Powers exercised

A. The Financial Conduct 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 137A (The FCA’s general rules);
(2) section 137B (FCA general rules: clients’ money, right to rescind etc);
(3) section 137T (General supplementary powers);
(4) section 138C (Evidential provisions); and
(5) section 139A (Power of the FCA to give guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force as specified within each Annex.

Amendments to the FCA Handbook

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

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Notes

E. In Annex C 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 (Amendment No 5) Instrument 2014.

By order of the Board of the Financial Conduct Authority
5 June 2014
Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 1 July 2014

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

**general pool**
the discrete pool of client money held for all clients of the firm for whom the firm receives or holds client money in accordance with CASS 7.1.1AR, other than client money received or held in accordance with CASS 7.1.1AR in respect of a sub-pool.

**gross-minus-net amount**
at any given time, in respect of an omnibus client account maintained by a clearing member firm and the positions recorded therein, an amount equal to the difference between:

(a) the sum of the margin amounts received from each client in relation to positions held for such client in that omnibus client account and

(b) the amount of margin calculated on a net basis in respect of all of the client positions recorded in that omnibus client account and paid by that firm to the authorised central counterparty.

**LME**
the London Metal Exchange Limited.

**LME bond arrangement**
an arrangement for the segregation of money held by firms on behalf of US customers for transactions undertaken on the exchange operated by the LME, which is an alternative to complying with condition 2(g) of the Part 30 exemption order, and which has been established in accordance with certain no-action letters issued by the Commodity Futures Trading Commission.

**net margined omnibus client account**
an omnibus client account maintained by a clearing member firm in respect of which the margining arrangements give rise to a gross-minus-net amount which is held by the clearing member firm as client money.

**pool**
either a sub-pool or a general pool, as the context requires.

**sub-pool**
a discrete pool of client money established under CASS 7.19.

**sub-pool disclosure**
a document prepared by a firm containing the information required by
document  CASS 7.19.9R.

Amend the following as shown.

CCP  a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer, as defined in article 2(1) of EMIR.

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 and a CCP.

client money  …

(2A) (in FEES, CASS 6, CASS 7, CASS 7A and CASS 10 and, in so far as it relates to matters covered by CASS 6, CASS 7, COBS, GENPRU or IPRU(INV)) subject to the client money rules, money of any currency:

(a) that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its MiFID business; and/or

(b) which, in the course of carrying on designated investment business that is not MiFID business, a firm holds in respect of any investment agreement entered into, or to be entered into, with or for a client, or which a firm treats as client money in accordance with the client money rules; or

(c) which a firm treats as client money in accordance with the client money rules.

client money rules  …

(3) (in CASS 3, CASS 6, CASS 7, CASS 7A, UPRU, COBS and FEES) CASS 7.1 to 7.8 and CASS 7.19.


Part 30 Exemption  on the order under regulation 30.10 of the General Regulations under the US Commodity Exchange Act, issued by the Commodity Futures
Order

Trading Commission on 15 May 1989 on 10 October 2003 (consolidating and updating relief granted to firms in prior orders), granting a person authorised under the Act exemption from the registration requirement certain requirements contained in Part 30 of those General Regulations.

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).


Standard method of internal client money reconciliation (a) CASS 7 Annex 1G; or
(b) the methods of internal reconciliation of client money balances referred to in CASS 7.16 of the Client Assets Sourcebook (Amendment No 5) Instrument 2014.

Trustee firm a firm which is not an OPS firm and which is acting as a:
(a) trustee (other than for a trust of client money arising only under CASS 5.3.2R, CASS 5.4 (Non-statutory client money trust), CASS 7.7.2R or CASS 11.6.1R); or

Part 2: Comes into force on 1 December 2014

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

Acknowledgement letter (in CASS 7) a client bank account acknowledgement letter (a letter in the form of the template in CASS 7 Annex 2R), a client transaction account acknowledgement letter (a letter in the form of the template in CASS 7 Annex 3R) or an authorised central counterparty acknowledgment letter (a letter in the form of the template in CASS 7 Annex 4R).

Alternative approach mandatory prudent segregation the requirement under CASS 7.4.18BR on a firm using the alternative approach to segregate an amount of money as client money.
alternative approach mandatory prudent segregation record

the record created and maintained by a firm under CASS 7.4.19AR to CASS 7.4.19CR.

authorised central counterparty acknowledgment letter

a letter in the form of the template in CASS 7 Annex 4R.

client transaction account acknowledgement letter

a letter in the form of the template in CASS 7 Annex 3R.

commercial settlement system

a system commercially available to firms that are members or participants, a purpose of which is to facilitate the settlement of transactions using money and/or assets held on one or more settlement accounts.

non-standard method of internal client money reconciliation

a method of internal reconciliation of client money balances that is not a standard method of internal client money reconciliation.

settlement account

an account containing money and/or assets that is held with a central bank, central securities depository, central counterparty or any other institution acting as a settlement agent, which is used to settle transactions between participants or members of a commercial settlement system.

Amend the following definitions as shown.

acknowledgement letter fixed text

(in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is not in square brackets.

(1) (in CASS 7) the text in the template acknowledgement letters in CASS 7 Annex 2R, CASS 7 Annex 3R and CASS 7 Annex 4R that is not in square brackets.

(2) (in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is not in square brackets.

acknowledgement letter variable text

(in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is in square brackets.

(1) (in CASS 7) the text in the template acknowledgement letters in CASS 7 Annex 2R, CASS 7 Annex 3R, and CASS 7 Annex 4R that is in square brackets.

(2) (in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is in square brackets.
client bank account
acknowledgement letter

(1) (in CASS 7) a letter in the form of the template in CASS 7 Annex 2R.

(2) (in CASS 11) a letter in the form of the template in CASS 11 Annex 1R.

Part 3: Comes into force on 1 June 2015

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

aggregate safe custody asset record

a firm’s internal record or account of all the safe custody assets that the firm holds for its clients (including those safe custody assets deposited by the firm with third parties under CASS 6.3 and any physical safe custody assets held by the firm).

CASS 7 asset management firm

a firm subject to the client money rules and which falls within either (a) or (b), or both, but not (c):

(a) a firm that was a member of IMRO immediately before commencement;

(b) a firm for which the most substantial part of its gross income (including commissions) from its MiFID business or designated investment business that is not MiFID business, or both, is derived from one or more of the following activities:

(i) managing investments other than derivatives;

(ii) OPS activity;

(iii) acting as the manager or trustee of an AUT;

(iv) managing an AIF;

(v) acting as the ACD or depositary of an ICVC;

(vi) acting as the authorised contractual scheme manager or depositary of an ACS;

(vii) acting as trustee or depositary of an AIF;
(viii) acting as trustee or depositary of a UCITS;

(ix) establishing, operating or winding up a collective investment scheme (other than an AUT, ICVC or ACS);

(x) establishing, operating or winding up a personal pension scheme;

(xi) safeguarding and administering investments; and

(xii) the provision of platform services;

(c) a firm for which the most substantial part of its gross income is derived from its safeguarding and administering investments activities.

**CASS 7 loan-based crowdfunding firm**
a firm:

(a) that is subject to the client money rules in CASS 7; and

(b) whose designated investment business includes operating an electronic system in relation to lending.

**Clearing arrangement mandatory prudent segregation**
the requirement under CASS 7.13.73R on a firm using the normal approach to segregate an amount of money as client money.

**Clearing arrangement mandatory prudent segregation record**
the record created and maintained by a firm under CASS 7.13.74R and CASS 7.13.75R.

**Client money requirement**
the total amount of client money a firm is required to have segregated in client bank accounts under the client money rules (see CASS 7.16.10R).

**Client money resource**
the aggregate balance on the firm’s client bank accounts (see CASS 7.16.8R).

**Client-specific safe custody asset record**
a firm’s internal record or account identifying each of the particular safe custody assets that the firm holds for each particular client (including those safe custody assets deposited by the firm with third parties under CASS 6.3 and any physical safe custody assets held by the firm).

**External client money reconciliation**
the client money reconciliation described in CASS 7.15.20R.

**External custody reconciliation**
the safe custody asset reconciliation described in CASS 6.6.34R.
firm’s equity balance  
the sum of money described in CASS 7.16.29R.

individual client balance  
for each client, the total amount of all money the firm holds, has received or is obliged to have received or be holding as client money in a client bank account for that client in respect of non-margined transactions, calculated in accordance with CASS 7.16.21R.

individual client balance method  
the method of calculating a firm’s client money requirement described in CASS 7.16.16R.

internal client money reconciliation  
the client money reconciliation described in CASS 7.15.12R.

internal custody reconciliation method  
a method for performing an internal custody record check, described in CASS 6.6.17R.

internal custody record check  
the safe custody assets record check described in CASS 6.6.10G(2) performed using either the internal custody reconciliation method or the internal system evaluation method.

internal system evaluation method  
a method for performing an internal custody record check, described in CASS 6.6.19R.

margined transaction requirement  
the total amount of client money a firm is required to segregate in client bank accounts for margined transactions under the client money rules, in accordance with CASS 7.16.32R.

net negative add-back method  
the method of calculating a firm’s client money requirement described in CASS 7.16.17R.

non-margined transaction  
a transaction executed by a firm:
(a) for, or on behalf of, a client in relation to MiFID business and/or designated investment business; and
(b) which is not a margined transaction.

physical asset reconciliation  
the safe custody assets reconciliation described in CASS 6.6.24R, using either the total count method or the rolling stock method.

physical safe custody asset  
a safe custody asset (or tangible evidence of one) that is in a firm’s physical custody and which may also be registered with the relevant issuer or agent of the issuer.

prudent segregation  
a firm’s segregation of an amount of money as client money under CASS 7.13.41R.

prudent segregation record  
the records created and maintained by a firm under CASS 7.13.50R to CASS 7.13.53R.
rolling stock method  a method for performing a physical asset reconciliation, as described in CASS 6.6.28R.

total count method  a method for performing a physical asset reconciliation, as described in CASS 6.6.27R.

