

Chapter 8

Mandates

8.1 Application

- 8.1.1** **R** This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm's*:
- (1) *designated investment business* (including *MiFID business*); or
 - (2) *insurance distribution activity*, except where it relates to a *reinsurance contract*;
 - (3) *debt management activity*.
- 8.1.2** **G** [deleted]
- 8.1.2A** **R** The *mandate rules* do not apply to a *firm*:
- (1) in relation to *client money* that the *firm* is holding in accordance with **■ CASS 5** or **■ CASS 7** (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with **■ CASS 7.14.2R**) or **■ CASS 11**; or
 - (2) in relation to *custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets (without arranging)*, acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS in accordance with **■ CASS 6**; or
 - (2A) in relation to *custody assets* for which a *small AIFM* is:
 - (a) carrying on those *excluded custody activities* that would amount to *safeguarding and administration of assets (without arranging)* but for the exclusion in article 72AA of the RAO; and
 - (b) is doing so in accordance with **■ CASS 6**; or
 - (3) in relation to a *client's assets* that the *firm* is holding or has received under an arrangement to which **■ CASS 3** applies; or
 - (4) when it acts as the *operator* of a *regulated collective investment scheme* in relation to property held for or within the *scheme*.
- 8.1.2B** **G**
- (1) **■ CASS 8.1.2A R** is not an absolute exemption, but it excludes the application of the *mandate rules* in relation to *money* or assets that a *firm* has received, is holding, or is responsible for (as appropriate and in the circumstances described in **■ CASS 8.1.2A R**).

- (2) This means that, for example in respect of ■ CASS 8.1.2A R (1), a *firm* holding *client money* in accordance with ■ CASS 5 or ■ CASS 7 does not also need to comply with the *mandate rules* in relation to the *client money* which it actually holds, but the *mandate rules* would apply if the *firm* has a *mandate* under which it can receive a *client's money* from another *person* in the course of, or in connection with, the activities set out at ■ CASS 8.1.1 R (1) and ■ CASS 8.1.1 R (2).
- (3) Similarly, in respect of ■ CASS 8.1.2A R (4), the *mandate rules* apply to a *firm* that is the *operator* of a *regulated collective investment scheme* if, for example, it has a *mandate* under which it can receive a *client's money* from another *person* for the purposes of investing it in the *scheme*.

8.1.3 G *Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken (see ■ CASS 1.3).

Purpose
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8.1.4 G The *mandate rules* require *firms* to establish and maintain records and *internal controls* to prevent the misuse of a *mandate*.

8.1.4A G The *mandate rules* only apply to a *firm* that has a *mandate*, and do not affect the duties of any other *person* to whom the *firm* is able to give the types of instructions referred to in ■ CASS 8.2.1R (4). For example, if a *person* (A) has accepted a *deposit* from a *client*, and a *firm* (B) has a *mandate* in respect of that *client's deposit* held by A, the *mandate rules* only apply to B, and do not affect the duties of A in relation to the *deposit*.

8.1.5 R [deleted]

8.2 Definition of mandate

8.2.1

R A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):

- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
- (2) where those means are obtained in the course of, or in connection with, the *firm's insurance distribution activity*, they are in written form at the time they are obtained from the *client*;
- (3) they are retained by the *firm*;
- (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
 - (a) instructions to another *person* in relation to the *client's money* that is credited to an account maintained by that other *person* for the *client*;
 - (b) instructions to another *person* in relation to any *money* to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client money* for the *client* in accordance with ■ CASS 5 or ■ CASS 7);
 - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments, acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS*);
 - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
- (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

The form of a mandate

8.2.2

G A *mandate* can take any form and need not state that it is a *mandate*. For example it could take the form of:

- (1) a standalone document containing certain information conferring authority to control a *client's* assets or liabilities on the *firm*;
- (2) a specific provision within a document or agreement that also relates to other matters; or
- (3) an authority provided by a client orally.

Retention by the firm

8.2.3

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- (1) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retained it (for example by not destroying the relevant document, electronic record or telephone recording):
 - (a) after it uses it to effect those immediate transactions; or
 - (b) because those transactions are not, for whatever reason, effected immediately.
- (2) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

Ability to give instructions to another person

8.2.4

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The instructions referred to at ■ CASS 8.2.1 R (4) are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with ■ CASS 5, ■ CASS 6 or ■ CASS 7 (for example, because of an exemption in those *rules*).

8.2.5

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A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1 R (4)(a) could include a direct debit instruction over a *client's* bank account in favour of the *firm*. The fact that the instruction was given by the *client* in the form of a paperless direct debit would not prevent it from being a *mandate*.

8.2.6

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A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1 R (4)(d) could include the *client's* credit card details.

Conditions on use of mandate and client's further involvement

8.2.7

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- (1) If a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client*

might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.

- (2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but the *firm* cannot, in practice, use those means without the *client's* further involvement, then the condition in ■ CASS 8.2.1 R (5) would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in ■ CASS 8.2.1 R (4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to those instructions.

8.3 Records and internal controls

8.3.1 **R** A *firm* that has *mandates* must establish and maintain adequate records and *internal controls* in respect of its use of the *mandates*.

