Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(1) section 138 (General rule-making powers);
(2) section 139 (Miscellaneous ancillary matters);
(3) section 149 (Evidential provisions);
(4) section 156 (General supplementary powers);
(5) section 157(1) (Guidance); and
(6) section 340(1) (Auditors and actuaries).

B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with Annexes to this instrument listed in column (2) below:

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Citation

E. This instrument may be cited as the Client Assets sourcebook (MiFID Business) Instrument 2007.

By order of the Board
25 January 2007
Annex A

Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where new text is being inserted, the text is not underlined.

...  

1.2.4 R CASS 2 (Custody rules), CASS 3 (Collateral rules) and CASS 4 (Client money and mandates; designated investment business). With the exception of this chapter and the insurance client money chapter, CASS does not apply to:

(1) an authorised professional firm with respect to its non-mainstream regulated activities;

(2) the Society.

1.2.5 R CASS 5 (Client money and mandates: insurance mediation activity). The insurance client money chapter does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, which are insurance mediation activities, if:

(1) …

...  

1.2.6 G Authorised professional firms should be aware of PROF 5.2 (Nature of non-mainstream regulated activities). [deleted]

General application: what?

1.2.7 G (1) …

...  

(3) CASS 2 (Custody rules), CASS 3 (Collateral rules). The non-directive custody chapter and CASS 4 (Client money and mandates; designated investment business) the non-directive client money chapter apply in relation to regulated activities, conducted by firms, which fall within the definition of designated investment business other than MiFID business.

(3A) The collateral rules apply in relation to regulated activities, conducted by firms, which fall within the definition of designated investment business (including MiFID business).

(4) CASS 5 (Client money and mandates: insurance mediation activity) The insurance client money chapter applies in relation to regulated activities, conducted by firms, which fall within the definition of
insurance mediation activities.

(5) The MiFID custody chapter and the MiFID client money chapter apply in relation to regulated activities, conducted by firms, which fall within the definition of:

(a) MiFID business; and

(b) designated investment business other than MiFID business, where the firm has, in accordance with those rules, opted to comply with the provisions of those rules with respect of this business.

(6) The mandate rules apply in relation to regulated activities, conducted by firms, which fall within the definition of designated investment business (including MiFID business) and insurance mediation activity, except where it relates to a reinsurance contract.

Application for private customers, intermediate customers and market counterparties retail clients, professional clients and eligible counterparties

1.2.8 G (1) CASS applies directly in respect of activities conducted with or for all categories of clients, market counterparties as well as with or for customers. The term client refers both to market counterparties and to customers.

(2) In CASS 2 (Custody rules), CASS 3 (Collateral rules) and CASS 4 (Client money and mandates: designated investment business), except in the insurance client money chapter, MiFID custody chapter and MiFID client money chapter, the term customer refers to private customers retail clients and intermediate customers professional clients, but not market eligible counterparties. Where relevant, each of the provisions of CASS makes clear whether it applies to activities carried on with or for private customers retail clients or intermediate customers professional clients, or both.

(3) CASS 5 (Client money and mandates: insurance mediation activity) The insurance client money chapter does not generally distinguish between different categories of client. However, the term retail customer is used for those whom additional obligations are owed, rather than the term private customer retail client. This is to be consistent with the client categories used in relation to the obligations in ICOB in relation to insurance mediation activities.

(4) Each provision in the MiFID custody chapter and the MiFID client money chapter makes it clear whether it applies to activities carried on or for retail clients, professional clients or both. There is no further modification of the rules in these chapters in relation to activities carried on for eligible counterparties. Such clients are treated in the same way as other professional clients for the purposes of these rules.
1.2.9  
Firms are reminded that the definition of inter-professional business does not include safekeeping and administration of assets or agreeing to carry on that activity: CASS will apply in this context (and will apply to the holding of money for clients in connection with inter-professional business).

[deleted]

Investments and money held under different regimes

1.2.10  
Where a firm is subject to both the non-directive custody chapter and the MiFID custody chapter, it must ensure segregation between designated investments held under each chapter, including that designated investments held under different chapters with the same third party, are held in different, separately designated, accounts.

1.2.11  
Where a firm is subject to more than one of the non-directive client money chapter, the insurance client money chapter and the MiFID client money chapter, it must ensure segregation between money held under each chapter, including that money held under different chapters is held, in different, separately designated, client bank accounts or client transaction accounts.

1.2.12  
The purpose of the rules regarding the segregation of investments and money held under different regimes is to reduce the risk of confusion between assets held under different regimes either on an on-going basis or on the failure of a firm or a third party holding those assets.

1.2.13  
A firm may opt to hold under a single chapter designated investments that would otherwise be held under different chapters (see CASS 6.1.17R). A firm may also opt to hold under a single chapter money that would otherwise be held under different chapters (see CASS 4.1.1AR, CASS 5.1.1R(3) and CASS 7.1.3R(1)).

Stock lending activity with or for customers

1.4.2  
(1) The non-directive custody chapter and the non-directive client money chapter apply in respect of any stock lending activity that is not MiFID business undertaken with or for a customer by a firm. If the stock lending activity involves MiFID business or if the firm has opted to comply with the MiFID custody chapter or the MiFID client money chapter with respect to its non-MiFID business, then the MiFID custody chapter and the MiFID client money chapter apply.

(2) The collateral rules apply, where relevant, in respect of stock lending activity, whether or not the activity amounts to MiFID business.

Corporate finance business

1.4.3  
(1) The non-directive custody chapter and the non-directive client money
chapter CASS 2 (Custody rules) to CASS 4 (Client money and mandates: designated investment business) apply in respect of corporate finance business that is not MiFID business undertaken by a firm. If the corporate finance business involves MiFID business or if the firm has opted to comply with the MiFID custody chapter or the MiFID client money chapter with respect to its non-MiFID business, then the MiFID custody chapter and the MiFID client money chapter apply.

(2) The collateral rules apply, where relevant, in respect of corporate finance business, whether or not the activity amounts to MiFID business.

Oil market activity and energy market activity

1.4.4 G (1) The non-directive custody chapter and the non-directive client money chapter CASS 2 (Custody rules) to CASS 4 (Client money and mandates: designated investment business) apply in respect of oil market activity and other energy market activity that is not MiFID business undertaken by a firm. If the energy market activity (including oil market activity) involves MiFID business or if the firm has opted to comply with the MiFID custody chapter or the MiFID client money chapter with respect to its non-MiFID business, then the MiFID custody chapter and the MiFID client money chapter apply.

(2) The collateral rules apply, where relevant, in respect of energy market activity, whether or not the activity amounts to MiFID business.

Appointed representatives

1.4.5 G (1) Although CASS does not apply directly to a firm's appointed representatives, a firm will always be responsible for the acts and omissions of its appointed representatives in carrying on business for which the firm has accepted responsibility (section 39(3) of the Act). In determining whether a firm has complied with any provision of CASS, anything done or omitted by a firm's firm's appointed representative (when acting as such) will be treated as having been done or omitted by the firm (section 39(4) of the Act).

(2) …

Depositaries

1.4.6 R CASS 4.1 to CASS 4.4 The non-directive client money chapter and the MiFID client money chapter do not apply to a depositary when acting as such.

1.4.7 R The remainder of CASS applies to a depositary, when acting as such, with the following general modifications:
(1) except in CASS 4.5 the mandate rules, 'client' means 'trustee', 'trust' or 'collective investment scheme' as appropriate; and

(2) in CASS 4.5 the mandate rules, 'client' means 'trustee', 'collective investment scheme' or 'collective investment scheme instrument' as appropriate.

1.4.8 R In relation to a trustee firm which is not a depositary, when acting as such, and which falls within COB 11.5.1R(1):

(1) CASS does not apply, except for the MiFID custody chapter, the MiFID client money chapter and the mandate rules CASS 4.5 (Mandates); and

(2) in the MiFID custody chapter, the MiFID client money chapter and the mandate rules CASS 4.5, 'client' means 'trustee', 'trust', or 'trust instrument' or 'beneficiary', as appropriate.

2 Client assets

2.1 Custody

Application and purpose

2.1.1 R This section chapter (the custody rules) apply applies to a firm when it is safeguarding and administering investments other than:

(1) when it is holding financial instruments belonging to a client in the course of conducting MiFID business; or

(2) subject to in the circumstances set out in CASS 2.1.9R.

2.1.2A G The MiFID custody chapter applies when a firm holds financial instruments belonging to a client in the course of its MiFID business.

2.1.4 G The term 'client' refers to a market eligible counterparty, a professional client intermediate customer or a retail client private customer. However, the term 'customer' does not include an market eligible counterparty.

2.1.9 R The custody rules do not apply to:

(1) …
(3) …

(c) makes a record, which must then be retained for a period of 3 years after the record is made, of all the designated investments handled in accordance with (3)(a) and (b) together with the details of the clients concerned and of any action the firm has taken.

(4) a MiFID investment firm that has opted to act in accordance with the MiFID custody chapter in respect of designated investments that it safeguards and administers which are subject to the opt-in to the MiFID custody chapter.

... 2.1.10A G Firms that safeguard and administer designated investments including financial instruments and that are subject to both sets of custody rules, should refer to CASS 6.1.17R (Opt-in to the MiFID custody rules) which contains a provision enabling these firms to opt to comply solely with the MiFID custody chapter.

... 2.2.10 R To the extent practicable, a firm must effect appropriate registration or recording of legal title to a safe custody investment in the name of:

(1) …

... (4) the firm if:

(a) …

(b) the firm has notified the client in accordance with CASS 2.3.10R (Risk disclosures) if an market eligible counterparty or an professional client intermediate customer, or obtained his prior written consent if a retail client private customer; or

(5) any other person, in accordance with the client's specific written instruction, provided:

(a) …

(b) in the case of a retail client private customer, the other person is not an associate of the firm.
2.2.15 R A firm must hold any document of title to a safe custody investment either in the physical possession of the firm or:

(1) for a retail client private customer, with a custodian in an account designated for clients’ safe custody investments;

(2) for a market eligible counterparty or a professional client intermediate customer, with one or more of the following:

(a) …

(c) subject to CASS 2.3.11R (Risk disclosures) in accordance with the market eligible counterparty’s or professional client’s intermediate customer’s specific written instructions.

2.2.19 R Before a firm recommends a custodian to a retail client private customer, it must undertake an appropriate risk assessment of that custodian.

2.2.20 G A firm that holds safe custody investments with a custodian or recommends custodians to retail clients private customers, is expected to establish and maintain a system for assessing the appropriateness of its selection of the custodian and to assess the continued appointment of that custodian periodically as often as is reasonable in the relevant market. In order to comply with SYSC 3.2.20R and SYSC 9 (Records), the firm is also expected to make and retain a record of the grounds on which it satisfies itself as to the appropriateness of its selection or, following a periodic assessment, continued appropriateness of the custodian.

2.3.2 R Before a firm provides safe custody services to a client, unless CASS 2.3.5R applies, the firm must notify the client as to the appropriate terms and conditions which apply to this service, including, where applicable, those covering:

(1) …

(10) if the firm intends to pool a safe custody investment with that of one or more other clients, notification of its intention to the market eligible counterparty or professional client intermediate customer and if the client is a retail client private customer, an explanation of the effects of pooling to that retail client private customer.
### 2.3.3 G
When explaining the meaning of pooling to a *retail client private customer*, firms are expected to advise the *retail client private customer* that:

1. ...

### 2.3.4 R
Unless CASS 2.3.5R or CASS 2.3.6R applies, the *firm* must obtain the written agreement of a *retail client private customer*, or notify an *market eligible counterparty* or an *professional client intermediate customer*, as to:

1. ...

### 2.3.6 R
(1) A *firm* need not obtain the written agreement of a *retail client private customer*, or give notice to an *market eligible counterparty* or an *professional client intermediate customer*, as required by CASS 2.3.4R if:

(a) ...

### 2.3.8 G
The term "*customer*" does not include an *market eligible counterparty*.

### 2.3.10 R
Before a *firm* registers or records legal title to a *safe custody investment* in the name of the *firm*, it must notify the *client* if an *market eligible counterparty* or an *professional client intermediate customer*, and obtain his prior written consent if the *client* is a *retail client private customer*, that:

1. ...

### 2.3.16 R
If a *firm* provides a range of safe custody services for a *retail client private customer* which result in statements being generated from more than one system, it must ensure that all the statements in respect of those services are produced as at the same date and despatched within one week of each other, unless each statement makes clear that it relates to a particular service.
Content of client statements

2.3.17 R All statements produced by or on behalf of a firm in accordance with CASS 2.3.12R - CASS 2.3.14R and CASS 2.3.16R, must list all custody assets held for the client for which the firm is accountable and:

(1) ...

...

(4) for a retail client private customer, base the statement on either trade date or settlement date information for cash balances and safe custody investment and notify the basis to the retail client private customer.

2.5.2 R A firm must not use a safe custody investment for its own account unless the client:

(1) if a retail client private customer, has given prior written consent to the firm; or

(2) if an professional client intermediate customer or market eligible counterparty, has been notified by the firm.

Use of a safe custody investment: by another client

2.5.3 R A firm must not use, for the account of one client, the safe custody investment of any other customer, unless that other customer:

(1) if a retail client private customer, has given prior written consent to the firm; or

(2) if an professional client intermediate customer, has been notified by the firm.