Amend the following definitions as shown:

alternative approach  mandatory prudent segregation  the requirement under CASS 7.4.19BR 7.13.65R on a firm using the alternative approach to segregate an amount of money as client money.

alternative approach  mandatory prudent segregation record  the record created and maintained by a firm under CASS 7.4.19AR 7.13.66R to CASS 7.4.19CR 7.13.68R.

client bank account  … (2) (in CASS 7 and CASS 7A):

(a)  an account at a bank which:

(i)  holds the money of one or more clients;  [deleted]

(ii)  is expressly held in the name of the firm that is subject to the requirement in CASS 7.13.3R; and

(iii)  is a current or a deposit account; or

(b)  a money market deposit account of client money which is identified as being client money; and

(c)  in either case, which is a general client bank account, a designated client bank account or a designated client fund account.

client equity balance  the amount which a firm would be liable (ignoring 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. This refers to cash values and does not include non-cash collateral or other designated investments held in respect of a margined transaction the sum of money as described in CASS 7.16.28R.

client money rules  …
(3) (in CASS 3, CASS 6, CASS 7, CASS 7A, COBS and FEES) CASS 7.1 to 7.8 and CASS 7.10 to 7.19.

**client money segregation requirements**

CASS 7.4.1R 7.13.3R and CASS 7.4.11R 7.13.12R.

**client transaction account**

(in relation to a firm and an exchange, clearing house, or intermediate broker another person) an account maintained by the other person, such as an exchange, clearing house, or intermediate broker or OTC counterparty, as the case may be, in respect of transactions in contingent liability investments undertaken by the firm with or for its clients who a firm allows to hold client money under CASS 7.14 (Client money held by a third party), which:

(a) is in the name of the firm;

(b) includes in its title the word “client” (or, if the system constraints of the relevant person or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of “client” that has the same meaning); and

(c) is not a client bank account.

**designated client bank account**

a client bank account with the following characteristics:

... 

(b) the account includes in its title the word words "designated client" (or, if the systems constraints of the approved bank or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of those words that has the same meaning):

... 

**designated client fund account**

a client bank account with the following characteristics:

... 

(b) the account includes in its title the word words "designated client fund" (or, if the systems constraints of the approved bank or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of those words that has the same meaning): and

...
general pool

the discrete pool of client money held for all clients of the firm for whom the firm receives or holds client money in accordance with CASS 7.1.1AR 7.10.1R other than client money received or held in accordance with CASS 7.1.1AR 7.10.1R in respect of a sub-pool.

general client bank account

a client bank account that holds client money of one or more clients, which includes in its title the word “client” (or, if the systems constraints of the approved bank or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of the word “client” that has the same meaning), and which is not:

... MiFID client money (minimum implementing) rules

CASS 7.3.1R 7.12.1R, CASS 7.3.2R 7.12.2R, CASS 7.4.1R 7.13.3R, CASS 7.4.5R, CASS 7.4.7R 7.13.8R, CASS 7.4.8R 7.13.10R, CASS 7.4.11R 7.13.12R, CASS 7.13.28R, CASS 7.6.2R 7.15.2R, CASS 7.6.9R 7.15.20R.

non-standard method of internal client money reconciliation

a the method of internal reconciliation of client money balances internal client money reconciliation that is not a standard method of internal client money reconciliation described in CASS 7.15.17R.

segregated client

a client whose money must be segregated by the firm under CASS 4.3.3R (Segregation). [deleted]

shortfall

... (3) (in relation to safe custody assets) any amount by which the safe custody assets held by a firm under the custody rules fall short of the firm’s obligations to its clients to hold safe custody assets.

... standard method of internal client money reconciliation

(a) CASS 7 Annex 1G; or [deleted]

(b) the methods of internal reconciliation of client money balances internal client money reconciliation described referred to in CASS 7.16 of the Client Assets Sourcebook (Amendment No 5) Instrument 2014.

trustee firm

a firm which is not an OPS firm and which is acting as a:

(a) trustee (other than for a trust of client money arising only under CASS 5.3.2R, CASS 5.4 (Non-statutory client money trust), CASS 7.7.2R 7.17.2R or CASS 11.6.1R); or

...
Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: Comes into force on 1 December 2014

6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information

...  

6.1.7A Firms subject to either or both the custody rules and the client money rules are reminded of the information requirements concerning custody assets and client money in CASS 9.3 (Prime brokerage agreement disclosure annex) and CASS 9.4 (Information to clients concerning custody assets and client money).

...  

Part 2: Comes into force on 1 June 2015

16 Reporting information to clients

...  

16.4 Statements of client designated investments or client money

...  

16.4.6 Firms subject to either or both the custody chapter and the client money chapter are reminded of the reporting obligations to clients in CASS 9.2 (Prime broker’s daily report to clients) and CASS 9.5 (Reporting to clients on request).

...
Annex C

Amendments to the Client Assets sourcebook (CASS)

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

Part 1: Comes into force on 1 July 2014

1 Application and general provisions

... 

1.2 General application: who? what?

... 

1.2.7 G (1) The approach in CASS is to ensure that the rules in a chapter are applied to firms in respect of particular regulated activities or unregulated activities.

[deleted]

(2) The scope of the regulated activities to which CASS applies is determined by the description of the activity as it is set out in the Regulated Activities Order. Accordingly, a firm will not generally be subject to CASS in relation to any aspect of its business activities which fall within an exclusion found in the Regulated Activities Order. The definition of designated investment business includes, however, activities within the exclusion from dealing in investments as principal in article 15 of the Regulated Activities Order (Absence of holding out etc).

[deleted]

(3) The custody chapter and the client money chapter apply in relation to regulated activities, conducted by firms, which fall within the definition of MiFID business and/or designated investment business.

[deleted]

(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).

[deleted]

(4) The insurance client money chapter applies in relation to regulated activities, conducted by firms, which fall within the definition of insurance mediation activities.

[deleted]

... 

(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.
1.2.8 G …

(4) Each provision in the collateral rules, custody chapter, and the client money chapter and CASS 9 (Information to clients) makes it clear whether it applies to activities carried on 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.

(4A) There is no further modification of the rules in the chapters referred to in (4) for activities carried on for eligible counterparties. Such clients are treated in the same way as other professional clients for the purposes of these rules.

…

Application for affiliates

1.2.9A G (1) The fact that a firm’s client is an affiliated company for MiFID business does not affect the operation of CASS to the firm in relation to that client.

(2) For business that is not MiFID business, the operation of the custody chapter or the client money chapter may differ if a firm’s client is an affiliated company and depending on certain other conditions (see, for example, CASS 6.1.10BR and CASS 7.1.12AR).

…

1.2.11 R Where a firm is subject to two or more of the client money chapter, the insurance client money chapter and the debt management 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) A firm must not keep money in respect of which any one of the following chapters applies in the same client bank account or client transaction account as money in respect of which another of the following chapters applies:

(a) the client money chapter;

(b) the insurance client money chapter;

(c) the debt management client money chapter.
In accordance with CASS 7.1.15HR, a firm which is subject to the client money chapter and holds money both (i) in its capacity as a trustee firm and (ii) other than in its capacity as a trustee firm must not keep money held in in its capacity as a trustee firm in the same client bank account or client transaction account as money held other than in its capacity as a trustee firm.

To the extent that the restriction under (1) or (2) applies to a firm, the client bank accounts and client transaction accounts that a firm holds in respect of different chapters or in its different capacities (as the case may be) must be separately designated.

…

1.2.13 G A firm may, where permitted by the relevant rules, opt to hold under a single chapter money that would otherwise be held under different chapters (see CASS 5.1.1R(3) and CASS 7.1.3R and CASS 7.1.15BAR). However, making such an election does not remove the requirement under CASS 1.2.11R(1).

1.4 Application: particular activities

…

1.4.8 R (1) Other than the mandate rules, CASS does not apply to a trustee firm which is not a depositary, or the trustee of a personal pension scheme or stakeholder pension scheme, unless MiFID applies to it, in which case the custody chapter and the client money chapter do apply. [deleted]

(2) In the custody chapter, the client money chapter and the mandate rules, 'client' means 'trustee', 'trust', 'trust instrument' or 'beneficiary', as appropriate. [deleted]

1.4.8A R (1) The application of CASS for a trustee firm acting as a depositary is set out in CASS 1.4.6R and CASS 1.4.7R.

(2) The application of CASS for a trustee firm that is not acting as a depositary is limited as follows:

(a) the mandate rules apply;

(b) for MiFID business, the custody chapter and the client money chapter apply; and

(c) for business that is not MiFID business, the custody chapter and the client money chapter apply only to trustee firms acting as trustees of personal pension schemes or stakeholder pension schemes, including SIPPs.
(3) To the extent that CASS applies to a trustee firm, it applies with the following general modification: 'client' means 'relevant trustee', 'trust', or 'beneficiary', as appropriate.

3 Collateral

3.1 Application and purpose

... 3.1.7A G Firms are reminded of the client's best interests rule which requires a firm to act honestly, fairly and professionally, in accordance with the best interests of its clients, when agreeing to, entering into, exercising its rights under and fulfilling its obligations under an arrangement covered by this chapter, and when structuring its business to include such arrangements.

