

CLIENT ASSETS SOURCEBOOK (LIENS AMENDMENT) INSTRUMENT 2012

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 April 2012.

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 (Liens Amendment) Instrument 2012.

By order of the Board
19 January 2012

Annex

Amendments to the Client Assets sourcebook (CASS)

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

6 Custody rules

...

6.3.3 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*; [deleted]~~

...

6.3.5 R Subject to CASS 6.3.6R, in relation to a third party with which a *firm* deposits *safe custody assets* belonging to a *client*, a *firm* must ensure that ~~the~~ any agreement with that third party relating to the custody of those assets does not include the grant to that ~~third~~ party, or to any other *person*, of a lien or a right of retention or sale over the *safe custody assets*, or a right of set-off over any *client money* derived from those *safe custody assets*.

~~[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 A *firm* may conclude an agreement with a third party relating to the custody of *safe custody assets* which ~~does confer~~ confers on that ~~third~~ party, or on another *person* instructed by that party to provide custody services for those assets, a lien, right of retention or sale, or right of set-off in favour of that ~~third~~ party or that other *person* ~~if and~~ only if that lien or right:

- (1) is confined to ~~an individual *client's safe custody assets* or *client money*~~ those *safe custody assets* held in an account with that third party or that other person and extends only to ~~that third party's (or a sub-custodian's, where a sub-custodian is appointed by that third party)~~ properly incurred charges and liabilities arising from the provision of custody services ~~to that *client*~~ in respect of *safe custody assets* held in that account; or
- (2) arises under the operating terms of a securities depository, securities settlement system or central counterparty in whose ~~books or accounts~~

account ~~a client's client money~~ ~~or safe custody assets~~ ~~is or~~ are recorded or held, and provided that it does so for the purpose only of facilitating the settlement of ~~that client's~~ trades involving the assets held in that account; or

- (3) arises in relation to ~~a client's~~ those safe custody assets ~~or client money~~ held in a jurisdiction outside the *United Kingdom*, provided that:
- (a) it does so as a result of local applicable law in that jurisdiction or as a necessary precondition for participation in a local market is necessary for that firm to gain access to the local market in that jurisdiction; and
 - (b) in respect of each client to which those assets belong, either:
 - (i) the firm has taken reasonable steps to determine that holding those assets ~~or that money~~ subject to such a that lien or right is in the best interests of that client; or
 - (ii) where a client is a professional client, the firm is instructed by that client to hold those assets in that jurisdiction notwithstanding the existence of that lien or right.

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

- 6.3.7 G A firm will be considered to be acting on the instructions of its professional client under CASS 6.3.6R(3)(b)(ii) where:
- (1) the firm has received an individual instruction or has a standing instruction in its terms of business which results in it holding safe custody assets in the relevant jurisdiction; and
 - (2) prior to acting on the instruction, the firm has expressly informed the client that holding that client's safe custody assets in the relevant jurisdiction will involve the granting of a lien or right over those assets. The firm may do this by discussing the lien or right individually with the client or by including reference to it in terms of business (which may themselves cross refer to a separate list of relevant jurisdictions to which 6.3.6R(3)(a) applies maintained on the firm's website in a form accessible to clients) or by a similar method.
- 6.3.8 R For the purpose of CASS 6.3.6R, references to a safe custody asset include any client money derived from that safe custody asset. Client money derived from a safe custody asset may be regarded as held in the same account as that safe custody asset even though that money and those assets may be recorded separately.
- 6.3.9 R CASS 6.3.6R does not permit a firm to agree to a right of set-off of the kind

prohibited by either CASS 7.8.1R or CASS 7.8.2R in relation to *client money*.

...

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. [deleted]	1 October 2011 until 31 March 2012	1 October 2011
8A	CASS 6.3.6R CASS 6.3.5R to <u>CASS 6.3.8R</u>	R	The <i>rule</i> listed in column (2) does not apply. <u>The rules listed in column (2) do not apply in relation to agreements executed before 1 April 2012.</u>	1 October 2011 until 31 March 2012 <u>1 April 2012 until 30 September 2012</u>	1 October 2011 <u>1 April 2012</u>
		G	<u>Notwithstanding the operation of CASS TP 1.1R(8A), a firm should as soon as reasonably practicable modify its agreement with that third party so as to meet the requirements of CASS 6.3.5R to CASS 6.3.8R.</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 application to a <i>rolling spot forex contract</i> . [deleted]	1 October 2011 until 31 October 2011	1 October 2011
		G	<u>Notwithstanding the operation of CASS TP 1.1(9)R, a firm 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</u>		

			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 application to a <i>rolling spot forex contract</i> . [deleted]	1 October 2011 until 31 October 2011	1 October 2011
		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.		