

**CLIENT ASSETS SOURCEBOOK (COLLATERAL TRANSFER AND LIENS
AMENDMENT) INSTRUMENT 2011**

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 October 2011.

Amendments to the Handbook

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

Notes

- E. In the Annex to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Client Assets Sourcebook (Collateral Transfer and Liens Amendment) Instrument 2011.

By order of the Board
22 September 2011

Annex

Amendments to the Client Assets sourcebook (CASS)

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

6 Custody rules

6.1 Application

...

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 or a rolling spot forex contract)~~ that is a future, and in either case where that contract is 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 or a rolling spot forex contract)~~ that is a future, and in either case where that contract is 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.

...

6.3 Depositing assets and arranging for assets to be deposited with third parties

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

...

- (4) ~~the~~ restrictions over the third party's right to claim a lien, right of retention or sale over any *safe custody asset* which the *firm* holds for its *client*, or a right of set-off over any *client money* derived from that *safe custody asset*;

...

...

- 6.3.5 R ...

[Note: this provision is not in force from 1 October 2011 until 31 March 2012, by virtue of CASS TP 1.8]

- 6.3.6 R ...

[Note: this provision is not in force from 1 October 2011 until 31 March 2012, by virtue of CASS TP 1.8A]

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7.2 Definition of client money

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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~~ or a *rolling spot forex contract*) that is a future, and in either case where that contract is 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~~ or a *rolling spot forex contract*) that is a future, and in either case where that contract is 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.

...

TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8	CASS 6.3.5R	R	The <i>rule</i> listed in column (2) does not apply in relation to agreements executed before 1 March 2011.	1 March 2011 until 1 October 2011 <u>1 October 2011 until 31 March 2012</u>	1 March 2011 <u>1 October 2011</u>
8A	CASS 6.3.6R	R	The <i>rule</i> listed in column (2) <u>does not apply.</u>	<u>1 October 2011 until 31</u>	<u>1 October 2011</u>

				<u>March 2012</u>	
9	CASS 6.1.6R(2) and CASS 6.1.6AR	R	The <i>rules</i> to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 6.1.6AR as a result of its <u>application to a rolling spot forex contract.</u>	1 December 2010 to 31 December 2010 <u>1 October 2011 until 31 October 2011</u>	1 December 2010 <u>1 October 2011</u>
		G	Notwithstanding the operation of CASS TP 1.1(9)R, a <i>firm</i> should as soon as reasonably practicable modify its contractual agreement with that <i>retail client</i> so as to remove its ability to utilise that title transfer collateral arrangement.		
10	CASS 7.2.3R(2) and CASS 7.2.3AR	R	The <i>rules</i> to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 7.2.3AR as a result of its <u>application to a rolling spot forex contract.</u>	1 December 2010 to 31 December 2010 <u>1 October 2011 until 31 October 2011</u>	1 December 2010 <u>1 October 2011</u>
		G	Notwithstanding the operation of CASS TP 1.1(10)R, a <i>firm</i> should as soon as reasonably practicable modify its contractual agreement with that <i>retail client</i> so as to remove its ability to utilise that title transfer collateral arrangement.		