...

2.5.5 E (1) In the case of a retail client private customer, the appropriate terms and conditions referred to in CASS 2.5.4R(2) include those specified in COB 4 Annex 2(18) (Content of terms of business provided to a customer: stock lending).

(2) ...

...
2.5.6 G Firms are reminded that the term "customer" does not include an market eligible counterparty.

... 

2.5.8 R If a safe custody investment belonging to a retail client private customer is used for stock lending activity, the firm must ensure that:

(1) ... 

... 

3.1 Application and Purpose

Application

3.1.1 R This chapter section applies to a firm when it receives or holds assets in connection with an arrangement to secure the obligation of a client in the course of, or in connection with, its designated investment business, including MiFID business.

3.1.2 G Firms are reminded that under CASS 1.3.3R, this chapter section does not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of this chapter section is also dependent on the location from which the activity is undertaken (see CASS 1.3.2R and CASS 1.3.3R).

3.1.3 R This chapter section does not apply to a firm that has only a bare security interest (without rights to hypothecate) in the client's asset. In such circumstances, the firm must comply with the custody rules or client money rules as appropriate.

3.1.4 G For the purpose of this chapter section only, a bare security interest in the client's asset gives a firm the right to realise the assets only on a client's default and without the right to use other than in default.

Purpose

3.1.5 G The purpose of this chapter section is to ensure that an appropriate level of protection is provided for those assets over which a client gives a firm certain rights. The arrangements covered by this chapter section are those under which the firm is given a right to use the asset, and the firm treats the asset as if legal title and associated rights to that asset had been transferred to the firm subject only to an obligation to return equivalent assets to the client upon satisfaction of the client's obligation to the firm. The rights covered in this chapter section do not include those arrangements by which the firm has only a bare security interest in the client's asset (in which case the custody rules or client money rules apply).
3.1.6 G Examples of the arrangements covered by this chapter section include the taking of collateral by a firm, under the ISDA English Law (transfer of title) and the New York Law Credit Support Annexes (assuming the right to rehypothecate has not been disapplied).

3.1.7 G This chapter section recognises the need to apply a differing level of regulatory protection to the assets which form the basis of the two different types of arrangement described in CASS 3.1.5G. Under the bare security interest arrangement, the asset continues to belong to the client until the firm's right to realise that asset crystallises (that is, on the client's default). But under a "right to use arrangement", the client has transferred to the firm the legal title and associated rights to the asset, so that when the firm exercises its right to treat the asset as its own, the asset ceases to belong to the client and in effect becomes the firm's asset and is no longer in need of the full range of client asset protection. The firm may exercise its right to treat the asset as its own by, for example, clearly so identifying the asset in its own books and records.

3.2 Requirements

Application

3.2.1 R CASS 3.2 applies in accordance with CASS 3.1. [deleted]

3.2.2 R A firm that receives or holds a client's assets under an arrangement to which this chapter section applies and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the client.

3.2.4 G When appropriate, firms that enter into the arrangements covered in this chapter section with retail clients private customers will be expected to identify in the statement of custody assets sent to the client in accordance with CASS 2.3.12R (Production and despatch of client statements) details of the assets which form the basis of the arrangements. Where the firm utilises global netting arrangements, a statement of the assets held on this basis will suffice.

4 Non-directive Client money rules and mandates: designated investment business

4.1 Application and Purpose

Application

4.1.1 R This chapter section (the client money rules) applies to a firm that receives money from or holds money for from, or on behalf of, a client in the course of, or in connection with:

(1) its designated investment business other than MiFID business; or
(2) in the circumstances set out in CASS 4.1.1AR (insurance mediation activity); except where CASS 4.1.2R applies.

4.1.1A R A firm that receives or holds money to which this chapter section applies and money in respect of which the insurance client money chapter CASS 5.1 applies, may elect to comply with the provisions of this chapter section CASS 4 in respect of all such money and if it does so this chapter applies as if all such money were money that the firm receives and holds in the course of or in connection with its designated investment business.

…

4.1.2 R The client money rules This chapter does not apply with respect to:

(1) …

…

(3) …

(a) …

(b) as a result, the money will not be held in accordance with the client money rules; or

(4) money held by depositaries which are regulated by COB 11; or

(5) client money held by a firm which:

(a) receives or holds client money in relation to contracts of insurance; but which

(b) in relation to such client money elects to act in accordance with the insurance client money chapter CASS 5.1 to 5.6; or

(6) client money held by a firm which:

(a) receives or holds client money in relation to designated investment business other than MiFID business; but which

(b) in relation to such client money elects to act in accordance with the MiFID client money chapter under the opt-in to that chapter (CASS 7.1.3R(1)).

4.1.2B G (1) A firm which receives and holds client money in respect of life assurance business in the course of its designated investment business may:

(a) in accordance with CASS 4.1.1A R elect to comply with the non-directive client money chapter CASS 4 in respect of such
client money and in doing so avoid the need to comply with the insurance client money chapter CASS 5.1 to 5.6 which would otherwise apply to the firm in respect of client money received in the course of its insurance mediation activity; or

(b) in accordance with CASS 4.1.2 R(5), elect to comply with the insurance client money chapter CASS 5.1 to 5.6 in respect of such client money.

(2) These options are available to a firm irrespective of whether it also receives and holds client money in respect of other parts of its designated investment business. A firm may not however choose to comply with the insurance client money chapter CASS 5.1 to 5.6 in respect of client money which it receives and holds in the course of any part of its designated investment business which does not involve an insurance mediation activity.

4.1.2C G Firms that hold client money in the course of, or in connection with, designated investment business that is not MiFID business and also in the course of, or in connection with, MiFID business (and are therefore subject to the non-directive client money chapter and the MiFID client money chapter), should refer to CASS 7.1.3R(1) (Opt-in to the MiFID client money rules) which contains a provision enabling these firms to opt to comply solely with the MiFID client money chapter.

Money that is not client money: 'opt outs' for any business (including ISD business) other than insurance mediation activity

4.1.8 G The 'opt out' provisions provide a firm with the option of allowing an professional client intermediate customer or market an eligible counterparty to choose whether their money is subject to the client money rules (unless the firm is conducting insurance mediation activity).

4.1.9 R Subject to CASS 4.1.11R, money is not client money when a firm (other than a sole trader) holds that money on behalf of, or receives it from, an market eligible counterparty or an professional client intermediate customer, other than in the course of insurance mediation activity, and the firm has obtained written acknowledgement from the market eligible counterparty or professional client intermediate customer that:

(1) the money will not be subject to the protections conferred by the client money rules;

(2) as a consequence, this money will not be segregated from the money of the firm in accordance with the client money rules and will be used by the firm in the course of its own business; and
(3) the market eligible counterparty or professional client intermediate customer will rank only as a general creditor of the firm.

'Opt-outs' for non-ISD or non-IMD business

4.1.10 G For a firm whose business is not governed by the ISD or the IMD, it is possible to 'opt out' on a one-way basis. However, in order to maintain a comparable regime to that applying to MiFID business, in the case of certain non-ISD investment firms that undertake 'ISD type' business from a branch in the United Kingdom, article 5 of the ISD requires the FSA not to treat this business any more favourably than business of an ISD investment firm. Therefore all ISD and 'ISD type' all 'MiFID type' business undertaken outside the scope of MiFID, should comply with the client money rules or be 'opted out' on a two-way basis.

4.1.11 R Money is not client money if a firm, in respect of designated investment business which is not an investment service or activity, an ancillary service, a core investment service, a non-core investment service, a listed activity or insurance mediation activity:

(1) holds it on behalf of or receives it from an eligible market counterparty who is not an authorised person or an professional client intermediate customer who is not an authorised person; and

(2) has sent a separate written notice stating the matters set out in CASS 4.1.9R (1) to (3).

4.1.12 G When a firm undertakes a range of business for an market eligible counterparty or professional client intermediate customer and has separate agreements for each type of business undertaken, the firm may treat client money held on behalf of the client differently for different types of business; for example, a firm may, under CASS 4.1.9R or CASS 4.1.11R, elect to segregate client money in connection with securities transactions and not segregate (by complying with CASS 4.1.9R or CASS 4.1.11R) money in connection with contingent liability investments for the same client.

...
If no interest is payable to a retail client private customer, that fact should be separately identified in an agreement or notification.

Transfer of client money to a third party

CASS 4.3.30R sets out the requirements a firm must comply with when it transfers client money to another person without discharging its fiduciary duty owed to that client. Such circumstances arise when, for example, a firm passes client money to an intermediate broker for contingent liability investments in the form of initial or variation margin on behalf of a client. In these circumstances, the firm remains responsible for that client's equity balance, as defined in CASS 4.3.79R, held at the intermediate broker until the contract is terminated and all of that client's positions at that broker closed. If a firm wishes to discharge itself from its fiduciary duty, it should do so in accordance with CASS 4.3.99R.

A firm may allow another person, such as an exchange, a clearing house or an intermediate broker, to hold or control client money, but only if:

1. ...

2. in the case of a retail client private customer, that customer has been notified that the client money may be transferred to the other person.

A firm (other than a trustee firm) may hold client money with a bank that is not an approved bank if all of the following conditions are met:

1. ...

4. the firm notifies each relevant market eligible counterparty and professional client intermediate customer and obtains the prior written consent of each relevant retail client private customer that:

   a. ...

A client's equity balance is the amount which the firm would be liable (ignoring for the purposes of this rule any non-cash collateral held) to pay to a client (or the client to the firm) in respect of his margined transactions if each of his open positions was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and his account closed. [deleted]
4.3.81 R The total margined transaction requirement is:

(1) the sum of each of the client's equity balance, as defined in CASS 4.3.79R, which are positive;

Less

(2) the proportion of any individual negative client equity balance which is secured by approved collateral; and

(3) the net aggregate of the firm's equity balance (negative balances being deducted from positive balances) on transaction accounts for clients with exchanges, clearing houses, intermediate brokers and OTC counterparties.

4.3.84 G The terms 'client equity balance in CASS 4.3.79R' and 'firm's equity balance' in CASS 4.3.80R refer to cash values and do not include non-cash collateral or other designated investments held in respect of a margined transaction.

4.3.85 R (1) When, in respect of a client, there is a positive individual client balance and a negative client equity balance, a firm may offset the credit against the debit and hence have a reduced individual client balance in CASS 4.3.72R for that client.

(2) When, in respect of a client, there is a negative individual client balance and a positive client equity balance, a firm may offset the credit against the debit and hence have a reduced client equity balance in CASS 4.3.81R for that client.

4.3.108 R A firm with a Part 30 exemption order which also operates an LME bond arrangement for the benefit of US-resident investors, must exclude the client's equity balance, as defined in CASS 4.3.79R, for transactions undertaken on the London Metal Exchange on behalf of those US-resident investors from the calculation required by CASS 4.3.81R.
Client money and mandates: insurance mediation activity

5.1.1 R …

(1) …

(2) *CASS* 5.1 to *CASS* 5.6 do not, subject to (3), apply:

(a) to a *firm* to the extent that it acts in accordance with *CASS* 4 the *non-directive client money chapter* or the *MiFID client money chapter*; or

…

5.1.8 G *Firms* which carry on *designated investment business* which may, for example, involve them handling *client money* in respect of life assurance business should refer to *CASS* 4 the *non-directive client money chapter* which includes provisions enabling *firms* to elect to comply solely with *CASS* 4 *that chapter* or with *CASS* 5 the *insurance client money chapter* in respect of that business. *Firms* that also carry on *MiFID business* may elect to comply solely with the *MiFID client money chapter* with respect of *client money* in respect of which the *non-directive client money chapter* or the *insurance client money chapter* apply.

…

5.7 Mandates

5.7.1 R [deleted]

5.7.2 G [deleted]

5.7.3 G [deleted]

5.7.4 G [deleted]

5.7.5 R [deleted]

5.7.6 R [deleted]

…
After CASS 5, insert the following provisions. This material is all new and it is not underlined.

6.1 Custody: MiFID business

Application

6.1.1 R This chapter (the custody rules) applies to a MiFID investment firm:

(1) when it holds financial instruments belonging to a client in the course of its MiFID business; or

(2) that opts to comply with the custody rules under this chapter in accordance with CASS 6.1.17R (Opt-in to the MiFID custody rules).

6.1.2 G Firms are reminded that dividends (actual or payments in lieu), stock lending fees and other payments received for the benefit of a client should be held in accordance with the MiFID client money chapter where appropriate.

6.1.3 G This chapter does not apply where a firm issues depositary receipts. The custody rules in the non-directive custody chapter provide a specialist regime for the issue of depositary receipts (see CASS 2.1.24R to CASS 2.1.26R).

Business in the name of the firm

6.1.4 R The custody rules do not apply where a firm carries on business in its name but on behalf of the client where that is required by the very nature of the transaction and the client is in agreement.

[Note: recital 26 to MiFID]

6.1.5 G For example, this chapter does not apply where a firm borrows financial instruments from a client as principal under a stock lending agreement.

Title transfer collateral arrangements

6.1.6 R The custody rules do not apply where a client transfers full ownership of a financial instrument to a firm for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.

