

**CLIENT ASSETS SOURCEBOOK (EUROPEAN MARKETS INFRASTRUCTURE  
REGULATION) 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:
- (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 January 2013.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Client Assets sourcebook (CASS) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Client Assets Sourcebook (European Markets Infrastructure Regulation) Instrument 2012.

By order of the Board  
13 December 2012

## Annex A

### Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical order. The text is not underlined.

*authorised central counterparty* a *CCP* authorised or recognised under *EMIR*.

*CCP* as defined in article 2(1) of *EMIR*.

*EMIR* Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, sometimes referred to as the “European Markets Infrastructure Regulation”.

*individual client account* an account maintained by a *firm* at an *authorised central counterparty* for a *client* of the *firm* in respect of which the *authorised central counterparty* has agreed with the *firm* to provide *individual client segregation*.

*individual client segregation* as defined in article 39(3) of *EMIR*.

*omnibus client account* an account maintained by a *firm* at an *authorised central counterparty* for more than one *client* of the *firm* in respect of which the *authorised central counterparty* has agreed with the *firm* to provide *omnibus client segregation*.

*omnibus client segregation* as defined in article 39(2) of *EMIR*.

*port* means, in respect of the assets and positions recorded in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty*, action taken by that *authorised central counterparty* to transfer those assets and positions in accordance with article 48 of *EMIR* to another clearing member designated by the *individual client* (in the case of an *individual client account*) or designated by all of the *clients* for whom the account is held (in the case of an *omnibus client account*).

Amend the following as shown.

*clearing house* a clearing house through which transactions may be cleared and for the purposes of CASS 7 and CASS 7A, includes an *authorised central counterparty*.

## Annex B

### Amendments to the Client Assets sourcebook (CASS)

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

#### 7 Client money rules

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#### 7.2 Definition of client money

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- 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~~ granted a security interest ~~over to its client to secure~~ 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~~ where a *firm* has received *client money* under a security interest and the 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~~ *client bank account* to the *firm*.

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#### Discharge of fiduciary duty

- 7.2.15 R *Money ceases to be client money (having regard to CASS 7.2.17R where applicable) if it is paid:*
- (1) *it is paid* to the *client*, or a duly authorised representative of the *client*; or
  - (2) *it is paid* 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) *it is paid* 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 in accordance with CASS 7.2.9R (Money due and payable to the *firm*))*; or

- (5) it is paid to the firm itself, when it is as an excess in the client bank account (see CASS 7.6.13R(2) (Reconciliation discrepancies)); or
- (6) it is paid by an authorised central counterparty to a clearing member other than the firm in connection with a porting arrangement in accordance with CASS 7.2.15AR; or
- (7) it is paid by an authorised central counterparty directly to the client in accordance with CASS 7.2.15BR.

7.2.15A R Client money received or held by the firm and placed in a client transaction account that is an individual client account or an omnibus client account at an authorised central counterparty ceases to be client money for that firm if, as part of the default management process of that authorised central counterparty in respect of a default by the firm, it is ported by the authorised central counterparty in accordance with article 48 of EMIR.

7.2.15B R Client money received or held by the firm and placed in a client transaction account that is an individual client account or an omnibus client account at an authorised central counterparty ceases to be client money if, as part of the default management process of that authorised central counterparty in respect of a default by the firm, it is paid directly to the client by the authorised central counterparty in accordance with the procedure described in article 48(7) of EMIR.

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## **7.5 Transfer of client money to a third party**

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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. This guidance does not apply to client money provided by a firm to an authorised central counterparty in connection with a contingent liability investment undertaken for a client and recorded in a client transaction account that is an individual client account or an omnibus client account at that authorised central counterparty.

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## **7.8 Notification and acknowledgement of trust**

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Exchanges, clearing houses, intermediary brokers or OTC counterparties

**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 exchange, *clearing house*, *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*~~ *clearing house*, *intermediate broker* or *OTC* counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any *money*.

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## 7A Client money distribution

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### 7A.2 Primary pooling events

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Pooling and distribution

7A.2.4 R If a *primary pooling event* occurs:

- (1) all *client money* held in ~~each *client money account*~~ a *client bank account* or a *client transaction account* of the *firm* is treated as pooled (forming a notional pool) except for *client money* held in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty*; and
- (2) the *firm* must distribute ~~that~~ *client money* comprising the notional pool 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 7A.2.5R; and

- (3) if client money is remitted directly to the firm from an authorised central counterparty, then:
- (a) any such remittance in respect of a client transaction account that is an individual client account must be distributed to the relevant client subject to CASS 7.7.2R(4);
  - (b) subject to (3)(c), any such remittance in respect of a client transaction account that is an omnibus client account must form part of the notional pool under CASS 7A.2.4R(1) and be subject to distribution in accordance with CASS 7A.2.4R(2); and
  - (c) any such remittance in respect of a client transaction account that is an omnibus client account must be distributed to the clients for whom that omnibus client account is held if:
    - (i) no client money in excess of the amount recorded in that omnibus client account is held by the firm as margin in relation to the positions recorded in that omnibus client account; and
    - (ii) the amount of such remittance attributable to each client of the omnibus client account is readily apparent from information provided to the firm by the authorised central counterparty;

in which case the amount of such remittance must be distributed to each such client in accordance with the information provided by the authorised central counterparty subject to CASS 7.7.2R(4).

- 7A.2.4A G (1) Under EMIR, where a firm that is a clearing member of an authorised central counterparty defaults, the authorised central counterparty may:
- (a) port client positions where possible; and
  - (b) after the completion of the default management process:
    - (i) return any balance due directly to those clients for whom the positions are held, if they are known to the authorised central counterparty; or
    - (ii) remit any balance to the firm for the account of its clients if the clients are not known to the authorised central counterparty.
- (2) Where any balance remitted from an authorised central counterparty to a firm is client money, CASS 7A.2.4R(3) provides for the distribution of remittances from either an individual client account or

an omnibus client account.

- (3) Remittances received by the firm falling within CASS 7A.2.4R(3)(a) and CASS 7A.2.4R(3)(c) should not be pooled with client money held in any client bank account operated by the firm at the time of the primary pooling event. Those remittances should be segregated and promptly distributed to each client on whose behalf the remittance was received.
- (4) For the avoidance of doubt, any client money remitted by the authorised central counterparty to the firm pursuant to CASS 7A.2.4R(3) should not be treated as client money received after the failure of the firm under CASS 7A.2.7R.

7A.2.5 R -(1) Each client's client equity balance must be reduced by:

- (a) any amount paid by an authorised central counterparty to a clearing member other than the firm in connection with a porting arrangement in accordance with CASS 7.2.15R(6) in respect of that client;
- (b) any amount paid by an authorised central counterparty directly to that client, in accordance with CASS 7.2.15R(7); and
- (c) any amount that must be distributed to that client by the firm in accordance with CASS 7A.2.4R (3) (a) or (c).

(1) ...

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7A.2.6 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. [deleted]