

Chapter 9

Information to clients

9.1 Application

9.1.1

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This chapter applies as follows:

- (1) ■ CASS 9.2 and ■ CASS 9.3 apply to a *prime brokerage firm* to which ■ CASS 6 (Custody rules) applies;
- (2) subject to paragraphs (3) and (4), ■ CASS 9.4 and ■ CASS 9.5 apply to a *firm* to which either or both ■ CASS 6 (Custody rules) and ■ CASS 7 (Client money rules) applies;
- (3) ■ CASS 9.4 and ■ CASS 9.5 do not apply to a *firm* which only *arranges safeguarding and administration of assets*; and
- (4) for a *firm* to which ■ CASS 7 (client money rules) applies as well as either or both of ■ CASS 5 (Client money: insurance distribution activity) and ■ CASS 11 (Debt management client money chapter) apply, this chapter does not apply to *client money* that a *firm* holds in accordance with ■ CASS 5 or ■ CASS 11.

9.2 Prime broker's daily report to clients

9.2.1

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- (1) A *firm* must make available to each of its *clients* to whom it provides *prime brokerage services* a statement in a *durable medium*:
 - (a) showing the value at the close of each *business day* of the items in (3); and
 - (b) detailing any other matters which that *firm* considers are necessary to ensure that a *client* has up-to-date and accurate information about the amount of *client money* and the value of *safe custody assets* held by that *firm* for it.
- (2) The statement must be made available to those *clients* not later than the close of the next *business day* to which it relates.
- (3) The statement must include:
 - (a) the total value of *safe custody assets* and the total amount of *client money* held by that *prime brokerage firm* for a *client*;
 - (b) the cash value of each of the following:
 - (i) Cash loans made to that *client* and accrued interest;
 - (ii) *securities* to be redelivered by that *client* under open short positions entered into on behalf of that *client*;
 - (iii) current settlement amount to be paid by that *client* under any *futures* contracts;
 - (iv) short sale cash proceeds held by the *firm* in respect of short positions entered into on behalf of that *client*;
 - (v) cash margin held by the *firm* in respect of open *futures* contracts entered into on behalf of that *client*;
 - (vi) mark-to-market close-out exposure of any *OTC* transaction entered into on behalf of that *client* secured by *safe custody assets* or *client money*;
 - (vii) total secured obligations of that *client* against the *prime brokerage firm*; and
 - (viii) all other *safe custody assets* held for that *client*.
 - (c) total collateral held by the *firm* in respect of secured transactions entered into under a *prime brokerage agreement*, including where the *firm* has exercised a right of use in respect of that *client's safe custody assets*;
 - (d) the location of all of a *client's safe custody assets*, including assets held with a sub-custodian; and

(e) a list of all the institutions at which the *firm* holds or may hold *client money*, including money held in *client bank accounts* and *client transaction accounts*.

9.2.2

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Where a *firm* has entered into an agreement with a *client* under article 91 (Reporting obligations for prime brokers) of the *AIFMD level 2 regulation*, and to the extent that the *firm* makes available to the *client* the same statements as specified by that article that it is required to provide to the relevant *depository*, the *FCA* will treat the obligations under ■ CASS 9.2.1 R as satisfied by the *firm*.

9.3 Prime brokerage agreement disclosure annex

9.3.1

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- (1) A *firm* must ensure that every *prime brokerage agreement* that includes its right to use *safe custody assets* for its own account includes a disclosure annex.
- (2) A *firm* must ensure that the disclosure annex sets out a summary of the key provisions within the *prime brokerage agreement* permitting the use of *safe custody assets*, including:
 - (a) the contractual limit, if any, on the *safe custody assets* which a *prime brokerage firm* is permitted to use;
 - (b) all related contractual definitions upon which that limit is based;
 - (c) a list of numbered references to the provisions within that *prime brokerage agreement* which permit the *firm* to use the *safe custody assets*; and
 - (d) a statement of the key risks to that *client's safe custody assets* if they are used by the *firm*, including but not limited to the risks to the *safe custody assets* on the *failure* of the *firm*.
- (3) A *firm* must ensure that it sends to the *client* in question an updated disclosure annex if the terms of the *prime brokerage agreement* are amended after completion of that agreement such that the original disclosure annex no longer accurately records the key provisions of the amended agreement.

