

Chapter 9

Information to clients

9.3 Prime brokerage agreement disclosure annex

9.3.1

R

- (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

G

- (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).