pool*:

- (1) must not be transferred to the *failed person* unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed person*; and
- (2) must be, subject to paragraph (1), placed in a *client bank account* or *client transaction account* relating to the *general pool* or the particular *sub-pool* as the case may be other than an account at the *failed person*.

**7A.3.14** **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 *firm* would normally expect the remittance to be cleared.

**7A.3.15** **G** Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

**7A.3.16** **R** [deleted]

**7A.3.17** **R** [deleted]

**7A.3.18** **R** [deleted]:

**Notification to the FCA of secondary pooling event**

**7A.3.19** **R** A *firm* must notify the *FCA* as soon as reasonably practical after it becomes aware of the *failure* of any bank, exchange, clearing house, intermediate broker, settlement agent, OTC counterparty or other entity with which it has placed, or whom it has allowed to hold, *client money*:

- (1) [deleted]
- (2) [deleted]
- (3) whether it intends to make good any *secondary pooling shortfall* that has arisen or may arise; and
- (4) the amount of that *secondary pooling shortfall*, or the expected amount if the actual amount is not known.