[Note: recital 27 to MiFID]

6.1.7 G A title transfer financial collateral arrangement under the Financial Collateral Directive is a type of transfer of instruments to cover obligations where the financial instrument will not be regarded as belonging to the client.

6.1.8 G Firms are reminded of the client's best interests rule, which requires them to act honestly, fairly and professionally in accordance with the best interests of their clients when structuring their business particularly in
respect of the effect of that structure on firms’ obligations under this chapter.

6.1.9 G Firms are reminded that, in certain cases, the collateral rules apply where a firm receives collateral from a client in order to secure the obligations of the client.

Affiliated companies

6.1.10 G The fact that a client is an affiliated company does not affect the operation of the custody rules in relation to that client.

6.1.11 G A firm that holds financial instruments on behalf of an affiliated company in respect of its non-MiFID business and opts under CASS 6.1.17R to comply with this chapter in respect of that non-MiFID business, should refer to CASS 2.1.9R(1) to determine whether the assets falls within the scope of the custody rules in the non-directive custody chapter and therefore within the scope of the opt-in.

Delivery versus payment transactions

6.1.12 R (1) A firm need not treat this chapter as applying in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that the financial instrument is either to be:

(a) in respect of a client's purchase, due to the client within one business day following the client's fulfilment of a payment obligation; or

(b) in respect of a client's sale, due to the firm within one business day following the fulfilment of a payment obligation;

unless the delivery or payment by the firm does not occur by the close of business on the third business day following the date of payment or delivery of the financial instrument by the client.

(2) Until such a delivery versus payment transaction through a commercial settlement system settles, a firm may segregate money (in accordance with the MiFID client money chapter) instead of the client's financial instruments.

Arranging registration and recommendations

6.1.13 G This chapter does not apply where a firm arranges registration of a financial instrument. In such circumstances, a firm must comply with the relevant custody rules in the non-directive custody chapter (see CASS 2.1.22R).

6.1.14 G This chapter does not apply where a firm recommends to a retail client a third party to hold the assets of that client. In such circumstances, a firm must comply with the relevant custody rules in the non-directive custody chapter (see CASS 2.2.19R).
Temporary handling of financial instruments

6.1.15 G The custody rules do not apply if a firm temporarily handles a financial instrument belonging to a client. A firm should temporarily handle financial instrument for no longer than is reasonably necessary. In most transactions this would be no longer than one business day, but it may be longer or shorter depending upon the transaction in question. For example, when a firm executes an order to sell shares which have not been registered on a dematerialised exchange, handling documents for longer periods may be reasonably necessary. However, in the case of financial instruments in bearer form, the firm is expected to handle them for less than one business day. When a firm temporarily handles financial instruments, it is still obliged to comply with Principle 10 (Clients' assets).

6.1.16 G When a firm temporarily handles a financial instrument, in order to comply with its obligation to act in accordance with Principle 10 (Clients' assets), the following are guides to good practice:

(1) a firm should keep the financial instrument secure, record it as belonging to that client, and forward it to the client or in accordance with the client's instructions as soon as practicable after receiving it; and

(2) a firm should make and retain a record of the fact that the firm has handled that financial instrument and of the details of the client concerned and of any action the firm has taken.

Opt-in to the MiFID custody rules

6.1.17 R (1) A firm that holds financial instruments to which this chapter applies and assets in respect of which the non-directive custody chapter applies, may elect to comply with the provisions of this chapter in respect of all assets so held and if it does so, this chapter applies as if all such assets were financial instruments that the firm receives and holds in the course of, or in connection with, its MiFID business.

(2) An election under this rule must be in respect of all the activities of the firm when it is safeguarding and administering investments belonging to a client with the exception of arranging safeguarding and administration of assets within the scope of CASS 2.1.21R and CASS 2.1.22R and depositary receipt business within the scope of CASS 2.1.24R to CASS 2.1.26R.

(3) A firm must make and retain a written record of the election it makes under this rule, including the date from which the election is to be effective. The firm must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

6.1.18 G A firm cannot rely upon this opt-in in respect of arranging safeguarding and administration of assets and depositary receipt business as the custody rules
in the non-directive custody chapter provide specialised regimes in respect of these types of business which are outside the scope of this chapter.

6.1.19 G If a firm has opted to comply with this chapter, the non-directive custody chapter will have no application to the activities to which the election applies.

6.1.20 G A firm that is only subject to the non-directive custody chapter may not choose to comply with this chapter.

Disposal of financial instruments

6.1.21 R The custody rules cease to have effect in relation to a financial instrument it has been disposed of in accordance with a valid client instruction.

General purpose

6.1.22 G Principle 10 (Clients' assets) requires a firm to arrange adequate protection for clients' assets when it is responsible for them. As part of these protections, the custody rules require a firm to take appropriate steps to protect financial instruments for which it is responsible.

6.1.23 G The rules in this chapter are designed primarily to restrict the commingling of client and the firm's assets and minimise the risk of the client's financial instruments being used by the firm without the client's agreement or contrary to the client's wishes, or being treated as the firm's assets in the event of its insolvency.

6.1.24 G The custody rules also implement the provisions of MiFID which regulate the obligations of a firm when it holds financial instruments belonging to a client.

6.2 Holding of client assets

Requirement to protect clients' financial instruments

6.2.1 R A firm must, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the firm's insolvency, and to prevent the use of financial instruments belonging to a client on the firm's own account except with the client's express consent.

[Note: article 13(7) of MiFID]

Requirement to have adequate organisational arrangements

6.2.2 R A firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of clients' financial instruments, or the rights in connection with those financial instruments, as a result of the misuse of the financial instruments, fraud, poor administration, inadequate record-keeping or negligence.
[Note: article 16(1)(f) of the MiFID implementing Directive]

6.2.3 R To the extent practicable, a firm must effect appropriate registration or recording of legal title to a financial instrument in the name of:

(1) the client (or, where appropriate, the trustee firm), unless the client is an authorised person acting on behalf of its client, in which case it may be registered in the name of the client of that authorised person;

(2) a nominee company which is controlled by:

(a) the firm;

(b) an affiliated company;

(c) a recognised investment exchange or a designated investment exchange; or

(d) a third party with whom financial instruments are deposited under CASS 6.3;

(3) any other third party if:

(a) the financial instrument is subject to the law or market practice of a jurisdiction outside the United Kingdom and the firm has taken reasonable steps to determine that it is in the client's best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(b) the firm has notified the client in writing;

(4) the firm if:

(a) the financial instrument is subject to the law or market practice of a jurisdiction outside the United Kingdom and the firm has taken reasonable steps to determine that it is in the client's best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(b) the firm has notified the client if a professional client, or obtained prior written consent if a retail client.

6.2.4 R A firm must accept the same level of responsibility to its client for any nominee company controlled by the firm with respect of any requirements of the custody rules.

6.2.5 R A firm may register or record legal title to its own financial instrument in the same name as that in which legal title to a financial instrument is registered or recorded, but only if:
(1) the firm's financial instruments are separately identified in the firm's records from the financial instruments; or

(2) the firm registers or records a financial instrument in accordance with CASS 6.2.3R(4).

6.2.6 G A firm when complying with CASS 6.2.3R(3) or CASS 6.2.3R(4) will be expected to demonstrate that adequate investigations have been made of the market concerned by reference to local sources, which may include an appropriate legal opinion.

6.2.7 R A firm must ensure that any documents of title to financial instruments in bearer form, belonging to the firm and which it holds in its physical possession, are kept separately from any document of title to a client's financial instrument in bearer form.

6.3 Depositing assets with third parties

6.3.1 R (1) A firm may deposit financial instruments held by it on behalf of its clients into an account or accounts opened with a third party, but only if it exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.

(2) A firm must take the necessary steps to ensure that any client's financial instruments deposited with a third party, in accordance with this rule are identifiable separately from the financial instruments belonging to the firm and from the financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.

(3) When a firm makes the selection, appointment and conducts the periodic review referred under this rule, it must take into account:

(a) the expertise and market reputation of the third party; and

(b) any legal requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

(4) A firm must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a third party as required in this rule. The firm must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the firm ceases to use the third party to hold financial instruments belonging to clients.

[Note: articles 16(1)(d) and 17(1) of the MiFID implementing Directive]
6.3.2 G In discharging its obligations under this section, a firm should also consider, together with any other relevant matters:

(1) once a financial instrument has been lodged by the firm with the third party, the third party's performance of its services to the firm;

(2) the arrangements that the third party has in place for holding and safeguarding the financial instrument;

(3) current industry standard reports, for example Financial Reporting and Auditing Group (FRAG) 21 report or its equivalent;

(4) the capital or financial resources of the third party;

(5) the credit rating of the third party; and

(6) any other activities undertaken by the third party and, if relevant, any affiliated company.

6.3.3 G A firm should consider carefully the terms of its agreements with third parties with which it will deposit financial instruments belonging to a client. The following terms are examples of the issues firms should address in this agreement:

(1) that the title of the account indicates that any financial instrument credited to it does not belong to the firm;

(2) that the third party will hold or record a financial instrument belonging to the firm's client separately from any financial instrument belonging to the firm or to the third party;

(3) the arrangements for registration or recording of the financial instrument if this will not be registered in the client's name;

(4) the restrictions over the third party's right to claim a lien, right of retention or sale over any financial instrument standing to the credit of the account;

(5) the restrictions over the circumstances in which the third party may withdraw assets from the account;

(6) the procedures and authorities for the passing of instructions to or by the firm;

(7) the procedures regarding the claiming and receiving of dividends, interest payments and other entitlements accruing to the client; and

(8) the provisions detailing the extent of the third party's liability in the event of the loss of a financial instrument caused by the fraud, wilful default or negligence of the third party or an agent appointed by him.
6.3.4 R (1) A firm must only deposit financial instruments with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of financial instruments for the account of another person with a third party who is subject to such regulation.

(2) A firm must not deposit financial instruments held on behalf of a client with a third party in a country that is not an EEA State (third country) and which does not regulate the holding and safekeeping of financial instruments for the account of another person unless:

(a) the nature of the financial instruments or of the investment services connected with those financial instruments requires them to be deposited with a third party in that third country; or

(b) the financial instruments are held on behalf of a professional client and the client requests the firm in writing to deposit them with a third party in that third country.

(3) In the case of activities a firm has opted into this chapter under CASS 6.1.17R, (1) and (2) do not apply. However, the firm must deposit financial instruments belonging to clients pursuant to such activities with a custodian and must hold any document of title to a financial instrument either in the physical possession of the firm or:

(a) for a retail client, with a custodian;

(b) for a professional client, with one or more of the following:

(i) a custodian;

(ii) any person whom the firm has taken reasonable steps to determine is a person whose business includes the provision of appropriate safe custody services; or

(iii) in accordance with the professional client's specific written instructions.

[Note: article 17(2) and (3) of the MiFID implementing Directive]

6.4 Use of financial instruments

6.4.1 R (1) A firm must not enter into arrangements for securities financing transactions in respect of financial instruments held by it on behalf of a client or otherwise use such financial instruments for its own account or the account of another client of the firm, unless:

(a) the client has given express prior consent to the use of the financial instruments on specified terms; and

(b) the use of that client's financial instruments is restricted to the specified terms to which the client consents.
(2) A firm must not enter into arrangements for securities financing transactions in respect of financial instruments held by it on behalf of a client in an omnibus account held by a third party, or otherwise use financial instruments held in such an account for its own account or for the account of another client unless, in addition to the conditions set out in (1):

(a) each client whose financial instruments are held together in an omnibus account has given express prior consent in accordance with (1)(a); or

(b) the firm has in place systems and controls which ensure that only financial instruments belonging to clients who have given express prior consent in accordance with the requirements of (1)(a) are used.

(3) For the purposes of obtaining the express prior consent of a retail client under this rule the signature of the retail client or an equivalent alternative mechanism is required.

[Note: article 19 of the MiFID implementing Directive]

6.4.2 G Firms are reminded of the client's best interests rule, which requires the firm to act honestly, fairly and professionally in accordance with the best interests of their clients. An example of what is generally considered to be such conduct, in the context of stock lending activities involving retail clients is that:

(1) the firm ensures that relevant collateral is provided by the borrower in favour of the client;

(2) the current realisable value of the financial instrument and of the relevant collateral is monitored daily; and

(3) the firm provides relevant collateral to make up the difference where the current realisable value of the collateral falls below that of the financial instrument, unless otherwise agreed in writing by the client.

6.4.3 R Where a firm uses financial instruments as permitted in this section, the records of the firm must include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given consent, so as to enable the correct allocation of any loss.

[Note: article 19(2) of the MiFID implementing Directive]

6.5 Records, accounts and reconciliations

Records and accounts

6.5.1 R A firm must keep such records and accounts as necessary to enable it at any
time and without delay to distinguish financial instruments held for one client from financial instruments held for any other client, and from the firm's own financial instruments.

[Note: article 16(1)(a) of the MiFID implementing Directive]

6.5.2 R  A firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments held for clients.

[Note: article 16(1)(b) of the MiFID implementing Directive]

Record keeping

6.5.3 R  A firm must ensure that the records made under this section are retained for a period of five years after they are made.