6 Custody rules

6.1 Application

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

... 6.1.10A G In respect of business which is not MiFID business, the custody rules do not apply to a firm when it safeguards and administers a designated investment on behalf of an affiliated company, unless:
(1) the firm has been notified that the designated investment belongs to a client of the affiliated company; or

(2) the affiliated company is a client dealt with at arm’s length.

6.1.10B R In respect of a firm’s business falling under CASS 6.1.1R(1B), the custody rules do not apply to the firm when it is safeguarding and administering investments on behalf of an affiliated company, unless:

(1) the firm has been notified that the designated investment belongs to a client of the affiliated company; or

(2) the affiliated company is a client dealt with at arm’s length.

...

6.1.16F R ...

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<tr>
<td>CASS 6.3.1R to CASS 6.3.4R</td>
<td>Depositing safe custody assets with third parties</td>
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...

6.1.16H R When a trustee firm or depositary within CASS 6.1.16FR arranges for, or delegates the provision of safe custody services by or to another person, the trustee firm or depositary must also comply with CASS 6.3.1R (Depositing assets and arranging for assets to be deposited with third parties) in addition to the custody rules listed in the table in CASS 6.1.16FR. [deleted]

...

6.1.16IC G A firm (Firm A) to which another firm acting as trustee or depositary of an AIF (Firm B) has delegated safekeeping functions in line with FUND 3.11.25R 3.11.28R (Delegation: safekeeping) will not itself be acting as trustee or depositary of an AIF for that AIF. CASS 6.1.16IAR will not apply to Firm A in respect of that AIF. However, Firm A may be safeguarding and administering investments in respect of that AIF.

6.1.16J R Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets:

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<th>Reference</th>
<th>Rule</th>
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<tr>
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</table>
6.1.16R When a firm arranges safeguarding and administration of assets, it must ensure that proper records of the custody assets which it arranges for another to hold or receive, on behalf of the client, arrangements are made and retained for a period of 5 years after they are made.

6.4 Use of safe custody assets

6.4.1A The FCA expects firms which enter into arrangements under CASS 6.4.1R with retail clients to only enter into securities financing transactions and not otherwise use retail client’s safe custody assets.

6.4.2 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 For any transactions involving retail clients carried out under this section the FCA expects that:

6.5 Records, accounts and reconciliations

6.5.3 A Unless otherwise stated, a firm must ensure that the records any record made under this section are the custody rules is retained for a period of five years after they are made starting from the later of:

(1) the date it was created; and

(2) (if it has been modified since the date it was created), the date it was most recently modified.

6.5.5 A firm that uses an alternative reconciliation method must first send a written confirmation to the FCA 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. [deleted]

...

7 Client money rules

7.1 Application and purpose

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

(1) [deleted]

(a) [deleted]

(b) [deleted]

(2) [deleted]

(3) [deleted]

(4) its MiFID business; and/or

(4) its designated investment business, that is not MiFID business in respect of any investment agreement entered into, or to be entered into, with or for a client;

unless otherwise specified in this section. [deleted]

7.1.1A R This chapter applies to a firm that receives money from or holds money for, or on behalf of, a client in the course of, or in connection with, its:

(1) MiFID business; and/or

(2) designated investment business;

unless otherwise specified in this section.

7.1.1B G A firm is reminded that when CASS 7.1.1AR applies it should treat client money in an appropriate manner so that, for example:

(1) if it holds client money in a client bank account, that account is held in the firm’s name in accordance with CASS 7.4.11AR;

(2) if it allows another person to hold client money this is effected under CASS 7.5; and

(3) its internal reconciliations of client money carried out in line with CASS 7.6.6G and CASS 7 Annex 1G take into account any client equity balance relating to its margined transaction requirements.

...
7.1.3R R …

(3) This rule is subject to CASS 1.2.11R.

7.1.3A G Firms are reminded that, under CASS 1.2.11R(1), they must not keep money in respect of which the client money chapter applies in the same client bank account or client transaction account as money in respect of which the insurance client money chapter applies.

…

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 that, with respect to its regulated activities, is subject to the following rules of its designated professional body, must comply with those rules and, where relevant paragraph (3), and if it does so, it will be deemed to comply with the client money rules.

(2) The relevant rules are:

(a) if the firm is regulated by the Law Society (of England and Wales), the SRA Accounts Rules 2011;

   (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, the Law Society of Scotland Practice Rules 2011; and

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

(3) If the firm in (1) is a MiFID investment firm that receives or holds money for, or on behalf of a client in the course of, or in connection with its MiFID business, it must also comply with the MiFID client money (minimum implementing) rules in relation to that business.

…

7.1.15B R This chapter does not apply to client money held by a firm which:

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

(2) in relation to such client money elects to act in accordance with the insurance client money chapter. [deleted]
Provided it complies with CASS 1.2.11R, a firm that receives or holds client money in relation to contracts of insurance may elect to comply with the provisions of the insurance client money chapter, instead of this chapter, in respect of all such money.

A firm should make and retain a written record of any election which it makes under CASS 7.1.15BR 7.1.15BAR.

Trustee firms (other than trustees of unit trust schemes)

Subject to CASS 7.1.15GR only the client money rules listed in the table below apply to a trustee firm in connection with money that the firm receives, or holds for or on behalf of a client in the course of or in connection with its designated investment business which is not MiFID business.

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<td>The standard method of internal client money reconciliation</td>
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A trustee firm to which CASS 7.1.15FR applies may, in addition to the client money rules set out at CASS 7.1.15FR, also elect to comply with:

(a) all the client money rules in CASS 7.4 (Segregation of client money);

(b) CASS 7.5 (Transfer of client money to a third party);

(c) all the client money rules in CASS 7.6 (Records, accounts and reconciliations); or
(d) **CASS 7.8 (Notification and acknowledgement of trust).**

(2) A **trustee firm** must make 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.

(3) Where a **trustee firm** has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and keep that record from the date the decision is made for a period of five years after the date it is to be effective.

7.1.15H R  A **trustee firm** to which CASS 7.1.15FR applies and which is otherwise subject to the **client money rules** must ensure that any **client money** it holds other than in its capacity as **trustee firm** is segregated from **client money** it holds as a **trustee firm**.

7.1.15I G  A **trustee firm** to which CASS 7.1.15FR applies and which is otherwise subject to the **client money rules** should ensure that in designing its systems and controls it:

(1) takes into account that the **client money distribution rules** will only apply in relation to any **client money** that the firm holds other than in its capacity as **trustee firm**; and

(2) has regard to other legislation that may be applicable.

7.1.15J R  (1) A **trustee firm** to which CASS 7.1.15FR applies may elect that:

(1) the applicable provisions of **CASS 7.4 (Segregation of client money)** and **CASS 7.6 (Records, accounts and reconciliations)** under **CASS 7.1.15FR**; and

(2) and any further provisions it elects to comply with under **CASS 7.1.15GR(1)**:

will apply separately and concurrently for each distinct trust that the **trustee firm** acts for.

(2) A **trustee firm** must make 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.

(3) Where a **trustee firm** has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and must keep that record from the date the decision is
made for a period of five years after the date it is to be effective.

7.1.15K  A 

trustee firm may wish to make an election under CASS 7.1.15JR if, for example, it acts for a number of distinct trusts which it wishes, or is required, to keep operationally separate. If a firm makes such an election then it should:

(1) establish and maintain adequate internal systems and controls to effectively segregate client money held for one trust from client money held for another trust; and

(2) conduct internal client money reconciliations as set out in CASS 7 Annex 1G and external client money reconciliations under CASS 7.6.9R for each trust.

7.1.15L  The provisions in CASS 7.1.15ER to CASS 7.1.15KG do not affect the general application of the client money rules regarding money that is held by a 

firm other than in its capacity as a trustee firm.

... 7.2  Definition Treatment of client money

...  Interest

7.2.14  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. [deleted]

7.2.14A  A firm must pay a retail client any interest earned on client money held for that client unless it has otherwise notified him in writing.

7.2.14B  (1) The firm may, under the terms of its agreement with the client, pay some, none, or all interest earned to the relevant client.

(2) Where interest is payable on client money by a firm to clients:

(a) such sums are client money and so, if not paid to, or to the order of the clients, are required to be segregated in accordance with CASS 7.4 (Segregation of client money);

(b) the interest should be paid to clients in accordance with the firm’s agreement with each client; and

(c) if the firm’s agreement with the client is silent as to when interest should be paid to the client the firm should follow CASS 7.4.28G (Allocation of client money receipts);

irrespective of whether the client is a retail client or otherwise.
Discharge of fiduciary duty

7.2.15 R Money ceases to be client money (having regard to CASS 7.2.17R where applicable) if:

…

(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 7.5.2 R (Transfer of client money to a third party); or:

(a) paid to a third party on the instruction of, or with the specific consent of, the client unless it is transferred to a third party in the course of effecting a transaction under CASS 7.5.2R (Transfer of client money to a third party); or

(b) paid to a third party pursuant to an obligation on the firm where:

(1) that obligation arises under an enactment; and

(2) the obligation under that enactment is applicable to the firm as a result of the nature of the business being undertaken by the firm for its client; or

(3) subject to CASS 7.2.16AR, it is paid into a bank account of the client (not being an account which is also in the name of the firm); or

…

(9) it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment directly to the indirect clients of the firm in accordance with CASS 7.2.15CR(2).

…

7.2.15D R Client money received or held by the firm for a sub-pool ceases to be client money for that firm to the extent that such client money is transferred by the firm to an authorised central counterparty or a clearing member as a result of porting.

…

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.

[deleted]

7.2.16A R A firm must not pay client money into a bank account of the client that has
been opened without the consent of that client.