9.3.2

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- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *client's* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.
- (2) Subject to paragraph (3), a *prime brokerage firm* should not enter into "right to use arrangements" for a *client's safe custody assets* unless:
 - (a) in the case of a *CASS small firm* or a *firm* to which **■ CASS 1A.3.1C R** applies, the person in that *firm* to whom the responsibilities set out in **■ CASS 1A.3.1 R** or in **■ CASS 1A.3.1C R (2)** respectively have been allocated; or
 - (b) in the case of any other *firm*, the *person* who carries out the *CASS operational oversight function*; and

(c) those of that *firm's* managers who are responsible for those *safe custody assets*;

are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10* which include (where applicable):

- (i) the daily reporting obligation in ■ CASS 9.2.1 R; and
- (ii) the record-keeping obligations in ■ CASS 6.3.6AR.

(3) Paragraph (2) does not apply where the *prime brokerage firm* is also acting as trustee or depositary of an AIF which is an *unauthorised AIF* and exercises a right of reuse for a *safe custody asset* of that *unauthorised AIF* under ■ FUND 3.11.24 R (Reuse of assets).

9.4 Information to clients concerning custody assets and client money

- 9.4.1** **G** (1) *Firms* to which ■ COBS 6.1 applies are reminded that, under ■ COBS 6.1.7R, a *firm* that holds *client designated investments* or *client money* must provide its *clients* with specific information about how the *firm* holds those *client designated investments* and *client money* and how certain arrangements might give rise to specific consequences or risks for those *client designated investments* and *client money*.
- (2) ■ COBS 6.1 (Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)) applies to a *firm* in relation to its *designated investment business*, other than *MiFID, equivalent third country or optional exemption business* or *insurance distribution activities*, for a *retail client*.
- 9.4.2** **R** A *firm* to which ■ COBS 6.1 applies that holds *custody assets* or *client money* must, in relation to its business for which ■ COBS 6.1 applies:
- (1) provide the information in ■ COBS 6.1.7 R for any *custody assets* the *firm* may hold for a *client*, including any *custody assets* which are not *designated investments*; and
- (2) provide the information in ■ COBS 6.1.7 R and in (1) to each of its *clients*.
- 9.4.2A** **R** *Firms* to which ■ COBS 6.1ZA applies are reminded of the requirements under article 49 of the *MiFID Org Regulation* (which are directly applicable to some *firms* and which are also applied to *firms* in other circumstances under ■ COBS 6.1ZA.3R) to provide certain information to a *client* when the *firm* is holding the *client's financial instruments* or funds (see ■ COBS 6.1ZA.9EU) and the requirement under ■ COBS 6.1ZA.10AR when a *firm* doing *insurance distribution activities* is holding *client money* and has elected to comply with the *client money chapter*.
- (2) ■ COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions)) applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business* or its *insurance distribution activities* for a *client*.
- 9.4.2B** **R** A *firm* to which ■ COBS 6.1ZA applies that holds *custody assets* or *client money* must, in relation to its business for which ■ COBS 6.1ZA applies:

provide the information referred to in paragraphs 2 to 7 of article 49 of the *MiFID Org Regulation* for any *custody asset* that the *firm* may hold for a *client*, including:

any *custody asset* which is a *designated investment* but not a *financial instrument*; and

any *custody asset* which is neither a *designated investment* nor a *financial instrument*; and

provide the information in (1) to each of its *clients*.

9.4.3

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A *firm* should provide the information required in ■ CASS 9.4.2 R or ■ CASS 9.4.2BR (as applicable) to any *client* for whom it holds *custody assets* or *client money*, including a *retail client*, a *professional client* and an *eligible counterparty*.

9.4.4

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(1) *Firms* are reminded of their obligation, under ■ COBS 4.2.1 R, to be fair, clear and not misleading in their communications with *clients*.

(2) *Firms* are also reminded of the requirements in respect of communications made to *retail clients* under ■ COBS 4.5 and *clients* under article 44 of the *MiFID Org Regulation* and ■ COBS 4.5A (as applicable).