Internal reconciliation of financial instruments held for clients

6.5.4 G  (1) SYSC 4.1.1R requires firms to have robust governance arrangements, such as internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems. In addition, SYSC 6.1.1R requires firms to establish, implement and maintain adequate policies and procedures sufficient to ensure the firm's compliance with its obligations under the regulatory system. Carrying out internal reconciliations of the financial instruments held for each client with the financial instruments held by the firm and third parties is an important step in the discharge of the firm's obligations under CASS 6.5.2R, SYSC 4.1.1R and SYSC 6.1.1R.

(2) A firm should perform such internal reconciliations:

(a) as often as is necessary; and

(b) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of the firm's records and accounts.

(3) Reconciliation methods which can be adopted for these purposes include the 'total count method', which requires that all financial instruments be counted and reconciled as at the same date.

(4) If a firm chooses to use an alternative reconciliation method (for example the 'rolling stock method') it needs to ensure that:

(a) all of a particular financial instrument are counted and reconciled as at the same date; and

(b) all financial instruments are counted and reconciled during a period of six months.
6.5.5 R A firm that uses an alternative reconciliation method must first send a written confirmation to the FSA from the firm's auditor that the firm has in place systems and controls which are adequate to enable it to use the method effectively.

Reconciliations with external records

6.5.6 R A firm must conduct on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those financial instruments are held.

[Note: article 16(1)(c) of the MiFID implementing Directive]

6.5.7 G Where a firm deposits financial instruments belonging to a client with a third party, in complying with the requirements of CASS 6.5.6R, the firm should seek to ensure that the third party will deliver to the firm a statement as at a date or dates specified by the firm which details the description and amounts of all the financial instruments credited to the account, and that this statement is delivered in adequate time to allow the firm to carry out the periodic reconciliations required in CASS 6.5.6R.

Frequency of external reconciliations

6.5.8 G A firm should perform the reconciliation required by CASS 6.5.6R:

(1) as regularly as is necessary; and

(2) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom financial instruments are held.

Independence of person conducting reconciliations

6.5.9 G Whenever possible, a firm should ensure that reconciliations are carried out by a person (for example an employee of the firm) who is independent of the production or maintenance of the records to be reconciled (see SYSC 5.1.6R).

Reconciliation discrepancies

6.5.10 R A firm must promptly correct any discrepancies which are revealed in the reconciliations envisaged by this section, and make good, or provide the equivalent of, any unreconciled shortfall for which there are reasonable grounds for concluding that the firm is responsible.

6.5.11 G Items recorded or held within a suspense or error account fall within the scope of discrepancies.

6.5.12 G A firm may, where justified, conclude that another person is responsible for an irreconcilable shortfall despite the existence of a dispute with that other person about the unreconciled item. In those circumstances, the firm is not required to
make good the *shortfall* but is expected to take reasonable steps to resolve the position with the other *person*.

Notification requirements

6.5.13  R  A *firm* must inform the *FSA* in writing without delay:

(1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in *CASS* 6.5.1R, *CASS* 6.5.2R or *CASS* 6.5.6R; or

(2) if, having carried out a reconciliation, it has not complied with, or is unable, in any material respect, to comply with *CASS* 6.5.10R.

Audit of compliance with the MiFID custody rules

6.5.14  G  *Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FSA* under *SUP* 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *rules* in this chapter.

6.5.15  G  *Firms* that use an alternative reconciliation method are reminded that the *firm's* auditor must confirm to the *FSA* in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see *CASS* 6.5.5R).

After *CASS* 6, insert the following provisions. This material is all new and it is not underlined.

Client money: MiFID business

7.1  Application and Purpose

Application

7.1.1  R  This chapter (the *client money rules*) applies to a *MiFID investment firm*:

(1) that holds *client money*; or

(2) that opts to comply with this chapter in accordance with *CASS* 7.1.3R(1) (Opt-in to the MiFID client money rules);

unless otherwise specified in this section.

7.1.2  G  *CASS* 7.2 (Definition of client money) sets out the circumstances in which *money* is considered *client money* for the purposes of this chapter.

Opt-in to the MiFID client money rules
7.1.3 **R** (1) A firm that receives or holds money in respect of which this chapter applies and money in respect of which the non-directive client money chapter or the insurance client money chapter applies, may elect to comply with the provisions of this chapter in respect of all such money and if it does so, this chapter applies as if all such money were money that the firm receives and holds in the course of, or in connection with, its MiFID business.

(2) A firm must make and retain a written record of any election it makes under this rule, including the date from which the election is to be effective. The firm must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

7.1.4 **G** The opt-in to this chapter in accordance with this section does not apply in respect of money that a firm holds outside of the scope of the non-directive client money chapter or the insurance client money chapter, such as money falling within the scope of the opt-out for non-IMD designated investment business (see CASS 4.1.11R).

7.1.5 **G** If a firm has opted to comply with this chapter, the non-directive client money chapter or the insurance client money chapter will have no application to the activities to which the election applies.

7.1.6 **G** A firm that is only subject to the non-directive client money chapter or the insurance client money chapter may not opt to comply with this chapter.

7.1.7 **G** If a firm that has agreed with an insurance undertaking under the client money rules in the insurance client money chapter to treat the undertaking's money as client money, opts in to this chapter in accordance with this section, the insurance undertaking's interest under the trust (or in Scotland agency) will be subordinated to the interests of the firm's other clients.

Credit institutions

7.1.8 **R** The client money rules do not apply to a BCD credit institution in relation to deposits within the meaning of the BCD held by that institution.

[Note: article 13(8) of MiFID and article 18(1) of the MiFID implementing Directive]

7.1.9 **G** If a credit institution that holds money as a deposit with itself is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the client that:

(1) money held for that client in an account with the credit institution will be held by the firm as banker and not as trustee (or in Scotland as agent); and

(2) as a result, the money will not be held in accordance with the client
**money rules.**

7.1.10 G Pursuant to Principle 10 (Clients' assets), a credit institution that holds money as a deposit with itself should be able to account to all of its clients for amounts held on their behalf at all times. A bank account opened with the firm that is in the name of the client would generally be sufficient. When money from clients deposited with the firm is held in a pooled account, this account should be clearly identified as an account for clients. The firm should also be able to demonstrate that an amount owed to a specific client that is held within the pool can be reconciled with a record showing that individual's client balance and is, therefore, identifiable at any time. Similarly, where that money is reflected only in a firm's bank account with other banks (nosto accounts), the firm should be able to reconcile amounts owed to that client within a reasonable period of time.

7.1.11 G A credit institution is reminded that the exemption for deposits is not an absolute exemption from the client money rules.

**Affiliated companies**

7.1.12 G A firm that holds money on behalf of, or receives money from, an affiliated company in respect of MiFID business must treat the affiliated company as any other client of the firm for the purposes of this chapter.

7.1.13 G A firm that holds client money on behalf of, or receives money from, an affiliated company in respect of its non-MiFID business and opts under CASS 7.1.3R(1) to comply with this chapter in with respect of that non-MiFID business, should refer to the non-directive client money chapter (see CASS 4.1.18R (Affiliated companies)) to determine whether that money falls within the scope of the non-directive client money chapter and therefore within the scope of the opt-in.

**Coins**

7.1.14 R The client money rules do not apply with respect to coins held on behalf of a client if the firm and the client have agreed that the money (or money of that type) is to be held by the firm for the intrinsic value of the metal which constitutes the coin.

**Solicitors**

7.1.15 R (1) An authorised professional firm regulated by the Law Society (of England and Wales), the Law Society of Scotland or the Law Society of Northern Ireland must comply with the MiFID client money (minimum implementing) rules and also with the following rules of its designated professional body and if it does so, it will be deemed to comply with the client money rules in this chapter.

(2) The relevant rules are:

(a) if the firm is regulated by the Law Society (of England and
Wales):

(i) the Solicitors' Accounts Rules 1998; or

(ii) where applicable, the Solicitors Overseas Practice Rules 1990;

(b) if the firm is regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; and

(c) if the firm is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

General purpose

7.1.16 G (1) Principle 10 (Clients' assets) requires a firm to arrange adequate protection for clients' assets when the firm is responsible for them. An essential part of that protection is the proper accounting and treatment of client money. The client money rules provide requirements for firms that receive or hold client money, in whatever form.

(2) The client money rules also implement the provisions of MiFID which regulate the obligations of a firm when it holds client money.

7.2 Definition of client money

7.2.1 R For the purposes of this chapter and the MiFID custody chapter, client money means any money that a firm receives from or holds for, or on behalf of, a client in the course of, or in connection with, its MiFID business unless otherwise specified in this section.

Business in the name of the firm

7.2.2 R Money is not client money where the firm carries on business in its own name on behalf of the client where that is required by the very nature of the transaction and the client is in agreement.

[Note: recital 26 to MiFID]

Title transfer collateral arrangements

7.2.3 R Where a client transfers full ownership of money to a firm for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such money should no longer be regarded as client money.

[Note: recital 27 to MiFID]

7.2.4 G A title transfer financial collateral arrangement under the Financial Collateral Directive is an example of a type of transfer of money to cover
obligations where that money will not be regarded as client money.

7.2.5 G Where a firm has received full title or full ownership to money under a collateral arrangement, the fact that it has also taken a security interest over its obligation to repay that money to the client would not result in the money being client money. This can be compared to a situation in which a firm takes a charge or other security interest over money held in a client bank account, where that money would still be client money as there would be no absolute transfer of title to the firm. However, if that security interest includes a "right to use arrangement", under which the client agrees to transfer all of its rights to money in that account to the firm upon the exercise of the right to use, the money may cease to be client money, but only once the right to use is exercised and the money is transferred out of the account to the firm.

7.2.6 G Firms are reminded of the client's best interest rule, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients when structuring its business particularly in respect of the effect of that structure on firms' obligations under the client money rules.

7.2.7 G Pursuant to the client's best interests rule, a firm should ensure that where a retail client transfers full ownership of money to a firm:

(1) the client is notified that full ownership of the money has been transferred to the firm and, as such, the client no longer has a proprietary claim over this money and the firm can deal with it on its own right;

(2) the transfer is for the purposes of securing or covering the client's obligations;

(3) an equivalent transfer is made back to the client if the provision of collateral by the client is no longer necessary; and

(4) there is a reasonable link between the timing and the amount of the collateral transfer and the obligation that the client owes, or is likely to owe, to the firm.

Money in connection with a "delivery versus payment" transaction

7.2.8 R Money need not be treated as client money in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that either:

(1) in respect of a client's purchase, money from a client will be due to the firm within one business day upon the fulfilment of a delivery obligation; or

(2) in respect of a client's sale, money is due to the client within one business day following the client's fulfilment of a delivery obligation;
unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *investments* by the *client*.

Money due and payable to the firm

7.2.9 R (1) *Money* is not *client money* when it becomes properly due and payable to the *firm* for its own account.

(2) For these purposes, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum from a *client bank account* for reimbursement will become due and payable to the *firm*.

7.2.10 G *Money* held as *client money* becomes due and payable to the *firm* or for the *firm's* own account, for example, because the *firm* acted as *principal* in the contract or the *firm*, acting as agent, has itself paid for *securities* in advance of receiving the purchase *money* from its *client*. The circumstances in which it is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

7.2.11 G When a *client's* obligation or liability, that is secured by that *client's* asset, crystallises, and the *firm* realises the asset in accordance with an agreement entered into between the *client* and the *firm*, the part of the proceeds of the asset to cover such liability that is due and payable to the *firm* is not *client money*. However, any proceeds of sale in excess of the amount owed by the *client* to the *firm* should be paid over to the *client* immediately or be held in accordance with the *client money rules*.

Commission rebate

7.2.12 G When a *firm* has entered into an arrangement under which *commission* is rebated to a *client*, those rebates need not be treated as *client money* until they become due and payable to the *client* in accordance with the terms of the contractual arrangements between the parties.

7.2.13 G When *commission* rebate becomes due and payable to the *client*, the *firm* should:

(1) treat it as *client money*; or

(2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see *CASS 7.2.15R*);

unless the *firm* and the *client* have entered into an arrangement under which the *client* has agreed to transfer full ownership of this *money* to the *firm* as collateral against payment of future professional fees (see *CASS 7.2.3R* (Title transfer collateral arrangements)).

Interest
7.2.14 R Unless a firm notifies a retail client in writing whether or not interest is to be paid on client money and, if so, on what terms and at what frequency, it must pay that client all interest earned on that client money. Any interest due to a client will be client money.

Discharge of fiduciary duty

7.2.15 R Money ceases to be client money if it is paid:

1. to the client, or a duly authorised representative of the client; or
2. to a third party on the instruction of the client, unless it is transferred to a third party in the course of effecting a transaction, in accordance with CASS 7.5.2R (Transfer of client money to a third party); or
3. into a bank account of the client (not being an account which is also in the name of the firm); or
4. to the firm itself, when it is due and payable to the firm (see CASS 7.2.9R (Money due and payable to the firm)); or
5. to the firm itself, when it is an excess in the client bank account (see CASS 7.6.13R(2) (Reconciliation discrepancies)).

7.2.16 G When a firm wishes to transfer client money balances to a third party in the course of transferring its business to another firm, it should do so in a way which it discharges its fiduciary duty to the client under this section.

7.2.17 R When a firm draws a cheque or other payable order to discharge its fiduciary duty to the client, it must continue to treat the sum concerned as client money until the cheque or order is presented and paid by the bank.