......

7.4 Segregation of client money

......

7.4.-1 R Where a firm establishes one or more sub-pools, the provisions of CASS 7.4 (Segregation of client money) shall be read as applying separately to the firm’s general pool and each sub-pool in line with CASS 7.19.3R and CASS 7.19.12R.

......

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 CASS 6. [Note: recital 23 to the MiFID implementing Directive] [deleted]

7.4.3A R Where a firm deposits client money with a qualifying money market fund, the firm’s holding of those units in that fund will be subject to any applicable requirements of the custody rules. [Note: recital 23 to 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; and

(3) if it is the case, that the units will be held as the client’s safe custody assets in accordance with the custody rules.

......

7.4.9B R For the purposes of CASS 7.4.9AR an entity is a relevant group entity if it is:

(1) a CRD credit institution, or a bank authorised in a third country, a qualifying money market fund, or the entity operating or managing a qualifying money market fund; and
Client bank accounts

7.4.11A R (1) An account which the firm uses to deposit client money under CASS 7.4.1R(1) to (3) must be a client bank account.

(2) Each client bank account used by a firm must be held on terms under which:

(a) the relevant bank’s contractual counterparty is the firm that is subject to the requirement under CASS 7.4.1R; and

(b) unless the firm has agreed terms that comply with CASS 7.4.11AR(3), the firm is able to make withdrawals of client money promptly and, in any event, within one business day of a request for withdrawal.

Transitional provision CASS TP 1.1.10AR applies to (2).

(3) Firms may use client bank accounts held on terms under which withdrawals are, without exception, prohibited until the expiry of a fixed term or a notice period of a maximum of 30 days.

(4) Paragraphs (2)(b) and (3) do not apply in respect of client money received by a firm in its capacity as a trustee firm.

7.4.11B G CASS 7.4.11AR(2)(b) and (3) do not prevent a firm from depositing client money on terms under which a withdrawal may be made before the expiry of a fixed term or a notice period (whatever the duration), including where such withdrawal would incur a penalty charge to the firm.

7.4.11C G CASS 7.4.11AR does not prevent a firm from depositing client money in overnight money market deposits which are clearly identified as being client money (for example, in the client bank account acknowledgment letter).

7.4.11D G Firms are reminded of their obligations under CASS 7.8 (Notification and acknowledgement of trust) for client bank accounts. Firms should also ensure that client bank accounts meet the requirements in the relevant Glossary definitions, including regarding the titles given to the accounts.

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 7A.2.1G (Failure of the authorised firm: primary pooling event)). The requirements of CASS 7.4.11AR(2) and (3) apply for each type of client bank account.

Commodity Futures Trading Commission Part 30 exemption order
7.4.32 G United States (US) legislation restricts the ability of non-US firms to trade on behalf of US customers on non-US futures and options exchanges. The relevant US regulator (the CFTC) operates an exemption system for firms authorised under the Act. The FCA or the PRA sponsors the application from a firm for exemption from Part 30 of the General Regulations under the US Commodity Exchange Act in line with this system. [deleted]

7.4.33 G A firm with a Part 30 exemption order undertakes to the CFTC that it will refuse to allow any US customer to opt not to have his money treated as client money if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an “eligible contract participant” as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C. In doing so, the firm is representing that if available to it, it will not make use of the opt-out arrangements in CASS 7.1.7BR to CASS 7.1.7FR in relation to that business. [deleted]

7.4.34 R A firm must not reduce the amount of, or cancel a letter of credit issued under, an LME bond arrangement where this will cause the firm to be in breach of its Part 30 exemption order. [deleted]

7.4.35 R A firm must notify the FCA immediately it arranges the issue of an individual letter of credit under an LME bond arrangement. [deleted]

7.4.36 G CASS 12 contains provisions which are relevant to a firm conducting business pursuant to the Part 30 exemption order.

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 allows another person to hold client money, to another person other than under CASS 7.4.1R, 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. Similarly, this section applies where a firm allows a broker to hold client money in respect of the firm’s client’s non-margined transactions, again without the firm discharging its fiduciary duty to that client. In these circumstances, the firm remains responsible for that client’s client 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 allows that person to hold the client money:

(a) for the purpose of a transaction one or more transactions for a client though or with that person; or

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

7.5.2A G

Client money that a firm allows another person to hold under CASS 7.5.2R:

(1) should only be held for transactions which are likely to occur (and for which the other person needs to receive client money) or have recently settled (and such that the other person has received client money); and

(2) should be recorded in client transaction accounts by that other person.

7.5.3 G

Apart from client money held by a firm in an individual client account or an omnibus client account at an authorised central counterparty, 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.

7.6 Records, accounts and reconciliations

7.6.-1 R

Where a firm establishes one or more sub-pools, the provisions of CASS 7.6 (Records, accounts and reconciliations) shall be read as applying separately to the firm’s general pool and each sub-pool in line with CASS 7.19.3R and CASS 7.19.4R.

7.6.4 R

Unless otherwise stated, a firm must ensure that records are recorded under CASS 7.6.1R and CASS 7.6.2R for a period of five years after they were made starting from the later of:

(1) the date it was created; and

(2) (if it has been modified since the date it was created), the date it was most recently modified.
7.7 Statutory trust

7.7.2 A subject to CASS 7.7.3R in respect of a trustee firm, a firm receives and holds client money as trustee (or in Scotland as agent) on the following terms:

(1) ...

(2) (a) where a firm maintains only a general pool of client money, subject to (4), for the clients (other than clients which are insurance undertakings when acting as such with respect to 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;

(b) where a firm has established one or more pools of client money, subject to (4):

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

   (ii) each sub-pool is for the clients of the firm who are beneficiaries of the sub-pool in question in accordance with CASS 7.19.6R(2), 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) if such distribution takes place following the failure of the firm; and

7.7.3 A trustee firm which is subject to the client money rules by virtue of CASS 7.1.1AR(2) receives and holds client money as trustee (or in Scotland as agent) on the terms in CASS 7.7.2R, subject to its obligations to hold client money as trustee under the relevant instrument of trust.

(1) must receive and hold client money in accordance with the relevant instrument of trust;

(2) subject to the relevant instrument of trust, receives and holds client
money on trust on the terms (or in Scotland on the agency terms) specified in CASS 7.7.2R.

7.7.4 G If a trustee firm holds client money in accordance with CASS 7.7.3R(2), the firm should follow the provisions in CASS 7.1.15ER to CASS 7.1.15LG.

... After CASS 7.9 insert the following new sections:

7.10 [to follow]
7.11 [to follow]
7.12 [to follow]
7.13 [to follow]
7.14 [to follow]
7.15 [to follow]
7.16 [to follow]
7.17 [to follow]
7.18 [to follow]

After CASS 7.18 insert the following new section. The text is not underlined.

7.19 Clearing member client money sub-pools

7.19.1 G (1) Under CASS 7.7.2R(2), a firm acts as trustee for all client money received or held by it for the benefit of the clients for whom that client money is held, according to their respective interests in it.

(2) A firm that is also a clearing member of an authorised central counterparty may wish to segregate client money specifically for the benefit of a group of clients who have chosen to clear positions through a net margined omnibus client account maintained by the firm with that authorised central counterparty, where that segregation might facilitate the porting of client positions recorded in that net margined omnibus client account. To segregate client money (that would otherwise be held in the general pool) for a specific group of clients clearing positions through a particular net margined omnibus client account, a clearing member firm may, in accordance with these rules, create a sub-pool of client money.
(3) Upon the occurrence of a primary pooling event, the client money for:

(a) the general pool, should be distributed in accordance with CASS 7A to the clients for whom the firm receives or holds client money in that general pool; and

(b) a sub-pool, should either be:

(i) transferred to facilitate porting; or

(ii) distributed to the clients who are beneficiaries of that sub-pool, according to their respective interests under CASS 7A.2.4R(2)(a).

(4) All client money is received or held by the firm as trustee for the clients of the firm. However, a clearing member of an authorised central counterparty who clears client positions through a net margined omnibus client account may organise its affairs (with the consent of the relevant clients) in such a way that those clients need not share in the general pool of client money following a primary pooling event, save to the extent that such clients otherwise have an interest in the general pool.

7.19.2 R Where a firm creates a sub-pool for a particular net margined omnibus client account, it must not clear positions through that omnibus client account for clients who are not beneficiaries of that sub-pool.

Internal controls

7.19.3 R A firm wishing to establish a sub-pool must establish and maintain adequate internal controls necessary to comply with the firm’s obligations under CASS 7 for the general pool and each sub-pool that it may establish.

Records

7.19.4 R Where a firm establishes one or more sub-pools, CASS 7.6 (Records, accounts and reconciliations) shall be read as applying separately to the firm’s general pool and each sub-pool.

7.19.5 G A firm that establishes one or more sub-pools must establish and maintain adequate internal controls and records in accordance with CASS 7.6 (Records, accounts and reconciliations) to conduct internal and external reconciliations for each sub-pool and the general pool individually.

7.19.6 R (1) The records maintained for a sub-pool under CASS 7.19.4R must identify all the client beneficiaries of that sub-pool.

(2) The beneficiaries of each sub-pool are those clients:

(a) from whom the firm has received a signed sub-pool disclosure document in accordance with CASS 7.19.11R;
(b) for whom the firm maintains, previously maintained or is in the process of establishing a margined transaction(s) in the relevant net margined omnibus client account at the authorised central counterparty; and

(c) to whom any client equity balance or other client money is required to be segregated for the client by the firm in respect of the margined transactions under (2)(b) from that sub-pool.

