

Chapter 3

Auditors



3.10 Duties of auditors: notification and report on client assets

Application

- 3.10.1 R [deleted]
- 3.10.2 R An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the *client money rules* in the *client money chapter* or the *debt management client money rules* if:

(1) that *firm* is regulated by:

(a) the Law Society (England and Wales); or
(b) the Law Society of Scotland; or
(c) the Law Society of Northern Ireland; and

(2) that *firm* is subject to the rules of its *designated professional body* as specified in ■ CASS 7.10.28R (2) or ■ CASS 11.1.6 R (2) with respect to its *regulated activities*.
- 3.10.3 R ■ SUP 3.10.5 R(3) does not apply to an auditor of a *lead regulated firm*.
[deleted]

Client assets report: content

- 3.10.4 R An auditor of a *firm* must submit a client assets report addressed to the FCA which:

(1) (a) states the matters set out in ■ SUP 3.10.5 R; and
(b) specifies the matters to which ■ SUP 3.10.9 R and ■ SUP 3.10.9A R refer; or
(2) if the *firm* claims not to hold *client money* or *custody assets*, states whether anything has come to the auditor's attention that causes him to believe that the *firm* held *client money* or *custody assets* during the period covered by the report.
- 3.10.4A R (1) For the purpose of ■ SUP 3.10.4 R (1), an auditor must ensure that the report is prepared in accordance with the terms of a *reasonable assurance engagement*.

(2) For the purpose of ■ SUP 3.10.4 R (2), an auditor must ensure that the report is prepared in accordance with the terms of a *limited assurance engagement*.

3.10.5 R Client assets report

Whether in the auditor's opinion	
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> throughout the period ;
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> , at the date as at which the report has been made;
(3)	<div>in the case of an <i>investment management firm</i>, <i>personal investment firm</i>, a <i>UCITS firm</i>, <i>securities and futures firm</i>, <i>firm</i> acting as trustee or depositary of an AIF, <i>firm acting as trustee or depositary of a UK UCITS</i> or a <i>MIFID-PRU investment firm</i>, when a <i>subsidiary</i> of the <i>firm</i> is during the period a <i>nominee company</i> in whose name <i>custody assets</i> of the <i>firm</i> are registered during the period, that <i>nominee company</i> has maintained throughout the period systems for the custody, identification and control of <i>custody assets</i> which:</div> <div><div>(a)</div><div>were adequate; and</div></div> <div><div>(b)</div><div>included reconciliations at appropriate intervals between the records maintained (whether by the <i>firm</i> or the <i>nominee company</i>) and statements or confirmations from <i>custodians</i> or from the <i>person</i> who maintained the record of legal entitlement; and</div></div>
(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the <i>rules</i> in CASS 5.6 and CASS 7A (Client money distribution), CASS 11.13 (<i>debt management client money distribution rules</i>) and CASS 13.11 (<i>claims management client money distribution rules</i>) in relation to that pooling event.

3.10.5A R In relation to a client assets report provided in accordance with ■ SUP 3.10.4 R, an auditor must ensure that it:

- (1) is submitted in the form prescribed by ■ SUP 3 Annex 1 R; and
- (2) is signed on behalf of the audit firm by the individual with primary responsibility for a *firm's* client assets report and in that individual's own name.

3.10.5B G ■ SUP 3.10.4 R provides that an auditor must ensure that a client assets report is prepared in accordance with the terms of, as the case may be, a *reasonable assurance engagement* or a *limited assurance engagement*.

However, the *FCA* also expects an auditor to have regard, where relevant, to material published by the Financial Reporting Council that deals specifically with the client assets report which the auditor is required to submit to the *FCA*. In the *FCA*'s view, a client assets report that is prepared in accordance with that material is likely to comply with ■ SUP 3.10.4 R and ■ SUP 3.10.5 R where that report is prepared for a *firm* within the scope of the material in question.

- 3.10.5C** **R**
- (1) An auditor must ensure that the information provided to it by a *firm* in accordance with ■ SUP 3.11.1 G is included in the client assets report.
 - (2) If by the date at which the report is due for submission in accordance with ■ SUP 3.10.7 R or ■ SUP 3.10.8A R an auditor has not received the information prescribed in ■ SUP 3.11.1 G it must submit the report without that information, together with an explanation for its absence.

Client assets report: period covered

- 3.10.6** **R**
- The period covered by a report under ■ SUP 3.10.4 R must end not more than 53 weeks after the period covered by the previous report on such matters, or, if none, after the *firm* is *authorised* or becomes subject to ■ SUP 3.11 and its auditor becomes subject to ■ SUP 3.10.

Client assets report: timing of submission

- 3.10.7** **R**
- An auditor must deliver a client assets report under ■ SUP 3.10.4 R to the *FCA* within four months from the end of each period covered, unless it is the auditor of a *firm* falling within category (10) of ■ SUP 3.1.2 R.