Allocated but unclaimed client money

7.2.18 G The purpose of the rule on allocated but unclaimed client money is to allow a firm, in the normal course of its business, to cease to treat as client money any balances, allocated to an individual client, when those balances remain unclaimed.

7.2.19 R A firm may cease to treat as client money any unclaimed client money balance if it can demonstrate that it has taken reasonable steps to trace the client concerned and to return the balance.

7.2.20 E (1) Reasonable steps should include:

(a) entering into a written agreement, in which the client consents to the firm releasing, after the period of time specified in (b), any client money balances, for or on behalf of that client, from client bank accounts;

(b) determining that there has been no movement on the client's balance for a period of at least six years (notwithstanding any
payments or receipts of charges, interest or similar items);

(c) writing to the client at the last known address informing the client of the firm's intention of no longer treating that balance as client money, giving the client 28 days to make a claim;

(d) making and retaining records of all balances released from client bank accounts; and

(e) undertaking to make good any valid claim against any released balances.

(2) Compliance with (1) may be relied on as tending to establish compliance with CASS 7.2.19R.

(3) Contravention of (1) may be relied on as tending to establish contravention of CASS 7.2.19R.

7.2.21 G When a firm gives an undertaking to make good any valid claim against released balances, it should make arrangements authorised by the firm's relevant controllers that are legally enforceable by any person with a valid claim to such money.

7.3 Organisational requirements: client money

Requirement to protect client money

7.3.1 R A firm must, when holding client money, make adequate arrangements to safeguard the client's rights and prevent the use of client money for its own account.

[Note: article 13(8) of MiFID]

Requirement to have adequate organisational arrangements

7.3.2 R A firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money, or of rights in connection with client money, as a result of misuse of client money, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the MiFID implementing Directive]

7.4 Segregation of client money

Depositing client money

7.4.1 R A firm, on receiving any client money, must promptly place this money into one or more accounts opened with any of the following:

(1) a central bank;

(2) a BCD credit institution;
(3) a bank authorised in a third country;

(4) a qualifying money market fund.

[Note: article 18(1) of the MiFID implementing Directive]

7.4.2 G An account with a central bank, a BCD credit institution or a bank authorised in a third country in which client money is placed is a client bank account.

Qualifying money market funds

7.4.3 G Where a firm deposits client money with a qualifying money market fund, the units in that fund should be held in accordance with the MiFID custody chapter.

[Note: recital 23 to the MiFID implementing Directive]

7.4.4 G A firm that places client money in a qualifying money market fund should ensure that it has the permissions required to invest in and hold units in that fund and must comply with the rules that are relevant for those activities.

7.4.5 R A firm must give a client the right to oppose the placement of his money in a qualifying money market fund.

[Note: article 18(3) of the MiFID implementing Directive]

7.4.6 G If a firm that intends to place client money in a qualifying money market fund is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the client that:

1. money held for that client will be held in a qualifying money market fund; and

2. as a result, the money will not be held in accordance with the client money rules but in accordance with the custody rules.

A firm's selection of a credit institution, bank or money market fund

7.4.7 R A firm that does not deposit client money with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or qualifying money market fund where the money is deposited and the arrangements for the holding of this money.

[Note: article 18(3) of the MiFID implementing Directive]

7.4.8 R When a firm makes the selection, appointment and conducts the periodic review of a credit institution, a bank or a qualifying money market fund, it must take into account:

1. the expertise and market reputation of the third party; and
(2) any legal requirements or market practices related to the holding of client money that could adversely affect clients' rights.

[Note: article 18(3) of the MiFID implementing Directive]

7.4.9 G In discharging its obligations when selecting, appointing and reviewing the appointment of a credit institution, a bank or a qualifying money market fund, a firm should also consider, together with any other relevant matters:

(1) the need for diversification of risks;

(2) the capital of the credit institution or bank;

(3) the amount of client money placed, as a proportion of the credit institution or bank's capital and deposits, and, in the case of a qualifying money market fund, compared to any limit the fund may place on the volume of redemptions in any period;

(4) the credit rating of the credit institution or bank; and

(5) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the credit institution or bank and affiliated companies.

7.4.10 R A firm must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a credit institution, a bank or a qualifying money market fund. The firm must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the firm ceases to use the third party to hold client money.

Client bank accounts

7.4.11 R A firm must take the necessary steps to ensure that client money deposited, in accordance with CASS 7.4.1R, in a central bank, a credit institution, a bank authorised in a third country or a qualifying money market fund is held in an account or accounts identified separately from any accounts used to hold money belonging to the firm.

[Note: article 16(1)(e) of the MiFID implementing Directive]

7.4.12 G A firm may open one or more client bank accounts in the form of a general client bank account, a designated client bank account or a designated client fund account (see CASS 7.9.3G).

7.4.13 G A designated client fund account may be used for a client only where that client has consented to the use of that account and all other designated client fund accounts which may be pooled with it. For example, a client who consents to the use of bank A and bank B should have his money held in a different designated client fund account at bank B from a client who has consented to the use of banks B and C.
Payment of client money into a client bank account

7.4.14 G Two approaches that a firm can adopt in discharging its obligations under the MiFID client money segregation requirements are:

(1) the 'normal approach'; or

(2) the 'alternative approach'.

7.4.15 R A firm that does not adopt the normal approach must first send a written confirmation to the FSA from the firm's auditor that the firm has in place systems and controls which are adequate to enable it to operate another approach effectively.

7.4.16 G The alternative approach would be appropriate for a firm that operates in a multi-product, multi-currency environment for which adopting the normal approach would be unduly burdensome and would not achieve the client protection objective. Under the alternative approach, client money is received into and paid out of a firm's own bank accounts; consequently the firm should have systems and controls that are capable of monitoring the client money flows so that the firm comply with its obligations to perform reconciliations of records and accounts (see CASS 7.6.2R). A firm that adopts the alternative approach will segregate client money into a client bank account on a daily basis, after having performed a reconciliation of records and accounts of the entitlement of each client for whom the firm holds client money with the records and accounts of the client money the firm holds in client bank account and client transaction accounts to determine what the client money requirement was at the close of the previous business day.

7.4.17 G Under the normal approach, a firm that receives client money should either:

(1) pay it promptly, and in any event no later than the next business day after receipt, into a client bank account; or

(2) pay it out in accordance with the rule regarding the discharge of a firm's fiduciary duty to the client (see CASS 7.2.15R).

7.4.18 G Under the alternative approach, a firm that receives client money should:

(1) (a) pay any money to or on behalf of clients out of its own account; and

(b) perform a reconciliation of records and accounts required under CASS 7.6.2R (Records and accounts), SYSC 4.1.1R and SYSC 6.1.1R, adjust the balance held in its client bank accounts and then segregate the money in the client bank account until the calculation is re-performed on the next business day; or

(2) pay it out in accordance with the rule regarding the discharge of a firm's fiduciary duty to the client (see CASS 7.2.15R).
A firm that adopts the alternative approach may:

1. receive all client money into its own bank account;
2. choose to operate the alternative approach for some types of business (for example, overseas equities transactions) and operate the normal approach for other types of business (for example, contingent liability investments) if the firm can demonstrate that its systems and controls are adequate (see CASS 7.4.15R); and
3. use an historic average to account for uncleared cheques (see paragraph 4 of CASS 7 Annex 1).

Pursuant to the MiFID client money segregation requirements, a firm should ensure that any money other than client money deposited in a client bank account is promptly paid out of that account unless it is a minimum sum required to open the account, or to keep it open.

If it is prudent to do so to ensure that client money is protected, a firm may pay into a client bank account money of its own, and that money will then become client money for the purposes of this chapter.

Automated transfers

Pursuant to the MiFID client money segregation requirements, a firm operating the normal approach that receives client money in the form of an automated transfer should take reasonable steps to ensure that:

1. the money is received directly into a client bank account; and
2. if money is received directly into the firm's own account, the money is transferred into a client bank account promptly, and in any event, no later than the next business day after receipt.

Mixed remittance

Pursuant to the MiFID client money segregation requirements, a firm operating the normal approach that receives a mixed remittance (that is part client money and part other money) should:

1. pay the full sum into a client bank account promptly, and in any event, no later than the next business day after receipt; and
2. pay the money that is not client money out of the client bank account promptly, and in any event, no later than one business day of the day on which the firm would normally expect the remittance to be cleared.

Appointed representatives, field representatives and other agents

Pursuant to the MiFID client money segregation requirements, a firm operating the normal approach should establish and maintain
procedures to ensure that client money received by its appointed representatives, field representatives or other agents is:

(a) paid into a client bank account of the firm promptly, and in any event, no later than the next business day after receipt; or

(b) forwarded to the firm, or in the case of a field representative forwarded to a specified business address of the firm, so as to ensure that the money arrives at the specified business address promptly, and in any event, no later than the close of the third business day.

(2) For the purposes of 1(b), client money received on business day one should be forwarded to the firm or specified business address of the firm promptly, and in any event, no later than the next business day after receipt (business day two) in order for it to reach that firm or specified business address by the close of the third business day. Procedures requiring the client money in the form of a cheque to be sent to the firm or the specified business address of the firm by first class post promptly, and in any event, no later than the next business day after receipt, would be in line with 1(b).

7.4.25 G The firm should ensure that its appointed representatives, field representatives or other agents keeps client money separately identifiable from any other money (including that of the firm) until the client money is paid into a client bank account or sent to the firm.

7.4.26 G A firm that operates a number of small branches, but holds or accounts for all client money centrally, may treat those small branches in the same way as appointed representatives.

Client entitlements

7.4.27 G Pursuant to the MiFID client money segregation requirements, a firm operating the normal approach that receives outside the United Kingdom a client entitlement on behalf of a client should pay any part of it which is client money:

(1) to, or in accordance with, the instructions of the client concerned; or

(2) into a client bank account promptly, and in any event, no later than five business days after the firm is notified of its receipt.

7.4.28 G Pursuant to the MiFID client money segregation requirements, a firm operating the normal approach should allocate a client entitlement that is client money to the individual client promptly and, in any case, no later than ten business days after notification of receipt.

Money due to a client from a firm

7.4.29 G Pursuant to the MiFID client money segregation requirements, a firm operating the normal approach that is liable to pay money to a client should
promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

(1) to, or to the order of, the *client*; or

(2) into a *client bank account*.

Segregation in different currency

7.4.30 R A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted each *day* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.

7.4.31 G The *rule* on segregation of *client money* in a different currency (CASS 7.4.30R) does not apply where the *client* has instructed the *firm* to convert the *money* into and hold it in a different currency.

7.5 Transfer of client money to a third party

7.5.1 G This section sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to a *clearing house* in the form of margin for the *firm's* obligations to the *clearing house* that are referable to transactions undertaken by the *firm* for the relevant clients. They may also arise when a *firm* passes *client money* to an *intermediate broker* for *contingent liability investments* in the form of initial or variation margin on behalf of a *client*. In these circumstances, the *firm* remains responsible for that *client's equity balance* held at the *intermediate broker* until the contract is terminated and all of that *client's* positions at that *broker* closed. If a *firm* wishes to discharge itself from its fiduciary duty, it should do so in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (CASS 7.2.15R).

7.5.2 R A *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold or control *client money*, but only if:

(1) the *firm* transfers the *client money*:

(a) for the purpose of a transaction for a *client* through or with that *person*; or

(b) to meet a *client's* obligation to provide collateral for a transaction (for example, an *initial margin* requirement for a *contingent liability investment*); and

(2) in the case of a *retail client*, that *client* has been notified that the *client money* may be transferred to the other *person*. 

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7.5.3 G A firm should not hold excess client money in its client transaction accounts with intermediate brokers, settlement agents and OTC counterparties; it should be held in a client bank account.

7.6 Records, accounts and reconciliations

Records and accounts

7.6.1 R A firm must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish client money held for one client from client money held for any other client, and from its own money.

[Note: article 16(1)(a) of the MiFID implementing Directive]

7.6.2 R A firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the client money held for clients.

[Note: article 16(1)(b) of the MiFID implementing Directive]

Client entitlements

7.6.3 G Pursuant to CASS 7.6.2R, SYSC 4.1.1R and SYSC 6.1.1R, a firm should take reasonable steps to ensure that is notified promptly of any receipt of client money in the form of a client entitlement.

Record keeping

7.6.4 R A firm must ensure that records made under CASS 7.6.1R and CASS 7.6.2R are retained for a period of five years after they were made.

7.6.5 G A firm should ensure that it makes proper records, sufficient to show and explain the firm's transactions and commitments in respect of its client money.

Internal reconciliations of client money balances

7.6.6 G (1) SYSC 4.1.1R requires firms to have robust governance arrangements, such as internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems. In addition, SYSC 6.1.1R requires firms to establish, implement and maintain adequate policies and procedures sufficient to ensure the firm's compliance with its obligations under the regulatory system. Carrying out internal reconciliations of records and accounts of the entitlement of each client for whom the firm holds client money with the records and accounts of the client money the firm holds in client bank accounts and client transaction accounts should be one of the steps a firm takes to satisfy its obligations under CASS 7.6.2R, SYSC 4.1.1R and SYSC 6.1.1R.
(2) A firm should perform such internal reconciliations:

(a) as often as is necessary; and
(b) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of the firm's records and accounts.