8.3.2 **R** The records and *internal controls* required by **■ CASS 8.3.1 R** must include:

- (1) an up-to-date list of each *mandate* that the *firm* has obtained, including a record of any conditions placed by the *client* or the *firm's* management on the use of the *mandate* and, where a *mandate* was received in non-written form in the course of, or in connection with, its *designated investment business*, the details required under **■ CASS 8.3.2C R**;
- (2) a record of each transaction entered into under each *mandate* that the *firm* has;
- (3) *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is carried out in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
- (4) the details of the procedures and *internal controls* around the giving of instructions under the *mandates* that the *firm* has (such instructions being those referred to in **■ CASS 8.2.1 R (4)**); and
- (5) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.

A firm's list of mandates

8.3.2A **R**

- (1) A *firm's* up-to-date list of *mandates* under **■ CASS 8.3.2 R (1)** must be maintained in a medium that allows the storage of information in a way accessible for future reference by the *FCA* or by an auditor preparing a report under **■ SUP 3.10.4 R**.
- (2) It must be possible for any corrections or other amendments, and the contents of the list prior to such corrections and amendments, to be easily ascertained.

8.3.2B **G** A *firm* may use version control to comply with **■ CASS 8.3.2A R (2)**.

- 8.3.2C** **R** An entry in a *firm's* list of *mandates* under ■ CASS 8.3.2 R (1) that relates to a *mandate* that was received in non-written form (eg in a telephone call) in the course of, or in connection with, its *designated investment business* must, as well as the information referred to at ■ CASS 8.3.2 R (1), include the following details:
- (1) the nature of the *mandate* (eg debit card details);
 - (2) the purpose of the *mandate* (eg collecting insurance premiums);
 - (3) how the *mandate* was obtained (eg by telephone);
 - (4) the name of the relevant *client*; and
 - (5) the date on which the *mandate* was obtained.
- 8.3.2D** **G** If a *firm* receives information through a telephone call in the course of, or in connection with, its *designated investment business* that amounts to a *mandate* as a result of the *firm* retaining a recording of the call (see ■ CASS 8.2.3 G), the requirements at ■ CASS 8.3.2 R (1) apply, regardless of whether or not the *firm* intends to use the *mandate* in the future. The *firm* will meet the requirements of ■ CASS 8.3.2 R (1) if the *firm's* list of *mandates* is updated with the details of the *mandate* that the *firm* obtained as a result of the call.
- 8.3.2E** **G** A *firm* should not reproduce information meeting the conditions under ■ CASS 8.2.1 R as a separate record (eg by including such information in its list of *mandates* under ■ CASS 8.3.2 R (1)) unless the *firm* considers this necessary, as this creates additional risk of misuse. Making a record of the details concerning the *mandate* described in ■ CASS 8.3.2C R would be appropriate.
- 8.3.2F** **G** When keeping its list of *mandates* under ■ CASS 8.3.2 R (1) up to date:
- (1) a *firm* should create a new entry in the list each time the *firm* obtains a new *mandate*;
 - (2) if, for an existing entry on its list, a *firm* obtains the same information meeting the conditions in ■ CASS 8.2.1 R again (eg in a written confirmation following a paperless direct debit), the additional *mandate* is not a new *mandate* and the *firm* should not create another entry on the list; but
 - (3) the *firm* should, for every entry on its list, identify each of the locations in which it has retained the information that meets the conditions in ■ CASS 8.2.1 R (eg a *client's* debit card details retained in a telephone recording and also the *firm's* written log of the call, or two separate documents containing the same information).

Retention of records

- 8.3.2G** **R** A *firm* must retain the records required under **■ CASS 8.3.1 R** in relation to a particular *mandate* for the following period after it ceases to have the *mandate* (e.g. because the *firm* has destroyed the relevant document, electronic record or telephone recording), as applicable:
- (1) subject to (2), a minimum of one year;
 - (2) a minimum of five years, where the relevant *mandate* was held by the *firm* in the course of, or in connection with, its *MiFID business*.
- 8.3.2H** **G** Where a *firm* has an obligation under **■ CASS 8.3.2G R** to retain records after it ceases to have a particular *mandate*, it may keep the *mandate* on the *firm's* list under **■ CASS 8.3.2 R (1)** for the relevant period, but the list should be updated to reflect the fact that it ceased to have the relevant *mandate* at the relevant date.
- 8.3.3** **G** A *firm* should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and criteria to which transactions effected by a *firm* with or for a *client* may be subject.
- (1) The requirements in **■ CASS 8.3.2 R (1)** and **■ CASS 8.3.2 R (3)** apply only in respect of conditions placed around the *firm's* use of a *mandate* itself or around the instructions described in **■ CASS 8.2.1 R (4)**. Examples of these include conditions under which a *mandate* may only be used by the *firm* in connection with transactions up to a certain value, or under which instructions under a *mandate* may only be given by certain personnel within the *firm*.
 - (2) The requirements in **■ CASS 8.3.2 R (1)** and **■ CASS 8.3.2 R (3)** do not apply in respect of criteria which relate to the nature and circumstances of transactions effected by a *firm* with or for a *client*. Examples of those criteria include investment restrictions or exposure limits for a managed portfolio, and required or preferred execution prices or execution venues.