[Note: article 8 of the *MiFID Delegated Directive*]

- 3.10.7A** **G**
- [deleted]

- 3.10.8** **R**
- (1) If an auditor expects that it will fail to comply with ■ SUP 3.10.7 R, it must no later than the end of the four month period in question:
 - (a) notify the *FCA* that it expects that it will be unable to deliver a client assets report by the end of that period; and
 - (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its expected failure to comply with ■ SUP 3.10.7 R.
 - (2) If an auditor fails to comply with ■ SUP 3.10.7 R, it must promptly:
 - (a) notify the *FCA* of that failure; and
 - (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its failure to comply with ■ SUP 3.10.7 R.

- 3.10.8A** **R**
- The auditor of a *firm* falling within category (10) of ■ SUP 3.1.2 R must deliver a report under ■ SUP 3.10.4 R:

- (1) to the *firm* so as to be received within four months of the end of each period covered; and
- (2) to the *FCA* upon request within six years of the end of the period covered.

3.10.8B **G** The rights and duties of auditors are set out in **■ SUP 3.8** (Rights and duties of all auditors) and **■ SUP 3.10** (Duties of auditors: notification and report on client assets). **■ SUP 3.8.10 G** also refers to the auditor's statutory duty to report certain matters to the *FCA* imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to a regulator). An auditor should bear these rights and duties in mind when carrying out *client* asset report work, including whether anything should be notified to the *FCA* immediately.

3.10.8C **G** It is the responsibility of an *insurance intermediary's* senior management to determine, on a continuing basis, whether the *firm* is an *exempt insurance intermediary* for the purposes of this requirement and to appoint an auditor if management determines the *firm* is no longer exempt. **■ SUP 3.7** (amplified by **■ SUP 15**) sets out what a firm should consider when deciding whether it should notify the *FCA* of matters raised by its auditor.

3.10.8D **R** An auditor must:

- (1) deliver to a *firm* a draft of its client assets report such that the *firm* has an adequate period of time to consider the auditor's findings and to provide the auditor with comments of the kind to which **■ SUP 3.11.1 G** refers; and
- (2) unless it is the auditor of a *firm* falling within category (10) of **■ SUP 3.1.2 R**, deliver to the *firm* a copy of the final report at the same time as it delivers that report to the *FCA* in accordance with **■ SUP 3.10.7 R**.

Client assets report: requirements not met or inability to form opinion

3.10.9 **R** If the client assets report under **■ SUP 3.10.4 R** states that one or more of the applicable requirements described in **■ SUP 3.10.5 R(1)** to **■ (4)** has or have not been met, the auditor must specify in the report each of those requirements and the respects in which it has or they have not been met.

3.10.9A **R**

- (1) Whether or not an auditor concludes that one or more of the requirements specified in **■ SUP 3.10.5 R(1)** to **■ (4)** has or have been met, the auditor must ensure that the client assets report identifies each individual *rule* in respect of which a breach has been identified.
- (2) If an auditor does not identify a breach of any individual *rule*, it must include a statement to that effect in the client assets report.

3.10.9B **R** For the purpose of **■ SUP 3.10.9 R** and **■ SUP 3.10.9A R**, an auditor must ensure that the information prescribed under those *rules* is submitted using,

		respectively, Part 1 (Auditor’s Opinion) and Part 2 (Breaches Schedule) of ■ SUP 3 Annex 1 R.
3.10.9C	G	<p>(1) The <i>FCA</i> expects that the list of breaches will include every breach of a <i>rule</i> in <i>CASS</i> insofar as that <i>rule</i> is within the scope of the client assets report and is identified in the course of the auditor’s review of the period covered by the report, whether identified by the auditor or disclosed to it by the <i>firm</i>, or by any third party.</p> <p>(2) For the purpose of determining whether to qualify its opinion or express an adverse opinion, the <i>FCA</i> would expect an auditor to exercise its professional judgment as to the significance of a <i>rule</i> breach, as well as to its context, duration and incidence of repetition. The <i>FCA</i> would expect an auditor to consider the aggregate effect of any breaches when judging whether a <i>firm</i> had failed to comply with the requirements described in ■ SUP 3.10.5 R (1) to ■ (4).</p>
3.10.10	R	If an auditor is unable to form an opinion as to whether one or more of the applicable requirements described in ■ SUP 3.10.5 R have been met, the auditor must specify in the report under ■ SUP 3.10.4 R those requirements and the reasons why the auditor has been unable to form an opinion.
3.10.11	G	[deleted]
		Method of submission of reports
3.10.12	R	An auditor of a <i>firm</i> must submit a report under ■ SUP 3.10.4 R in accordance with the rules in ■ SUP 16.3.6 R to ■ SUP 16.3.13 R as if those <i>rules</i> applied directly to the auditor.
		Service of Notice Regulations
3.10.13	G	The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the <i>FCA</i> . They do not apply to reports required by ■ SUP 3.10 because of the specific provisions in ■ SUP 3.10.12 R.