(3) The standard method of internal client money reconciliation sets out a method of reconciliation of client money balances that the FSA believes should be one of the steps that a firm takes when carrying out internal reconciliations of client money.

Records

7.6.7 R (1) A firm must make records, sufficient to show and explain the method of internal reconciliation of client money balances under CASS 7.6.2R used, and if different from the standard method of internal client money reconciliation, to show and explain that:

(a) the method of internal reconciliation of client money balances used affords an equivalent degree of protection to the firm's clients to that afforded by the standard method of internal client money reconciliation; and

(b) in the event of a primary pooling event or a secondary pooling event, the method used is adequate to enable the firm to comply with the client money (MiFID business) distribution rules.

(2) A firm must make these records on the date it starts using a method of internal reconciliation of client money balances and must keep it made for a period of five years after ceasing to use it.

7.6.8 R A firm that does not use the standard method of internal client money reconciliation must first send a written confirmation to the FSA from the firm's auditor that the firm has in place systems and controls which are adequate to enable it to use another method effectively.

Reconciliations with external records

7.6.9 R A firm must conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom client money is held.

[Note: article 16(1)(c) of the MiFID implementing Directive]

Frequency of external reconciliations

7.6.10 G (1) A firm should perform the required reconciliation of client money
balances with external records:

(a) as regularly as is necessary; and

(b) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom client money is held.

(2) In determining whether the frequency is adequate, the firm should consider the risks which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the client money is held.

Method of external reconciliations

7.6.11 G A method of reconciliation of client money balances with external records that the FSA believes is adequate is when a firm compares:

(1) the balance on each client bank account as recorded by the firm with the balance on that account as set out on the statement or other form of confirmation issued by the bank with which those accounts are held; and

(2) the balance, currency by currency, on each client transaction account as recorded by the firm, with the balance on that account as set out in the statement or other form of confirmation issued by the person with whom the account is held;

and identifies any discrepancies between them.

7.6.12 R Any approved collateral held in accordance with the client money rules must be included within this reconciliation.

Reconciliation discrepancies

7.6.13 R When any discrepancy arises as a result of a firm's internal reconciliations, the firm must identify the reason for the discrepancy and ensure that:

(1) any shortfall is paid into a client bank account by the close of business on the day that the reconciliation is performed; or

(2) any excess is withdrawn within the same time period (but see CASS 7.4.20G and CASS 7.4.21R).

7.6.14 R When any discrepancy arises as a result of the reconciliation between a firm's internal records and those of third parties that hold client money, the firm must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the firm.
While a *firm* is unable to resolve a difference arising from a reconciliation between a *firm’s* internal records and those of third parties that hold *client money*, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* or *approved collateral* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant account.

**Notification requirements**

A *firm* must inform the FSA in writing without delay:

1. if it has not complied with, or is unable, in any material respect, to comply with the requirements in [CASS 7.6.1R](#), [CASS 7.6.2R](#) or [CASS 7.6.9R](#);

2. if having carried out a reconciliation it has not complied with, or is unable, in any material respect, to comply with [CASS 7.6.13R](#) to [CASS 7.6.15R](#).

**Audit of compliance with the MiFID client money rules**

*Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the FSA under [SUP 3.10](#) (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *client money rules*.

*Firms* that do not adopt the normal approach are reminded that the *firm’s* auditor must confirm to the FSA in writing that the *firm* has in place systems and controls which are adequate to enable it to operate the alternative approach effectively (see [CASS 7.4.15R](#)).

*Firms* that do not use the *standard method of internal client money reconciliation* are reminded that the *firm’s* auditor must confirm to the FSA in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see [CASS 7.6.8R](#)).

**Statutory trust**

Section 139(1) of the *Act* (Miscellaneous ancillary matters) provides that *rules* may make provision which result in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). This section creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

**Requirement**

A *firm* receives and holds *client money* as trustee (or in Scotland as agent)
on the following terms:

(1) for the purposes of and on the terms of the client money rules and the client money (MiFID business) distribution rules;

(2) subject to (3), for the clients (other than clients which are insurance undertakings when acting as such with respect of client money received in the course of insurance mediation activity and that was opted in to this chapter) for whom that money is held, according to their respective interests in it;

(3) after all valid claims in (2) have been met, for clients which are insurance undertakings with respect of client money received in the course of insurance mediation activity according to their respective interests in it;

(4) on failure of the firm, for the payment of the costs properly attributable to the distribution of the client money in accordance with (2); and

(5) after all valid claims and costs under (2) to (4) have been met, for the firm itself.

7.8 Notification and acknowledgement of trust

Banks

7.8.1 R (1) When a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:

(a) all money standing to the credit of the account is held by the firm as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and

(b) the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm.

(2) In the case of a client bank account in the United Kingdom, if the bank does not provide the required acknowledgement within 20 business days after the firm dispatched the notice, the firm must withdraw all money standing to the credit of the account and deposit it in a client bank account with another bank as soon as possible.

Exchange, clearing house, intermediate broker or OTC counterparty

7.8.2 R (1) A firm which undertakes any contingent liability investment for clients through an exchange, clearing house, intermediate broker or
OTC counterparty must, before the client transaction account is opened with the exchange, clearing house, intermediate broker or OTC counterparty:

(a) notify the person with whom the account is to be opened that the firm is under an obligation to keep client money separate from the firm's own money, placing client money in a client bank account;

(b) instruct the person with whom the account is to be opened that any money paid to it in respect of that transaction is to be credited to the firm's client transaction account; and

(c) require the person with whom the account is to be opened to acknowledge in writing that the firm's client transaction account is not to be combined with any other account, nor is any right of set-off to be exercised by that person against money credited to the client transaction account in respect of any sum owed to that person on any other account.

(2) If the intermediate broker or OTC counterparty does not provide the required acknowledgement within 20 business days of the dispatch of the notice and instruction, the firm must cease using the client transaction account with that broker or counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any money.

7.9 Client money distribution

Application

7.9.1 R This section (the client money (MiFID business) distribution rules) applies to a firm that holds client money which is subject to the client money rules when a primary pooling event or a secondary pooling event occurs.

Purpose

7.9.2 G The client money (MiFID business) distribution rules seek to facilitate the timely return of client money to a client in the event of the failure of a firm or third party at which the firm holds client money.

Failure of the authorised firm: primary pooling event

7.9.3 G A firm can hold client money in either a general client bank account, a designated client bank account or a designated client fund account. A firm holds all client money in general client bank accounts for its clients as part of a common pool of money so those particular clients do not have a claim against a specific sum in a specific account; they only have a claim to the client money in general. A firm holds client money in designated client bank accounts or designated client fund accounts for those clients that requested their client money be part of a specific pool of money, so those particular clients do have a claim against a specific sum in a specific account; they do
not have a claim to the client money in general unless a primary pooling event occurs. A primary pooling event triggers a notional pooling of all the client money, in every type of client money account, and the obligation to distribute it. If the firm becomes insolvent, and there is (for whatever reason) a shortfall in money held for a client compared with that client's entitlements, the available funds will be distributed in accordance with the client money (MiFID business) distribution rules.

7.9.4 R A primary pooling event occurs:
(1) on the failure of the firm;
(2) on the vesting of assets in a trustee in accordance with an 'assets requirement' imposed under section 48(1)(b) of the Act;
(3) on the coming into force of a requirement for all client money held by the firm; or
(4) when the firm notifies, or is in breach of its duty to notify, the FSA, in accordance with CASS 7.6.16R (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a secondary pooling event.

7.9.5 R CASS 7.9.4R(4) does not apply so long as:
(1) the firm is taking steps, in consultation with the FSA, to establish those records; and
(2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

Pooling and distribution

7.9.6 R If a primary pooling event occurs:
(1) client money held in each client money account of the firm is treated as pooled; and
(2) the firm must distribute that client money in accordance with CASS 7.7.2R, so that each client receives a sum which is rateable to the client money entitlement calculated in accordance with CASS 7.9.7R.

7.9.7 R (1) When, in respect of a client, there is a positive individual client balance and a negative client equity balance, the credit must be offset against the debit reducing the individual client balance for that client.
(2) When, in respect of a client, there is a negative individual client balance and a positive client equity balance, the credit must be offset against the debit reducing client equity balance for that client.

7.9.8 G A client's main claim is for the return of client money held in a client bank account. A client may be able to claim for any shortfall against money held
in a firm's own account. For that claim, the client will be an unsecured creditor of the firm.

Client money received after the failure of the firm

7.9.9 R Client money received by the firm after a primary pooling event must not be pooled with client money held in any client money account operated by the firm at the time of the primary pooling event. It must be placed in a client bank account that has been opened after that event and must be handled in accordance with the client money rules, and returned to the relevant client without delay, except to the extent that:

1. it is client money relating to a transaction that has not settled at the time of the primary pooling event; or

2. it is client money relating to a client, for whom the client money entitlement, calculated in accordance with CASS 7.9.7R, shows that money is due from the client to the firm at the time of the primary pooling event.

7.9.10 G Client money received after the primary pooling event relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:

1. an equity transaction with a trade date before the date of the primary pooling event and a settlement date after the date of the primary pooling event; or

2. a contingent liability investment that is 'open' at the time of the primary pooling event and is due to settle after the primary pooling event.

7.9.11 R If a firm receives a mixed remittance after a primary pooling event, it must:

1. pay the full sum into the separate client bank account opened in accordance with CASS 7.9.9R; and

2. pay the money that is not client money out of that client bank account into a firm's own bank account within one business day of the day on which the firm would normally expect the remittance to be cleared.

7.9.12 G Whenever possible the firm should seek to split a mixed remittance before the relevant accounts are credited.

Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events

7.9.13 R If both a primary pooling event and a secondary pooling event occur, the provisions of this section relating to a primary pooling event apply.

7.9.14 R A secondary pooling event occurs on the failure of a third party to which client money held by the firm has been transferred under CASS 7.4.1R(1) to
(3) (Depositing client money) or CASS 7.5.2R (Transfer of client money to a third party).

7.9.15 R CASS 7.9.19R to CASS 7.9.31R do not apply if, on the failure of the third party, the firm repays to its clients or pays into a client bank account, at an unaffected bank, an amount equal to the amount of client money which would have been held if a shortfall had not occurred at that third party.

7.9.16 G When client money is transferred to a third party, a firm continues to owe fiduciary duties to the client. Whether a firm is liable for a shortfall in client money caused by a third party failure will depend on whether it has complied with its duty of care as agent or trustee.

Failure of a bank

7.9.17 G When a bank fails and the firm decides not to make good the shortfall in the amount of client money held at that bank, a secondary pooling event will occur in accordance with CASS 7.9.19R. The firm would be expected to reflect the shortfall that arises at the failed bank in its records of the entitlement of clients and of money held with third parties.

7.9.18 G The client money (MiFID business) distribution 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

7.9.19 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, then:

1. in relation to every general client bank account of the firm, the provisions of CASS 7.9.21R, CASS 7.9.26R and CASS 7.9.27R will apply;

2. in relation to every designated client bank account held by the firm with the failed bank, the provisions of CASS 7.9.23R, CASS 7.9.26R and CASS 7.9.27R will apply;

3. in relation to each designated client fund account held by the firm with the failed bank, the provisions of CASS 7.9.24R, CASS 7.9.26R and CASS 7.9.27R will apply;

4. any money held at a bank, other than the bank that has failed, in designated client bank accounts, is not pooled with any other client money; and

5. any money held in a designated client fund account, no part of which is held by the bank that has failed, is not pooled with any other client money.
7.9.20 R If a secondary pooling event occurs as a result of the failure of a bank where one or more designated client bank accounts or designated client fund accounts are held, then:

(1) in relation to every designated client bank account held by the firm with the failed bank, the provisions of CASS 7.9.23R, CASS 7.9.26R and CASS 7.9.27R will apply; and

(2) in relation to each designated client fund account held by the firm with the failed bank, the provisions of CASS 7.9.24R, CASS 7.9.26R and CASS 7.9.27R will apply.

7.9.21 R Money held in each general client bank account and client transaction account of the firm must be treated as pooled and:

(1) any shortfall in client money held, or which should have been held, in general client bank accounts and client transaction accounts, that has arisen as a result of the failure of the bank, must be borne by all the clients whose client money is held in either a 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 by the firm, to reflect the requirements in (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 client money 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 (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).

7.9.22 G The term 'which should have been held' is a reference to the failed bank's failure to hold the client money at the time of the pooling event.

7.9.23 R For each client with a designated client bank account held at the failed bank:

(1) any 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 whose client money is held in a designated client bank account of the firm at the failed bank, rateably in accordance with their entitlements;

(2) a new client money entitlement must be calculated for each of the relevant clients 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
client money 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 (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).

7.9.24 R Money held in each designated client fund account with the failed bank must be treated as pooled with any other designated client fund accounts of the firm which contain part of the same designated fund and:

(1) any 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 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 by the firm, in accordance with (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 client money 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 (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).

7.9.25 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.

Client money received after the failure of a bank

7.9.26 R Client money received by the firm after the failure of a bank, that would otherwise have been paid into a client bank account at that bank:

(1) must not be transferred to the failed bank unless specifically instructed by the client in order to settle an obligation of that client to the failed bank; and

(2) must be, subject to (1), placed in a separate client bank account that has been opened after the secondary pooling event and either:

(a) on the written instruction of the client, transferred to a bank other than the one that has failed; or
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.