7.19.7 R (1) For each sub-pool that the firm establishes, it must maintain a record of:

(a) the name of the sub-pool;

(b) the particular net margined omnibus client account at an authorised central counterparty to which the sub-pool relates;

(c) each client bank account and each client transaction account (other than the net margined omnibus client account) maintained for the sub-pool, including the unique identifying reference or descriptor under CASS 7.19.13R(2); and

(d) the applicable sub-pool disclosure document for the sub-pool.

7.19.8 R The firm must maintain an up-to-date list of all the sub-pools it has created.

Sub-pool disclosure document

7.19.9 R (1) A firm wishing to establish a sub-pool must prepare a sub-pool disclosure document for each sub-pool.

(2) The sub-pool disclosure document for each sub-pool must:

(a) identify the sub-pool by name, as stated in its records under CASS 7.19.7R, the net margined omnibus client account and the authorised central counterparty to which the sub-pool disclosure document relates;

(b) contain a statement that the client consents to the firm receiving and holding the client’s client money in the sub-pool;

(c) contain a statement that, in the event of the failure of the firm, the firm is directed by the client to use any client money held by the firm in the sub-pool to facilitate the porting of the positions recorded in that net margined omnibus client account; and

(d) a statement reminding the client that, in the event of the failure of the firm, if porting is not effected or if porting is effected but any money in the sub-pool is not used to facilitate porting, the client beneficiaries of the sub-pool will be entitled to a distribution of any client money held for that sub-pool in
accordance with CASS 7A. However, the client beneficiaries will not have a claim on any other pool of client money, except to the extent that the client is a beneficiary of another pool.

7.19.10 G In preparing a sub-pool disclosure document under CASS 7.19.9R(1), a firm may use the template in CASS 7 Annex 6G.

7.19.11 R (1) Before receiving or holding client money for a client for a sub-pool, a firm must:

(a) provide to the client a copy of the sub-pool disclosure document applicable to that sub-pool; and

(b) obtain a signed copy of that sub-pool disclosure document from the client.

(2) A firm must provide the beneficiary of a sub-pool with a copy of its signed sub-pool disclosure document applicable to that sub-pool upon the beneficiary’s request.

Segregation and operation of sub-pools

7.19.12 R Where a firm establishes one or more sub-pools, CASS 7.4 (Segregation of client money) shall be read as applying separately to the firm’s general pool and each sub-pool.

7.19.13 R (1) A firm must not hold client money for a sub-pool in a client bank account or a client transaction account used for holding client money for any other sub-pool or the general pool.

(2) A firm that establishes a sub-pool must ensure that the name of each client bank account and each client transaction account (other than the net margined omnibus client account) maintained for that sub-pool includes a unique identifying reference or descriptor that enables the account to be identified with that sub-pool.

(3) Where a client of the firm is a beneficiary of the general pool and wishes to become a beneficiary of a sub-pool, the client in question shall become a beneficiary of the relevant sub-pool when:

(a) the firm has obtained the signed sub-pool disclosure document from that client in accordance with CASS 7.19.11R(1); and

(b) the firm has either:

(i) transferred the relevant amount of client money for that client from a client bank account maintained for the general pool to a client bank account maintained for the relevant sub-pool; or

(ii) if the firm is not making a transfer of client money from the general pool, when it has received that client’s money
in a client bank account maintained for the relevant sub-pool.

(4) Where a client of the firm is a beneficiary of the general pool and wishes to become a beneficiary of a sub-pool, the firm must ensure that it does not transfer client money from a client bank account maintained for the general pool to a client bank account maintained for a sub-pool in accordance with CASS 7.19.13R(3)(b)(i), unless the amount of client money held for the general pool is sufficient, immediately after that transfer, to satisfy the firm’s client money obligations to the remaining beneficiaries of the general pool.

(5) A client of the firm who is a beneficiary of a sub-pool ceases to be a beneficiary of that sub-pool when:

(a) the firm has settled the amount owing to that client for all of the margined transactions cleared through the related net margined omnibus client account and no longer holds any client money for that client in that sub-pool, and so CASS 7.19.6R(2)(b) and (c) no longer apply for that client; or

(b) the firm has complied with (i) or (ii), and in either case (iii):

(i) the firm has received a written instruction from the client stating that the client no longer wishes to have its positions cleared through the net margined omnibus client account or its client money held in that sub-pool, or the firm has notified the client under CASS 7.19.18R that it is making a material change to a sub-pool; or

(ii) the firm has closed or moved that client’s positions to an account other than the net margined omnibus client account referable to that sub-pool; and

(iii) the firm has either transferred the relevant amount of client money for that client from a client bank account maintained for the relevant sub-pool to a client bank account maintained by the firm for the general pool (or, if applicable, another sub-pool), or transferred the amount owing to that client for all of the margined transactions cleared through the related net margined omnibus client account and no longer holds any client money for that client in that sub-pool.

(6) In relation to the transfer of client money under CASS 7.19.13R(5)(b)(iii), a firm must ensure that it does not transfer client money from a client bank account maintained for a sub-pool, unless the amount of client money held for the sub-pool is sufficient, immediately after that transfer, to satisfy the firm’s client money obligations to the remaining beneficiaries of that sub-pool.
7.19.14 R A firm that receives client money to be credited in part to the general pool or one sub-pool and in part to another sub-pool must:

(1) take the necessary steps to ensure that the full sum is paid directly into a client bank account maintained for the general pool; and

(2) promptly, and in any event no later than one business day after receipt, pay the money that is not client money for the general pool out of that client bank account and into a client bank account maintained for the appropriate sub-pool.

7.19.15 G (1) If a primary pooling event occurs before client money is transferred from a client bank account maintained for the general pool to a client bank account maintained for the appropriate sub-pool in accordance with CASS 7.19.14R(2), the amount in question will not form part of that sub-pool, including for the purposes of CASS 7A.2.4R(1).

(2) If a primary pooling event occurs before client money is transferred from a client bank account maintained for a sub-pool to a client bank account maintained for the general pool or another sub-pool in accordance with CASS 7.19.13R(5), the amount in question will not form part of the general pool or that other sub-pool, including for the purposes of CASS 7A.2.4R(1), but will remain part of the original sub-pool.

7.19.16 R A client for whom a firm receives or holds client money for a sub-pool has no claim to or interest in client money received or held for the general pool or any other sub-pool unless:

(1) that client is a beneficiary of that other sub-pool; or

(2) the firm receives or holds client money for that client for other business which does not relate to any sub-pool (and thus the client is a beneficiary of the firm’s general pool).

7.19.17 R A client for whom a firm receives or holds client money in more than one pool as described in CASS 7.19.16R(1) and/or (2) has an interest in a distribution from each such pool, and each interest is separate and distinct.

Material changes to sub-pools

7.19.18 R Before making a material change to a sub-pool, a firm must:

(1) notify the then current beneficiaries of that sub-pool in writing, not less than two months before the date on which the firm intends the change to take effect; and

(2) include in the notification an explanation of the consequences for the beneficiaries of the proposed change and the options available to them, such as the option of a beneficiary of the affected sub-pool to cease to be a beneficiary of that sub-pool and to become a beneficiary of the
A firm should keep in mind its obligations under CASS 7.19.11R(1)(b) (before receiving or holding client money for a client in a sub-pool, a firm must obtain a signed copy of the sub-pool disclosure document from the client) when making a material change to a sub-pool. A firm is also reminded of the conditions under CASS 7.19.13R(5)(b) (when a client of the firm who is a beneficiary of a sub-pool ceases to be a beneficiary of that sub-pool) if a material change proposed to a sub-pool results in a client ceasing to be a beneficiary of that sub-pool.

The FCA would normally consider the dissolution of a sub-pool, such that the firm no longer operates the sub-pool or no longer uses the relevant net margined omnibus client account or transfers the business to another authorised central counterparty, to be examples of material changes to a sub-pool.

Before materially changing a sub-pool, a firm must provide a copy of the notice provided to clients under CASS 7.19.18R to the FCA not less than two months before the date on which the firm intends the change to take place.

A firm that wishes to establish a sub-pool of client money must notify the FCA in writing not less than two months before the date on which the firm intends to receive or hold client money for that sub-pool.

Upon request, a firm must deliver to the FCA a copy of the sub-pool disclosure document for any sub-pool established by the firm.

A firm must inform the FCA in writing, without delay, if it has not complied, or is unable to comply with the requirements in CASS 7.19.11R or the requirements in CASS 7.19.18R.

The records maintained under this section, including the sub-pool disclosure documents, are a record of the firm that must be kept in a durable medium for at least five years following the date on which client money was last held by the firm for a sub-pool to which those records or the sub-pool disclosure document applied.

After CASS 7 Annex 1G insert the following new annexes.

7 Annex 2 [to follow]
7 Annex 3 [to follow]
After CASS 7 Annex 5, insert the following new annex (on the next page). The text is not underlined.
7 Annex 6G  Sub-pool disclosure document

[letterhead of firm, including full name and address of firm, firm reference number]

[addressee – client participating in specified sub-pool]

[date]

Sub-pool disclosure document (under the rules of the Financial Conduct Authority)

1. The sub-pool to which this sub-pool disclosure document relates is designated in the firm’s records as:

   [insert name of sub-pool in firm’s records]

   (for the purposes of this document, the “sub-pool”)

2. The net margined omnibus client account relating to the sub-pool is held at [insert name of authorised CCP] and is designated as:

   [insert the account title, the account unique identifier and (if applicable) any abbreviated name of the account as reflected in the authorised CCP’s systems]

   (for the purposes of this document, the “omnibus client account”).

