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 power);
   (2) section 139 (Miscellaneous ancillary matters);
   (3) section 156 (General supplementary powers); and
   (4) section 157(1) (Guidance).

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

Commencement

C. This instrument comes into force on 1 December 2010.

Amendments to the Handbook

D. The Client Assets sourcebook (CASS) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Client Assets Sourcebook (Title Transfer) (Amendment) Instrument 2010.

By order of the Board
10 November 2010
Annex

Amendments to the Client Assets sourcebook (CASS)

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

Title transfer collateral arrangements

6.1.6 R (1) The custody rules do not apply where a client transfers full ownership of a safe custody asset to a firm for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.

[Note: recital 27 to MiFID]

(2) Excepted from (1) is a transfer of the full ownership of a safe custody asset:

(a) belonging to a retail client;

(b) whose purpose is to secure or otherwise cover that client’s present or future, actual, contingent or prospective obligations under a contract for differences (other than a rolling spot forex contract) entered into with a firm acting as market maker; and

(c) which is made to that firm or to any other person arranging on its behalf.

6.1.6A R (1) Subject to (2), where a firm makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a retail client those arrangements must not provide for the taking of a transfer of full ownership of any of that client’s safe custody assets.

(2) The application of (1) is confined to the taking of a transfer of full ownership:

(a) whose purpose is to secure or otherwise cover that retail client’s obligations under a contract for differences (other than a rolling spot forex contract) entered into with a firm acting as market maker; and

(b) which is made to that firm or to any other person arranging on its behalf.

...
Title transfer collateral arrangements

7.2.3 R (1) 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]

(2) Excepted from (1) is a transfer of the full ownership of money:

(a) belonging to a retail client;

(b) whose purpose is to secure or otherwise cover that client’s present or future, actual, contingent or prospective obligations under a contract for differences (other than a rolling spot forex contract) entered into with a firm acting as market maker; and

(c) which is made to that firm or to any other person arranging on its behalf.

7.2.3A R (1) Subject to (2), where a firm makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a retail client those arrangements must not provide for the taking of a transfer of full ownership of any of that client’s money.

(2) The application of (1) is confined to the taking of a transfer of full ownership:

(a) whose purpose is to secure or otherwise cover that retail client’s obligations under a contract for differences (other than a rolling spot forex contract) entered into with a firm acting as market maker; and

(b) which is made to that firm or to any other person arranging on its behalf.

Firms are reminded that, notwithstanding that money may be due and payable to them, they have a continuing obligation to segregate client money in accordance with the client money rules. In particular, in accordance with CASS 7.6.2R, firms must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out internal reconciliations of client money balances, either in accordance with the standard method of internal client money reconciliation or a different method which meets the requirements of CASS 7.6.7R and CASS 7.6.8R.
TP 1  Transitional Provisions

1.1

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<td>9</td>
<td>CASS 6.1.6R(2) and CASS 6.1.6AR</td>
<td>R</td>
<td>The <em>rules</em> to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 6.1.6AR.</td>
<td>1 December 2010 to 31 December 2010</td>
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<td>Notwithstanding the operation of CASS TP 1.1(9)R, a <em>firm</em> should as soon as reasonably practicable modify its contractual agreement with that <em>retail client</em> so as to remove its ability to utilise that title transfer collateral arrangement.</td>
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<td>10</td>
<td>CASS 7.2.3R(2) and CASS 7.2.3AR</td>
<td>R</td>
<td>The <em>rules</em> to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 7.2.3AR.</td>
<td>1 December 2010 to 31 December 2010</td>
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<td>Notwithstanding the operation of CASS TP 1.1(10)R, a <em>firm</em> should as soon as reasonably practicable modify its contractual agreement with that <em>retail client</em> so as to remove its ability to utilise that title transfer collateral arrangement.</td>
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