Whenever possible the firm should seek to split a mixed remittance before the relevant accounts are credited.

Failure of an intermediate broker, settlement agent or OTC counterparty:

Money held in each general client bank account and client transaction account of the firm must be treated as pooled and:

(1) any shortfall in client money held, or which should have been held, in general client bank accounts and client transaction account, that has arisen as a result of the failure, must be borne by all the clients whose client money is held in either a general client bank account or a client transaction accounts of the firm, rateably in accordance with their entitlements;

(2) a new client money entitlement must be calculated for each client by the firm, to reflect the requirements of (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 client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty until the client is repaid; and

(4) the firm must use the new client money entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).

Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty
7.9.31  R  *Client money* received by the *firm* after the *failure* of an *intermediate broker*, *settlement agent* or *OTC* counterparty, that would otherwise have been paid into a *client transaction account* at that *intermediate broker*, *settlement agent* or *OTC* counterparty:

(1) must not be transferred to the *failed* third party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed intermediate broker*, *settlement agent* or *OTC* counterparty; and

(2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:

(a) on the written instruction of the *client*, transferred to a third party other than the one that has failed; or

(b) returned to the *client* as soon as possible.

Notification to the FSA: failure of a bank, intermediate broker, settlement agent or OTC counterparty

7.9.32  R  On the *failure* of a third party with which *money* is held, a *firm* must notify the *FSA*:

(1) as soon as it becomes aware of the *failure* of any bank, *intermediate broker*, *settlement agent*, *OTC* counterparty or other entity with which it has placed, or to which it has passed, *client money*; and

(2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

CASS 7 Annex 1G

As explained in *CASS 7.6.6G*, in complying with its obligations under *CASS 7.6.2R* (Records and accounts), *SYSC 4.1.1R* (General organisational requirements) and *SYSC 6.1.1R* (Compliance), a *firm* should carry out internal reconciliations of records and accounts of *client money* the *firm* holds in *client bank accounts* and *client transaction accounts*. This Annex sets out a method of reconciliation that the *FSA* believes is appropriate for these purposes (the *standard method of internal client money reconciliation*).

1. Each *business day*, a *firm* that adopts the normal approach (see *CASS 7.4.17G*) should check whether its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on the previous *business day*, was at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on that day.

2. Each *business day*, a *firm* that adopts the alternative approach (see *CASS 7.4.18R*) should ensure that its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on that *business day* is at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on the previous *business day*. 
3. No excess or shortfall should arise when adopting the alternative approach.

4. If a firm is operating the alternative approach and draws a cheque on its own bank account, it will be expected to account for those cheques that have not yet cleared when performing its reconciliations of records and accounts under paragraph 2. An historic average estimate of uncleared cheques may be used to satisfy this obligation (see CASS 7.4.19G(3)).

5. For the purposes of performing its reconciliations of records and accounts under paragraphs 1 or 2, a firm should use the values contained in its accounting records, for example its cash book, rather than values contained in statements received from its banks and other third parties.

Client money requirement

6. The client money requirement is either:

(1) (subject to paragraph 18) the sum of, for all clients:

(a) the individual client balances calculated in accordance with paragraph 7, excluding:

(i) individual client balances which are negative (that is, debtors); and

(ii) clients' equity balances; and

(b) the total margined transaction requirement calculated in accordance with paragraph 14; or

(2) the sum of:

(a) for each client bank account:

(i) the amount which the firm's records show as held on that account; and

(ii) an amount that offsets each negative net amount which the firm's records show attributed to that account for an individual client; and

(b) the total margined transaction requirement calculated in accordance with paragraph 14.

General transactions

7. The individual client balance for each client should be calculated in accordance with this table:

| Individual client balance calculation | 58 |
Free money (no trades) and sale proceeds due to the client:

(a) in respect of principal deals when the client has delivered the designated investments; and

(b) in respect of agency deals, when either:

(i) the sale proceeds have been received by the firm and the client has delivered the designated investments; or

(ii) the firm holds the designated investments for the client; and

the cost of purchases:

(c) in respect of principal deals, paid for by the client but the firm has not delivered the designated investments to the client; and

(d) in respect of agency deal, paid for by the client when either:

(i) the firm has not remitted the money to, or to the order of, the counterparty; or

(ii) the designated investments have been received by the firm but have not been delivered to the client;

Less

money owed by the client in respect of unpaid purchases by or for the client if delivery of those designated investments has been made to the client; and

Proceeds remitted to the client in respect of sales transactions by or for the client if the client has not delivered the designated investments.

Individual Client Balance 'X' = (A+B+C1+C2+D+E1+E2)-F-G

8. A firm should calculate the individual client balance using the contract value of any client purchases or sales.

9. A firm may choose to segregate designated investments instead of the value identified in paragraph 7 (except E1) if it ensures that the designated investments are held in such a manner that the firm cannot use them for its own purposes.
10. Segregation in the context of paragraph 9 can take many forms, including the holding of a safe custody investment in a nominee name and the safekeeping of certificates evidencing title in a fire resistant safe. It is not the intention that all the custody rules in the MiFID custody chapter should be applied to designated investments held in the course of settlement.

11. In determining the client money requirement under paragraph 6, a firm need not include money held in accordance with CASS 7.2.8R (Delivery versus payment transaction).

12. In determining the client money requirement under paragraph 6, a firm:

   (1) should include dividends received and interest earned and allocated;
   (2) may deduct outstanding fees, calls, rights and interest charges and other amounts owed by the client which are due and payable to the firm (see CASS 7.2.9R);
   (3) need not include client money in the form of client entitlements which are not required to be segregated (see CASS 7.4.27G) nor include client money forwarded to the firm by its appointed representatives, field representatives and other agents, but not received (see CASS 7.4.24G);
   (4) should take into account any client money arising from CASS 7.6.13R (Reconciliation discrepancies); and
   (5) should include any unallocated client money.

Equity balance

13. A firm's equity balance, whether with an exchange, intermediate broker or OTC counterparty, is the amount which the firm would be liable to pay to the exchange, intermediate broker or OTC counterparty (or vice-versa) in respect of the firm's margined transactions if each of the open positions of the firm's clients was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the firm's account with the exchange, intermediate broker or OTC counterparty is closed.

Margined transaction requirement

14. The total margined transaction requirement is:

   (1) the sum of each of the client's equity balances which are positive;
   Less
   (2) the proportion of any individual negative client equity balance which is secured by approved collateral; and
the net aggregate of the firm's equity balance (negative balances being deducted from positive balances) on transaction accounts for customers with exchanges, clearing houses, intermediate brokers and OTC counterparties.

To meet a shortfall that has arisen in respect of the requirement in paragraph 6(1)(b) or 6(2)(b), a firm may utilise its own approved collateral provided it is held on terms specifying when it is to be realised for the benefit of clients, it is clearly identifiable from the firm's own property and the relevant terms are evidenced in writing by the firm. In addition, the proceeds of the sale of that collateral should be paid into a client bank account.

If a firm's total margined transaction requirement is negative, the firm should treat it as zero for the purposes of calculating its client money requirement.

The terms 'client equity balance' and 'firm's equity balance' in paragraph 13 refer to cash values and do not include non-cash collateral or other designated investments held in respect of a margined transaction.

Reduced client money requirement option

(1) When, in respect of a client, there is a positive individual client balance and a negative client equity balance, a firm may offset the credit against the debit and hence have a reduced individual client balance in paragraph 7 for that client.

(2) When, in respect of a client, there is a negative individual client balance and a positive client equity balance, a firm may offset the credit against the debit and hence have a reduced client equity balance in paragraph 14 for that client.

The effect of paragraph 18 is to allow a firm to offset, on a client by client basis, a negative amount with a positive amount arising out of the calculations in paragraphs 7 and 14, and, by so doing, reduce the amount the firm is required to segregate.

After CASS 7, insert the following provisions. This material is all new and it is not underlined.

Mandates

8.1.1 R This chapter applies to a firm (including in its capacity as trustee under CASS 5.4) in respect of any written authority from a client under which the firm may control a client's assets or liabilities in the course of, or in connection with, the firm's:
(1) designated investment business (including MiFID business); and

(2) insurance mediation activity, except where it relates to a reinsurance contract.

8.1.2 G Mandates or similar authorities for the purpose of this chapter include a firm's authority over a client's safe custody account, for example for stock lending purposes, a firm's authority over a client's bank or building society account including direct debits in favour of the firm, and a firm holding a client's credit card details.

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 passported activities. The application of the mandate rules is also dependent on the location from which the activity is undertaken (see CASS 1.4.3G).

Purpose

8.1.4 G The mandate rules apply to those firms that control, rather than hold, clients' assets or are able to create liabilities in the name of a client. These rules seek to ensure that firms establish and maintain records and internal controls to prevent the misuse of the authority granted by the client.

General

8.1.5 R A firm that holds authorities of the sort referred to in this chapter, must establish and maintain adequate records and internal controls in respect of its use of the mandates, which must include:

(1) an up-to-date list of the authorities and any conditions placed by the client or the firm's management on the use of them;

(2) a record of all transactions entered into using the authority and internal controls to ensure that they are within the scope of authority of the person and the firm entering into the transaction;

(3) the details of the procedures and authorities for the giving and receiving of instructions under the authority; and

(4) 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.
Schedule 1
Record keeping requirements

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

CASS Sch 1.3

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
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<tr>
<td>CASS 4.5.5R</td>
<td>Adequate records and internal controls in respect of the firm’s use of mandates (see CASS 4.5.5R (1) to (4))</td>
<td>Up to date list of firm’s authorities, all transactions entered into, important client documents held by the firm</td>
<td>Maintain current full details</td>
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<td>CASS 5.8.3R</td>
<td>Mandates</td>
<td>Records of adequate internal controls for mandates</td>
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<tr>
<td>CASS 6.1.17R</td>
<td>Record of election to comply with the MiFID custody chapter</td>
<td>Record of election to comply with the MiFID custody chapter, including the date from which the election is to be effective</td>
<td>Date of the election</td>
<td>5 years (from the date the firm ceases to use the election)</td>
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<td>CASS 6.3.1R(4)</td>
<td>Appropriateness of a MiFID investment firm’s selection</td>
<td>Grounds upon which a MiFID investment firm satisfies itself as to the</td>
<td>Date of the selection</td>
<td>5 years (from the date the firm ceases to use the third party to hold</td>
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<tr>
<td>Section</td>
<td>Description</td>
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<td>寿司</td>
<td>金融工具 (financial instruments)</td>
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<td>CASS 6.4.3R</td>
<td>Details of clients and financial instruments used for the firm's own account or the account of another client of the firm</td>
<td>Details of the client on whose instructions the use of the financial instruments has been effected and the number of financial instruments used belonging to each client</td>
<td>Maintain up-to-date records</td>
<td>5 years (from the date the record was made)</td>
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<td>CASS 6.5.1R</td>
<td>Financial instruments held for each client and the firm's own financial instruments</td>
<td>All that is necessary to enable the firm to distinguish financial instruments held for one client from financial instruments held for any other client, and from the firm's own financial instruments</td>
<td>Maintain up-to-date records</td>
<td>5 years (from the date the record was made)</td>
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<td>CASS 6.5.2R</td>
<td>Financial instruments held for clients</td>
<td>Accurate records to ensure the correspondence between the financial instruments held for each client and the financial instruments held by the firm</td>
<td>Maintain up-to-date records</td>
<td>5 years (from the date the record was made)</td>
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<td><strong>CASS 7.1.3R(2)</strong></td>
<td>Record of election to comply with the MiFID client money chapter</td>
<td>Record of election to comply with the MiFID client money chapter, including the date from which the election is to be effective</td>
<td>Date of the election</td>
<td>5 years (from the date the firm ceases to use the election)</td>
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<td>Appropriateness of a MiFID investment firm’s selection of a third party</td>
<td>Grounds upon which a MiFID investment firm satisfies itself as to the appropriateness of the firm’s selection of a third party to hold client money</td>
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<td>5 years (from the firm ceases to use the third party to hold client money)</td>
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<td>Client money held for each client and the firm’s own money</td>
<td>All that is necessary to enable the firm to distinguish client money held for one client from client money held for any other client, and from the firm’s own money</td>
<td>Maintain up-to-date records</td>
<td>5 years (from the date the record was made)</td>
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<td>Maintain up-to-date records</td>
<td>5 years (from the date the record was made)</td>
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</tr>
<tr>
<td>CASS 7.6.7R</td>
<td>Internal reconciliation of client money balances</td>
<td>Explanation of method of internal reconciliation of client money balances used by the firm, and if different from the standard method of internal client money reconciliation, an explanation as to how the method used affords equivalent degree of protection to clients, and how it enables the firm to comply with the client money (MiFID business) distribution rules. Date the firm starts using the method. 5 years (from the date the firm ceases to use the method).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 7.9.21R(3)</td>
<td>Client money shortfall</td>
<td>Each client's entitlement to client money shortfall at the failed bank. Maintain up to date records. Until client is repaid.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 7.9.23R(3)</td>
<td>Client money shortfall</td>
<td>Each client's entitlement to client money shortfall at the failed bank. Maintain up to date records. Until client is repaid.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 7.9.24R(3)</td>
<td>Client money shortfall</td>
<td>Each client's entitlement to client money shortfall at the failed bank</td>
<td>Maintain up to date records</td>
<td>Until client is repaid</td>
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</tr>
<tr>
<td>CASS 7.9.30R(3)</td>
<td>Client money shortfall</td>
<td>Each client's entitlement to client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty</td>
<td>Maintain up to date records</td>
<td>Until client is repaid</td>
</tr>
<tr>
<td>CASS 8.1.5R</td>
<td>Adequate records and internal controls in respect of the firm's use of mandates (see CASS 8.1.5R (1) to (4))</td>
<td>Up to date list of firm's authorities and any conditions regarding the use of authorities, all transactions entered into, details of procedures and authorities for giving and receiving of instructions under authorities, and important client documents held by the firm</td>
<td>Maintain current full details</td>
<td>Not specified</td>
</tr>
</tbody>
</table>