3. The purpose of this letter is to:

   (a) provide you with information relating to the sub-pool [operated or to be operated] by [insert name of CASS firm] in relation to the omnibus client account held by the firm at [insert name of authorised CCP];

   (b) obtain your consent to holding your money in the sub-pool; and

   (c) confirm your direction that upon the failure of [insert name of CASS firm], we are to use any client money held by the firm in the sub-pool to facilitate porting.

4. [name of CASS firm] will hold any client money that we receive from you in relation to the cleared transactions that we maintain for you in the omnibus client account in client bank accounts that we open in relation to the sub-pool, or we will allow the CCP to hold this client money in the omnibus client account.

5. In the event of the failure of the [insert name of CASS firm], you hereby direct the [insert name of CASS firm] to use any client money held by the [insert name of CASS firm] in the sub-pool to facilitate the porting of the positions recorded in the omnibus client account.

6. In the event of the failure of [insert name of CASS firm], if porting is not effected, or if porting is effected but any money in the sub-pool is not used to facilitate porting, you and the other beneficiaries of the sub-pool will be entitled to a distribution from any client money held in respect of this sub-pool, in accordance with the client money distribution rules in CASS 7A. Save to the extent that [insert name of CASS firm] holds any other client money for you in the context of any other business or sub-pool, you will not be entitled to a distribution of any other client money held by [insert name of CASS firm].

7. You hereby consent to the firm receiving and holding your money as client money as part of [sub-pool specified above or specify name of sub-pool]. Until you sign and return this letter the firm will not hold money for you in the sub-pool and you will not be a beneficiary of the sub-pool.
8. This letter shall be governed by the laws of [England and Wales/Scotland/Northern Ireland /insert appropriate jurisdiction].

If you are in agreement with the foregoing terms, please sign and return the enclosed copy of this letter as soon as possible. You should retain a copy of this letter for your records.

[insert name of CASS firm]

x___________________________
Authorised signatory
Print name:
Title:

ACKNOWLEDGED AND AGREED:
[insert name of client]

x___________________________
Authorised signatory
Print name:
Title:
Contact information: [insert signatory’s phone number and email address]
Date:
Amend the following as shown.

7A Client money distribution

7A.1 Application and purpose

Application

7A.1.1 R This Subject to CASS 7A.1.1AR, this chapter (the client money 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.

7A.1.1A R The client money distribution rules do not apply to any client money held by a trustee firm under CASS 7.1.15FR to 7.1.15LG.

7A.1.1B G As a result of CASS 7A.1.1AR, the client money distribution rules relating to primary pooling events and secondary pooling events will not affect any client money held by a firm in its capacity as trustee firm. Instead, the treatment of that client money will be determined by the terms of the relevant instrument of trust or by applicable law. However, the client money distribution rules do apply to a firm for any client money that it holds other than in that capacity which is subject to the client money rules.

...

7A.2 Primary pooling events

...

7A.2.3A R If a primary pooling event occurs in circumstances where the firm had, before the primary pooling event, reduced its margined transaction requirement by utilising approved collateral under CASS 7 Annex 1G paragraph 15, it must immediately liquidate this approved collateral and place the proceeds in a client bank account.

7A.2.3B R CASS 7A.2.7R (Client money received after the failure of the firm) does not apply to the proceeds under CASS 7A.2.3AR.

7A.2.3C G The proceeds of the assets realised under CASS 7A.2.3AR:

(1) will form part of the notional pool of client money (see CASS 7A.2.4R (Pooling and distribution); and

(2) must be distributed in accordance with this chapter.

...
Pooling and distribution

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

(1) in respect of the general pool or a sub-pool, all client money held in a client bank account or a client transaction account of the firm relating to that pool is treated as pooled (forming a notional pool) a single notional pool of client money for the beneficiaries of that pool, except for client money held in a client transaction account at an authorised central counterparty or a clearing member which is, in either case, held as part of a regulated clearing arrangement;

(2) the firm must distribute 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:

(a) distribute client money comprising a notional pool in accordance with CASS 7.7.2R, so that each client who is a beneficiary of that pool receives a sum which is rateable to the client money entitlement calculated in accordance with CASS 7A.2.5R; or

(b) (where applicable) transfer client money comprising a sub-pool to effect or facilitate porting of positions held for the clients who are beneficiaries of that sub-pool; and

(3) if, in connection with a regulated clearing arrangement, client money is remitted directly to the firm either from an authorised central counterparty or from a clearing member, then:

…

(b) subject to (3)(c) and (d), 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)(a); and

(c) any such remittance in respect of a client transaction account that is an omnibus client account must be distributed to the relevant clients for whom that omnibus client account is held if:

…

(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 or, in the case of indirect clients, the clearing member;
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 or clearing member subject to CASS 7.7.2R(4); and

(d) any such remittance in respect of a client transaction account that is a net margined omnibus client account in respect of which the firm maintains a sub-pool must form part of such sub-pool to be distributed in accordance with CASS 7A.2.4R(2(a).

7A.2.4A G (1) Under EMIR, where a firm that is a clearing member clearing member of an authorised central counterparty defaults, the authorised central counterparty may:

…

…

(5) The firm’s obligation to its client in respect of client money held in a sub-pool is discharged to the extent that the firm transfers that client money to facilitate porting in accordance with CASS 7.2.15R(8).

7A.2.5 R …

(1) When, in respect of a client who is a beneficiary of a pool, there is a positive individual client balance balance and a negative client equity balance in relation to that pool, the credit for that pool must be offset against the debit reducing the individual client balance balance for that client.

(2) When, in respect of a client who is a beneficiary of a pool, there is a negative individual client balance balance and a positive client equity balance in relation to that pool, the credit for that pool must be offset against the debit for that pool reducing the client equity balance for that client.

…

Client money received after failure of the firm

7A.2.7 R Client money received by the firm after a primary pooling event in respect of a pool must not be pooled with client money held in any client money account operated by the firm either in respect of that pool or any other pool 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:

...

7A.3 Secondary pooling events

...

7A.3.4 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 7A.3.6R. The firm would be expected to reflect the shortfall that arises at the failed bank in the general pool (where the firm maintains only a general pool) and, where relevant, in a particular sub-pool (where the firm maintains both a general pool and one or more sub-pools) in its records of the entitlement of clients and of money held with third parties under CASS 7.6 (Records, accounts and reconciliations).

...

7A.3.6 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 for the general pool or a particular sub-pool, then:

(1) in relation to every general client bank account of the firm maintained in respect of that pool, the provisions of CASS 7A.3.8R, CASS 7A.3.13R and CASS 7A.3.14R will apply;

(2) in relation to every designated client bank account held by the firm with the failed bank for the relevant pool, the provisions of CASS 7A.3.10R, CASS 7A.3.13R and CASS 7A.3.14R will apply;

(3) in relation to each designated client fund account held by the firm with the failed bank for the relevant pool, the provisions of CASS 7A.3.11R, CASS 7A.3.13R and CASS 7A.3.14R will apply;

(4) any money held at a bank, other than the bank that has failed, in designated client bank accounts for the relevant pool, is not pooled with any other client money held for that pool or any other pool; and

(5) any money held in a designated client fund account in respect of that pool, no part of which is held by the bank that has failed, is not pooled with any other client money held for that pool or any other pool.

7A.3.7 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 in respect of a pool, then:
(1) in relation to every designated client bank account held by the firm with the failed bank in respect of that pool, the provisions of CASS 7A.3.10R, CASS 7A.3.13R and CASS 7A.3.14R will apply; and

(2) in relation to each designated client fund account held by the firm with the failed bank in respect of that pool, the provisions of CASS 7A.3.11R, CASS 7A.3.13R and CASS 7A.3.14R will apply.

7A.3.8 R Money held in each general client bank account and client transaction account of the firm for the general pool or a sub-pool must be treated as pooled and:

(1) any shortfall in client money held, or which should have been held, in general client bank accounts or client transaction accounts for the relevant pool, that has arisen as a result of the failure of the bank, must be borne by all the clients of that pool whose client money is held in either a such 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 of the relevant pool by the firm, to reflect the requirements in (1), and the firm’s records must be amended to reflect the reduced client money entitlement;

... 

(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) for that pool, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

... 

7A.3.10 R For each client with a designated client bank account maintained by the firm for the general pool or a particular sub-pool and 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 of the relevant pool whose client money is held in a designated client bank account of the firm at the failed bank, rateably in accordance with their client money entitlements;

(2) a new client money entitlement must be calculated for each of the relevant clients of the relevant pool by the firm, and the firm’s records must be amended to reflect the reduced client money entitlement;
…

(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) in respect of the relevant pool, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

7A.3.11 R Money held by the firm in each designated client fund account for the general pool or a particular sub-pool with the failed bank must be treated as pooled with any other designated client fund accounts for the general pool or a particular sub-pool as the case may be 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 of the relevant pool 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 of the relevant pool by the firm, in accordance with (1), and the firm’s records must be amended to reflect the reduced client money entitlement;

…

(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) for the relevant pool, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

…

Client money received after the failure of a bank

7A.3.13 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, for either the general pool or a particular sub-pool:

…

(2) must be, subject to (1), placed in a separate client bank account relating to the general pool or the particular sub-pool as the case may be 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
(b) returned to the client as soon as possible.

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

7A.3.16 R If a secondary pooling event occurs as a result of the failure of an intermediate broker, settlement agent or OTC counterparty, then in relation to every general client bank account and client transaction account of the firm relating to the general pool or a particular sub-pool as the case may be, the provisions of CASS 7A.3.17R and CASS 7A.3.18R will apply.

