

## Chapter 7A

# Client money distribution and transfer

## 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.