Schedule 2
Notification requirements
CASS Sch 2.1 G

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
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</tr>
<tr>
<td><strong>CASS</strong></td>
<td><strong>Non-compliance or inability, in any material respect, to comply with the requirements in</strong></td>
<td><strong>The fact that the</strong></td>
<td><strong>Non-compliance or inability, in any material respect, to comply with the requirements</strong></td>
<td><strong>Without delay</strong></td>
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</tr>
<tr>
<td><strong>6.5.13R(1)</strong></td>
<td><strong>CASS 6.5.1R (Records and accounts), CASS 6.5.2R (Records and accounts, including internal reconciliations) or CASS 6.5.6R (Reconciliations with external records)</strong></td>
<td><strong>the</strong> <em>firm</em> <strong>has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</strong></td>
<td><strong>Non-compliance or inability, in any material respect, to comply with the requirements</strong></td>
<td><strong>Without delay</strong></td>
</tr>
<tr>
<td><strong>6.5.13R(2)</strong></td>
<td><strong>CASS 6.5.10R (Reconciliation discrepancies)</strong></td>
<td><strong>The fact that the</strong> <em>firm</em> <strong>has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</strong></td>
<td><strong>Non-compliance or inability, in any material respect, to comply with the requirements</strong></td>
<td><strong>Without delay</strong></td>
</tr>
<tr>
<td><strong>7.6.16R(1)</strong></td>
<td><strong>CASS 7.6.1R (Records and accounts), CASS 7.6.2R (Records and accounts, including internal reconciliations) or CASS 7.6.9R (Reconciliations with external records)</strong></td>
<td><strong>The fact that the</strong> <em>firm</em> <strong>has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</strong></td>
<td><strong>Non-compliance or inability, in any material respect, to comply with the requirements</strong></td>
<td><strong>Without delay</strong></td>
</tr>
<tr>
<td><strong>7.6.16R(2)</strong></td>
<td><strong>CASS 7.6.1R (Records and accounts), CASS 7.6.2R (Records and accounts, including internal reconciliations) or CASS 7.6.9R (Reconciliations with external records)</strong></td>
<td><strong>The fact that the</strong> <em>firm</em> <strong>has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</strong></td>
<td><strong>Non-compliance or inability, in any material respect, to comply with the requirements</strong></td>
<td><strong>Without delay</strong></td>
</tr>
<tr>
<td><strong>CASS 7.6.13R to CASS 7.6.15R</strong> (Reconciliation discrepancies)</td>
<td>respect, to comply with the requirements and the reasons for that</td>
<td>comply with the requirements</td>
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</tr>
<tr>
<td><strong>CASS 7.9.32R(1)</strong></td>
<td><em>Failure of a third party with which money is held – i.e.: bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money</em></td>
<td>Full details</td>
<td></td>
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<tr>
<td><strong>Firm becomes aware of the failure of the entity</strong></td>
<td>As soon as the firm becomes aware</td>
<td></td>
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</tr>
<tr>
<td><strong>CASS 7.9.32R(2)</strong></td>
<td><em>Failure of a third party with which money is held – i.e.: bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money</em></td>
<td>Intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Failure of third party with which client money is held</strong></td>
<td>As soon as reasonably practical</td>
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</tbody>
</table>

...
Annex B

Amendments to the Senior Management Arrangements, Systems and Controls (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.1.8 G An example of the type of rule referred to in SYSC 1.1.7R with a different territorial scope is the custody rules in the non-directive custody chapter in CASS 2 (Custody). CASS 2 These rules apply to activities carried on from branches in other EEA States as well as UK establishments (CASS 1.3.3R (General application where?)). Therefore SYSC 2 and SYSC 3 apply to the custody activities described in CASS 2 the non-directive custody chapter carried on from such a branch by such a UK firm. The UK firm must, for example, take reasonable care to establish systems and controls under SYSC 3.1.1R as are appropriate to those activities carried on from its EEA branches as well as from its UK establishments.
### Annex C

#### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...  

Applicable sections (see SUP 3.1.1 R)

<table>
<thead>
<tr>
<th>3.1.2 R</th>
<th>(1) Category of firm</th>
<th>(2) Section applicable to firm</th>
<th>(3) Section applicable to its auditor</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) ...</td>
<td></td>
<td></td>
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<tr>
<td>(2)</td>
<td><strong>Authorised professional firm</strong> not within (1) to which either or both of CASS 2 (Client assets) and CASS 4 (Client money and mandates: designated investment business) the non-directive custody chapter, non-directive client money chapter, MiFID custody chapter or MiFID client money chapter applies; unless the firm is regulated by The Law Society (England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland (Note 2)</td>
<td><strong>SUP 3.1 – SUP 3.7</strong></td>
<td><strong>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</strong></td>
</tr>
<tr>
<td>(7)</td>
<td><strong>Investment management firm, personal investment firm</strong> (other than a small personal investment firm) or <strong>securities and futures firm</strong> (Note 3) which, in each case, has an auditor appointed as a result of a statutory provision other than the <strong>Act</strong> (Notes 3 and</td>
<td><strong>SUP 3.1 – SUP 3.7</strong></td>
<td><strong>SUP 3.1, SUP 3.2, SUP 3.8 - SUP 3.10</strong></td>
</tr>
<tr>
<td>Row</td>
<td>Description</td>
<td>Notes</td>
<td>Relevant Sections</td>
</tr>
<tr>
<td>-----</td>
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</tr>
<tr>
<td>3A)</td>
<td><strong>Investment management firm, personal investment firm</strong> (other than a small personal investment firm), or securities and futures firm not within (7) to which either or both of CASS 2 (Client assets) and CASS 4 (Client money and mandates: designated investment business) the non-directive custody chapter, non-directive client money chapter, MiFID custody chapter or MiFID client money chapter applies.</td>
<td>SUP 3.1 – SUP 3.7</td>
<td>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</td>
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<td>…</td>
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<tr>
<td>(7D)</td>
<td><strong>Sole trader or partnership</strong> that is a MiFID investment firm (Note 3B)</td>
<td>SUP 3.1 – SUP 3.7</td>
<td>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</td>
</tr>
<tr>
<td>…</td>
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<tr>
<td>(10)</td>
<td><strong>Insurance intermediary</strong> (other than an exempt insurance intermediary) to which the insurance client money chapter CASS 5 (Client money and mandates) (except for CASS 5.2 (Holding money as agent)) applies (see Note 4)</td>
<td>SUP 3.1 – SUP 3.7</td>
<td>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</td>
</tr>
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<td>…</td>
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</table>

Note 1 = …

Note 2 = In row (2):

(a) CASS 2 (Client assets) The non-directive custody chapter is treated as applying only if (i) the firm safeguardings and administering investments in connection with managing investments (other than when acting as trustee), or (ii) it safeguardings and administering investments in relation to bonded investments (and, in either case, it
has not opted to conduct all business that would fall within the non-directive custody chapter under the MiFID custody chapter).

(b) CASS 4 (Client money and mandates: designated investment business) The non-directive client money chapter is treated as applying only if the firm receives or holds client money other than under an arrangement where commission is rebated to the client (and assuming that it has not opted to conduct all business that would fall within the non-directive client money chapter under the MiFID client money chapter);

but, if the custody rules or the client money rules above CASS 2 or CASS 4 are treated as applying then SUP 3.10 (Duties of auditors: notification and report on client assets) applies to the whole of the business within the scope of the custody rules or the client money rules above CASS 2 or CASS 4.

…

Note 3 = …

Note 3A = If the firm has elected to comply with the MiFID custody chapter or the MiFID client money chapter also in respect of its non-MiFID business then SUP 3.10 will apply to the whole of the business within the scope of the MiFID custody chapter or the MiFID client money chapter.

…

Note 3B = A sole trader or a partnership that is a MiFID investment firm must have its annual accounts audited.

…

Incoming firms

3.1.3 R This chapter does not apply applies to an incoming EEA firm (and the auditor of such a firm) only if it has a without a top-up permission or an auditor of such a firm.

…

3.1.8 G This chapter applies to an authorised professional firm as set out in rows (1) to (3) of SUP 3.1.2R:

(1) a firm in row (1) is treated in the same way as its equivalent in row (7);

(2) large parts of this chapter apply to a firm in row (2) and its auditor; the report on client assets under SUP 3.10 (Duties of auditors: notification and report on client assets) must cover compliance for the whole of the business within the scope of whichever of CASS 2
and CASS 4 the custody rules and the client money rules is are treated as applying; but there is no requirement for the auditor to prepare a report to the FSA on the firm’s firm’s financial statements;

(3) this chapter has limited application to a firm in row (3) and its auditor.

...

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 non-directive client money chapter (CASS 4), if that firm firm is regulated by:

(1) the Law Society (England and Wales);

(2) the Law Society of Scotland;

(3) the Law Society of Northern Ireland.

...

Client assets report

3.10.5 R Whether in the auditor's opinion

<p>| | |</p>
<table>
<thead>
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<tbody>
<tr>
<td>(1)</td>
<td>the firm has maintained systems adequate to enable it to comply with the rules in custody rules, the collateral rules and the client money rules (except CASS 5.2) CASS 2 to CASS 4 and CASS 5.1 to CASS 5.8 (except CASS 5.2) throughout the period since the last date as at which a report was made;</td>
</tr>
<tr>
<td>(2)</td>
<td>the firm was in compliance with the rules in custody rules, the collateral rules and the client money rules (except CASS 5.2) CASS 2 to CASS 4 and CASS 5.1 to CASS 5.8 (except CASS 5.2) at the date as at which the report has been made;</td>
</tr>
<tr>
<td>(3)</td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>if there has been a secondary pooling event during the period, the firm has complied with the rules in CASS 4.4, and CASS 5.6 and CASS 7.9 (Client money distribution) in relation to that pooling event.</td>
</tr>
</tbody>
</table>

...

Client assets report: timing of submission

3.10.7 R An auditor must deliver a report under SUP 3.10.4R to the FSA so as to be received within a reasonable time from the four months of the end of each period covered, unless it is the auditor of a firm falling within category (10) of SUP 3.1.2R.
[Note: article 20 of the MiFID implementing Directive]

3.10.7A G A period of four months, in ordinary circumstances, would be considered by the FSA as a reasonable time for the auditor to deliver the client assets report to the FSA.

3.10.8 R If an auditor is unable to report to the FSA within the timetable set out in SUP 3.10.7R a reasonable time, the auditor must notify the FSA and advise the FSA of the reasons why it has been unable to meet the requirements of SUP 3.10.7R.

6.4.22 G In deciding whether to cancel a firm's part IV permission, the FSA will take into account all relevant factors in relation to business carried on under that permission, including whether:

(1) there are unresolved, unsatisfied or undischarged complaints against the firm from any of its customers;

(2) the firm has complied with CASS 4.3.99R, and CASS 5.5.80R and CASS 7.2.15R (Client money: discharge of fiduciary duty) and CASS 4.3.104R and CASS 7.2.19R (Client money: allocated but unclaimed client money) if it has ceased to hold client money; these rules apply to both repayment and transfer to a third party;

(3) the firm has ceased to hold or control custody assets in accordance with instructions received from clients (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R and COBS 7.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money);

(4) …

SUP 6 Annex 4G

SUP 6 Annex 4.2

1. …

2. A firm must comply with CASS 4.3.99R, and CASS 5.5.80R and CASS 7.2.15R (Client money: discharge of fiduciary duty) and CASS 4.3.104R and CASS 7.2.19R (Client money: allocated but unclaimed client money) if it is ceasing to hold client money. A firm must also cease to hold or control custody assets in accordance with instructions received from clients (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R and COBS 7.1.7R (Information concerning safeguarding
of designated investments belonging to clients and client money). These rules apply to both repayment and transfer to a third party.

## Schedule 2 Notification requirements

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUP 3.10</td>
<td>Auditor: client assets</td>
<td>Either: (1) ...</td>
<td>Report period must end no more than 53 weeks after previous report.</td>
<td>Four months A reasonable time</td>
</tr>
</tbody>
</table>

...
Annex D

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text.

Chapter 5: Interim Prudential Requirements for Former IMRO Firms

... 5.3.1(5) G The requirement to maintain adequate records of movements and holdings of client money and any interest paid on client money balances, are set out in CASS 4.1 to 4.3 (with respect of designated investment business that is not MiFID business) and in CASS 7.1 to 7.8 (with respect of MiFID business).

...