9.5 Reporting to clients on request

- 9.5.1** **G** (1) *Firms* to which ■ COBS 16.4 applies are reminded that, under ■ COBS 16.4, they are required to send to each of their *clients* at least once a year a statement in a *durable medium* of those *designated investments* and/or *client money* they hold for that *client*. A *firm* which *manages investments* may provide this statement in its *periodic statement*, as required under ■ COBS 16.3.
- (2) ■ COBS 16.4 (Statements of client designated investments or client money) applies, in accordance with ■ COBS 16.1.2R, to a *firm* carrying on *designated investment business* other than *MiFID, equivalent third country or optional exemption business*.
- 9.5.2** **G** *Firms* are reminded that the requirements in ■ COBS 16.4, article 63 of the *MiFID Org Regulation* and ■ COBS 16A.4 only set out the minimum frequency at which *firms* must report to their *clients* on their holdings of *designated investments* and/or *client money*. *Firms* may choose to report to their *clients* more frequently.
- 9.5.3** **G** Subject to ■ CASS 9.5.5AR and ■ CASS 9.5.6 R, ■ CASS 9.5.4R, ■ CASS 9.5.4BR and ■ CASS 9.5.5 R require *firms* to comply with a *client's* request for information on the *custody assets* and/or *client money* the *firm* holds for a *client* under ■ CASS 6 and/or ■ CASS 7, and such request may be made by a *client* at any time.
- 9.5.4** **R** When a *firm* to which ■ COBS 16.4 applies receives a request, made by a *client*, or on a *client's* behalf, for a statement of the *custody assets* and/or *client money* that the *firm* holds for that *client*, the *firm* must provide the *client* with the statement requested in a *durable medium*.
- 9.5.4A** **R** (1) *Firms* to which ■ COBS 16A applies are reminded of the requirements under article 63 of the *MiFID Org Regulation* (which are directly applicable to some *firms* and which are also applied to *firms* in other circumstances under ■ COBS 16A.1.2R) in relation to quarterly statements when the *firm* is holding a *client's financial instruments* or funds (see ■ COBS 16A.4.1EU and ■ COBS 16A.5.1EU).
- (2) ■ COBS 16A (Reporting information to clients (MiFID provisions)) applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

- 9.5.4B** **R** When a *firm* to which **■** COBS 16A applies receives a request, made by a *client*, or on a *client's* behalf, for a statement of the *custody assets* that the *firm* holds for that *client*, it must provide the *client* with a statement in a *durable medium* in relation to any *custody assets* that are not *financial instruments*.
- 9.5.4C** **G** A *firm* to which **■** COBS 16A applies may combine the statement required under **■** CASS 9.5.4BR with a statement issued in response to a request made under the last sentence of the first sub-paragraph of article 63(1) of the *MiFID Org Regulation*.
- 9.5.5** **R** When a *firm* receives a request, made by a *client*, or on a *client's* behalf, for a copy of any statement of *custody assets* and/or *client money* previously provided to that *client*, the *firm* must provide the *client* with the copy of the statement requested in a *durable medium* and within five *business days* following the receipt of the request.
- 9.5.5A** **R** A *firm* is not required to provide a *client* with a statement under **■** CASS 9.5.4R or **■** CASS 9.5.4BR, or a copy of a statement under **■** CASS 9.5.5R (as applicable) where the following conditions are met:
- (1) the *firm* provides the *client* with access to an online system, which qualifies as a *durable medium*;
 - (2) up-to-date statements of the *client's custody assets* and/or *client money* can be easily accessed by the *client* via the system under (1); and
 - (3) the *firm* has evidence that the *client* has accessed this statement at least once during the relevant quarter.
- 9.5.6** **R** Any charge agreed between the *firm* and the *client* for providing the statements in **■** CASS 9.5.4R, **■** CASS 9.5.4BR or **■** CASS 9.5.5R (as applicable) must be at a commercial cost.
- 9.5.7** **G** Any statement provided to a *client* under **■** CASS 9.5.4 R or **■** CASS 9.5.5 R (as applicable) may, although it is not required to, be in the same form as the statement a *firm* is required to provide to a *client* under **■** COBS 16.4 or, if appropriate, **■** COBS 16.3.
- 9.5.8** **G** Consistent with the *fair, clear and not misleading rule*, a *firm* should ensure that, in any statements of *custody assets* and/or *client money* it provides to its *clients*, it is clear from the statement which assets and/or monies the *firm* reports as holding for the *client* are, or are not, protected under **■** CASS 6 and/or **■** CASS 7 (e.g. if the statement also includes information regarding assets and/or monies which are held by the *firm* for that *client* which are not subject to the *custody rules* and/or *client money rules*) .
- 9.5.9** **G** *Firms* are reminded that under **■** CASS 3.2.4 G *firms* that enter into arrangements with *retail clients* covered by **■** CASS 3 (Collateral) should, when appropriate, identify in any statement of *custody assets* sent to the *client*

under ■ COBS 16.4 (Statements of client designated investments or client money), article 63 of the *MiFID Org Regulation* or ■ COBS 16A.4 (as applicable) or this section the details of the assets which form the basis of that collateral arrangement.