7A.3.17 R Money held in each general client bank account and client transaction account of the firm relating to the general pool or a particular sub-pool as the case may be, 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, must be borne by all the clients whose client money is held in either a general client bank account or a client transaction account of the firm relating to the general pool or the particular sub-pool as the case may be, 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 relating to the general pool or the particular sub-pool as the case may be;

... Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty

7A.3.18 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 relating to the general pool or a particular sub-pool as the case may be:

... must be, subject to (1), placed in a separate client bank account relating to the general pool or the particular sub-pool as the case may be, that has been opened after the secondary pooling event and either:

(2) on the written instruction of the client, transferred to a third party other than the one that has failed; or
12 Commodity Futures Trading Commission Part 30 exemption order

12.1 Application

12.1.1 R This chapter applies to a firm conducting business pursuant to the Part 30 exemption order.

12.1.2 G United States (‘US’) legislation restricts the ability of non-US firms to trade on behalf of customers resident in the US (‘US customers’) on non-US futures and options exchanges. The relevant US regulator (the CFTC) operates an exemption system for firms authorised under the Act. Under the Part 30 exemption order, eligible firms may apply for confirmation of exemptive relief from Part 30 of the General Regulations under the US Commodity Exchange Act. Under this system, both the applicant firm and the FCA must make certain written representations to the CFTC.

12.2 Treatment of client money

12.2.1 G Under condition 2(g) of the Part 30 exemption order, a firm with exemptive relief represents to the CFTC that it consents to refuse to allow any US customer the option of not having its money treated as client money if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an "eligible contract participant" as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C.

12.2.2 G The FCA understands that in complying with condition 2(g) of the Part 30 exemption order, a firm is representing that it will not:

1. make use of the opt-out arrangements in CASS 7.1.7CR to CASS 7.1.7GG; or

2. conduct business to which the client money rules do not apply because of the exemption for CRD credit institutions and approved banks in CASS 7.1.8R to CASS 7.1.11AR; or

3. enter into any arrangement relating to the transfer of full ownership of the client’s money to the firm for the purposes set out in CASS 7.2.3R(1);

in relation to business conducted pursuant to the Part 30 exemption order.

LME bond arrangements
12.2.3 G For firms with exemptive relief under the Part 30 exemption order, the CFTC has issued certain no-action letters which, on the FCA’s understanding, would allow such firms to use an LME bond arrangement as an alternative to complying with condition 2(g) of the Part 30 exemption order. Under an LME bond arrangement, a firm may arrange for a binding letter of credit to be issued to cover the ‘secured amount’ (as defined by section 30.7 of the General Regulations under the US Commodity Exchange Act). The letter of credit must be drawn up in a pre-specified format and may be issued in respect of either:

(1) an omnibus account in favour of a specified trustee; or

(2) a specified client who is the named beneficiary.

12.2.4 R A firm must not reduce the amount of, or cancel a letter of credit issued under, an LME bond arrangement where this will cause the firm to be in breach of the conditions of the Part 30 exemption order.

12.2.5 R A firm must notify the FCA immediately if it arranges the issue of a letter of credit for a specified client who is the named beneficiary under an LME bond arrangement.

12.2.6 G A firm’s use of an LME bond arrangement does not remove the need for the firm to act in accordance with the client money rules.

Amend the following as shown.

Transitional Provisions

TP 1.1

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>10</td>
<td>CASS 7.2.3R(2) …</td>
<td>…</td>
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<td></td>
</tr>
</tbody>
</table>

10 A CASS 7.4.11AR(2) R (1) The rule in column (1) applies when a firm enters into a new contract with a bank to provide a client bank account. (2) In relation to an

Indefinitely 1 July 2014
arrangement under which a firm holds a client bank account with a bank that is in place as at the date in column (5), and as soon as it is permitted to do so under that arrangement, the firm must terminate any contract that does not comply with the rule in column (1) and enter into a new contract (in respect of which (1) shall apply). If necessary to comply with the rule in column (1), a firm must move client money into another client bank account under compliant terms.

Insert the following new rows in the appropriate numerical position in Schedule 1 (Record keeping requirements). The new text is not underlined.

Sch 1.3G

<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>
</tr>
</thead>
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<tr>
<td>...</td>
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</tr>
<tr>
<td>CASS 6.5.3R</td>
<td>Default record keeping provision for CASS 6</td>
<td>Refer to the rule concerned</td>
<td>Refer to the rule concerned</td>
<td>Five years from the later of: (1) the date it was created; and (2) if it has been modified since the date in (1), the date it was most recently modified</td>
</tr>
<tr>
<td>CASS 7.1.15GR</td>
<td>Trustee firm’s election to comply, or to cease to comply, with specific CASS</td>
<td>Relevant provisions, date of election and of any decision to cease to comply</td>
<td>When election made or decision taken to cease to comply</td>
<td>Five years after ceasing to use the election</td>
</tr>
<tr>
<td>#</td>
<td>Provisions</td>
<td>Relevant Provisions, Date of Election and of Any Decision to Cease to Comply</td>
<td>When Election Made or Decision Taken to Cease to Comply</td>
<td>Duration After Cessation</td>
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</tr>
<tr>
<td>1</td>
<td><strong>CASS 7.1.15JR</strong>&lt;br&gt;Trustee firm’s election to comply, or to cease to comply, with specific CASS 7 provisions</td>
<td>Relevant provisions, date of election and of any decision to cease to comply</td>
<td>When election made or decision taken to cease to comply</td>
<td>Five years after ceasing to use the election</td>
</tr>
<tr>
<td>2</td>
<td><strong>CASS 7.6.4R</strong>&lt;br&gt;Default record keeping provision for CASS 7</td>
<td>Refer to the rule concerned</td>
<td>Refer to the rule concerned</td>
<td>Five years from the later of:&lt;br&gt;(1) the date it was created; and&lt;br&gt;(2) if it has been modified since the date in (1), the date it was most recently modified</td>
</tr>
<tr>
<td>3</td>
<td><strong>CASS 7.19.6R</strong>&lt;br&gt;For each sub-pool established by the firm</td>
<td>All the client beneficiaries of that sub-pool</td>
<td>From the date on which the sub-pool is created</td>
<td>Five years following the date on which client money was last held by the firm in relation to the sub-pool to which the record applied</td>
</tr>
<tr>
<td>4</td>
<td><strong>CASS 7.19.7R</strong>&lt;br&gt;For each sub-pool established by the firm</td>
<td>(a) The name of the sub-pool&lt;br&gt;(b) The identity of the net margined omnibus account to which the sub-pool relates;&lt;br&gt;(c) Each client bank account and each client transaction account maintained for the sub-pool;&lt;br&gt;(d) the applicable sub-pool disclosure document for</td>
<td>Prior to the date on which the firm intends to receive or hold client money for that sub-pool</td>
<td>Five years following the date on which client money was last held by the firm in relation to the sub-pool to which the record applied</td>
</tr>
</tbody>
</table>
For each sub-pool established by the firm:

A list of all the sub-pools the firm has created.

From the date on which a sub-pool is created.

Five years following the date on which client money was last held by the firm in relation to a sub-pool to which the record applied.

For each sub-pool established by the firm:

A sub-pool disclosure document.

At the time of establishing the relevant sub-pool.

Five years following the date on which client money was last held by the firm in relation to a sub-pool to which the sub-pool disclosure document applied.

Amend the following as shown:

<table>
<thead>
<tr>
<th>Handbook reference</th>
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<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
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<td>...</td>
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</tr>
<tr>
<td>CASS 7.19.15C R</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>Not specified (see default provision CASS 7.6.4R)</td>
</tr>
</tbody>
</table>

Insert the following new rows in the appropriate numerical position in Schedule 2 (Notification requirements). The new text is not underlined.

Sch 2.1G

<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>CASS 7.19.21R</td>
<td>Material change to sub-pool</td>
<td>Fact of proposed change, risks and consequences to beneficiaries</td>
<td>Firm determining that it wishes to make material change to a sub-pool</td>
<td>Not less than two months before the date on which the firm intends the change to take effect</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Matter to be notified</td>
<td>Contents of notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
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<tr>
<td>CASS 7.19.22R</td>
<td>Establishment of a sub-pool of client money to FCA</td>
<td>Firm wishes to establish a sub-pool of client money</td>
<td>Firm determining that it wishes to establish a sub-pool of client money</td>
<td>Not less than two months before the date on which the firm intends to receive or hold client money for that sub-pool</td>
</tr>
<tr>
<td>CASS 7.19.24R</td>
<td>Non-compliance, or inability to comply with, with the requirements in CASS 7.19.11R or CASS 7.19.18R</td>
<td>The fact that the firm has not complied with, or is unable to comply with, the requirements of CASS 7.19.11R or CASS 7.19.18R (as applicable)</td>
<td>Non-compliance with the applicable requirement</td>
<td>Without delay</td>
</tr>
</tbody>
</table>

In CASS Sch 2.1G amend the following as shown and move to its appropriate numerical position.

<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>CASS 7.4.35R</td>
<td>LME bond arrangements</td>
<td>Issue of an individual letter of credit issued by the firm</td>
<td>Upon issue of an individual letter of credit under an LME bond arrangement</td>
<td>Immediately</td>
</tr>
</tbody>
</table>
6 Custody rules

6.1 Application

...  

6.1.6B R (1) A firm must ensure that any arrangement relating to the transfer of full ownership of a client’s safe custody asset to the firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) is the subject of a written agreement made on a durable medium between the firm and the client.

(2) Regardless of the form of the agreement in (1) (which may have additional commercial purposes), it must cover the client’s agreement to:

(a) the terms for the arrangement relating to the transfer of the client’s full ownership of the safe custody asset to the firm;

(b) any terms under which the ownership of the safe custody asset is to transfer from the firm back to the client; and

(c) (to the extent not covered by the terms under (b)), any terms for the termination of:

(i) the arrangement under (a); or

(ii) the overall agreement in (1).

(3) A firm must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.

6.1.6C G The terms referred to in CASS 6.1.6BR(2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of the safe custody asset to the firm is not in effect from time to time, or is contingent on some other condition.

...  

Delivery versus payment transactions transaction exemption

6.1.12 R (1) A subject to (2) and CASS 6.1.12BR and with the written agreement of the relevant client, 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 safe custody asset is either to be:
in respect of a client’s purchase, due to the client within one business day following the client’s fulfilment of a payment obligation the firm intends for the asset in question to be due to the client within one business day following the client’s fulfilment of its payment obligation to the firm; or

(b) in respect of a client’s sale, due to the firm within one business day following the fulfilment of a payment obligation the firm intends for the asset in question to be due to the firm within one business day following the firm’s fulfilment of its payment obligation to the client.

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 safe custody asset 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 client money chapter) instead of the client’s safe custody assets. If the payment or delivery by the firm to the client has not occurred by the close of business on the third business day following the date on which a firm makes use of the exemption under (1), the firm must stop using that exemption for the transaction.

(3) If the period referred to in CASS 6.1.12R(2) has expired before such a delivery versus payment transaction through a commercial settlement system has settled, a firm may, until settlement and provided that doing so is consistent with the firm’s permissions and it complies with (4), segregate the firm’s own money as client money (in accordance with the client money rules) of an amount equivalent to the value at which that safe custody asset is reasonably expected to settle instead of holding the client’s safe custody assets (in accordance with the custody rules).

(4) Where a firm intends to segregate money as client money instead of the client’s safe custody asset under (3) it must, before doing so, ensure that this would result in money being held for the relevant client in respect of the shortfall under CASS 7.7.2R (statutory trust).

(5) Where a firm segregates an amount of client money instead of the client’s safe custody assets under (3) it must also:

(a) ensure the money is segregated under CASS 7.4 (Segregation of client money) and recorded as being held for the relevant client(s) under CASS 7.6 (Records, accounts and reconciliations);

(b) keep a record of the actions the firm has taken under this rule which includes a description of the safe custody asset in question, identifies the relevant affected client, and specifies the amount of money that the firm has appropriated as client
money to cover the value of the safe custody asset; and

(c) update the record made under (5)(b) when the transaction in question has settled and the firm has re-appropriated the money.

6.1.12A G (1) The amount of client money a firm segregates for the purposes of CASS 6.1.12R(3) may be determined by the previous day’s closing mark to market valuation of the relevant safe custody asset or, if in relation to a particular safe custody asset none is available, the most recent available valuation.

(2) Where a firm is segregating money for the purposes of CASS 6.1.12R(3) it should, as regularly as necessary, and having regard to Principle 10:

(a) review the value of the safe custody asset in question in line with (1); and

(b) where the firm has found that the value of the safe custody asset has changed, adjust the amount of money it has appropriated to ensure that these monies are sufficient to cover the latest value of the safe custody asset.

6.1.12B R A firm cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under CASS 6.1.12R in either or both of the following circumstances:

(1) it is not a direct member or participant of the relevant commercial settlement system, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that commercial settlement system;

(2) the transaction in question is being settled by another person on behalf of the firm through an account held at the relevant commercial settlement system by that other person.

6.1.12C G Where a firm does not meet the requirements in CASS 6.1.12R or CASS 6.1.12BR for use of the exemption in CASS 6.1.12R, the firm is subject to the custody rules in respect of any safe custody asset it holds in connection with the delivery versus payment transaction in question.

6.1.12D G (1) In line with CASS 6.1.12R, where a firm receives a safe custody asset from a client in respect of a delivery versus payment transaction the firm is carrying out through a commercial settlement system in respect of a client’s sale, and the firm has not fulfilled its payment obligation to the client by close of business on the third business day following the date of the client’s fulfilment of its delivery obligation to the firm, the firm should consider whether the custody rules apply in respect of the safe custody asset pursuant to CASS 6.1.1R(1A) to (1D).
Upon settlement of a delivery versus payment transaction a firm is carrying out through a commercial settlement system (including when it is settled within the three business day period referred to in CASS 6.1.12R), in respect of:

(a) a client’s purchase, the custody rules apply to the relevant safe custody asset the firm receives upon settlement; and

(b) a client’s sale, the client money rules will apply to the relevant money received on settlement.

6.1.12E R (1) If a firm makes use of the exemption under CASS 6.1.12R, it must obtain the client’s written agreement to the firm’s use of this exemption.

(2) In respect of each client, the written agreement in (1) must be retained during the time that the firm makes use, or intends to make use, of the exemption under CASS 6.1.12R in respect of that client’s safe custody assets.

Trustees and depositaries (except depositaries of AIFs)

6.1.16F R …

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
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<tbody>
<tr>
<td>…</td>
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<tr>
<td>CASS 6.3.1R to CASS 6.3.4R</td>
<td>Depositing safe custody assets with third parties</td>
</tr>
<tr>
<td>6.3.4BG</td>
<td>…</td>
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</tbody>
</table>

Arrangers

6.1.16J R Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
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<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>CASS 6.3.1R(1A) and CASS 6.3.2G</td>
<td>Arranging for assets to be deposited with third parties</td>
</tr>
</tbody>
</table>
6.2 Holding of client assets

Allocated but unclaimed safe custody assets

6.2.8 G The purpose of CASS 6.2.10R is to set out the requirements a firm must comply with if it chooses to divest itself of a client’s unclaimed safe custody assets.

6.2.9 G Before acting in accordance with CASS 6.2.10R to CASS 6.2.16G, a firm should consider whether its actions are permitted by law and consistent with the arrangements under which the safe custody assets are held. These provisions relate to a firm’s obligations as an authorised person.

6.2.10 R A firm may either (i) liquidate an unclaimed safe custody asset it holds for a client, at market value, and pay away the proceeds or (ii) pay away an unclaimed safe custody asset it holds for a client, in either case, to a registered charity of its choice provided:

1. this is permitted by law and consistent with the arrangements under which that safe custody asset is held;

2. it has held that safe custody asset for at least 12 years;

3. in the 12 years preceding the divestment of that safe custody asset, it has not received instructions relating to any safe custody assets from or on behalf of the client concerned;

4. it can demonstrate that it has taken reasonable steps to trace the client concerned and return that safe custody asset; and

5. the firm complies with CASS 6.2.14R: the undertaking requirement.

6.2.11 E (1) Taking reasonable steps in CASS 6.2.10R(4) includes following this course of conduct:

(a) determining, as far as reasonably possible, the correct contact details for the relevant client;

(b) writing to the client at the last known address either by post or by electronic mail to inform it:

(i) of the name of the firm with which the client first deposited the safe custody asset in question;

(ii) of the firm’s intention to pay the safe custody asset to charity under CASS 6.2.10R if it does not receive...
instructions from the client within 28 days;

(c) where the client has not responded after the 28 days referred to in (b), attempting to communicate the information set out in (b) to the client on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;

(d) subject to (e) and (f), where the client has not responded within 28 days following the most recent communication, writing again to the client at the last known address either by post or by electronic mail to inform them that:

(i) as the firm received no instructions from the client, it will in 28 days pay the safe custody asset to charity under CASS 6.2.10R; and

(ii) an undertaking will be provided by the firm or a member of its group to pay to the client concerned a sum equal to the value of the safe custody asset at the time it was liquidated or paid away in the event of the client seeking to claim the safe custody asset in future;

(e) if the firm has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the client is no longer at a particular address, the firm should not use that address for the purposes of (d);

(f) if, after carrying out the steps in (a), (b) and (c), the firm has obtained positive confirmation that none of the contact details it holds for the relevant client are accurate or, if utilised, the communication is unlikely to reach the client, the firm does not have to comply with (d); and

(g) waiting a further 28 days following the most recent communication under this rule before divesting itself of the safe custody asset under CASS 6.2.10R.

(2) Compliance with (1) may be relied on as tending to establish compliance with CASS 6.2.10R(4).

(3) Contravention of (1) may be relied on as tending to establish contravention of CASS 6.2.10R(4).

6.2.12 G For the purpose of CASS 6.2.11E(1)(a), a firm may use any available means to determine the correct contact details for the relevant client, including telephoning the client, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.

6.2.13 R Where a firm liquidates a safe custody asset under CASS 6.2.10R, it must
pay away the proceeds to charity as soon as practicable.

6.2.14 R Where a firm divests itself of a client’s safe custody asset under CASS 6.2.10R, it must comply with either (1)(a) or (1)(b) and, in either case, (2).

(1) (a) The firm must unconditionally undertake to pay to the client concerned a sum equal to the value of the safe custody asset at the time it was liquidated or paid away in the event of the client seeking to claim the safe custody asset in future.

(b) The firm must ensure that an unconditional undertaking in the terms set out in (1) is made by a member of its group and there is suitable information available for relevant clients to identify the member of the group granting the undertaking.

(2) Any undertaking under this rule must be:

(a) authorised by the firm’s governing body where (1) applies or the governing body of the group member where (2) applies;

(b) legally enforceable by any person that had a legally enforceable claim to the unclaimed safe custody asset in question at the time it was divested by the firm, or by an assign or successor in title to such claim; and

(c) retained by the firm, and, where (2) applies, by the group member, indefinitely.

6.2.15 R (1) If a firm pays away a client’s unclaimed safe custody assets to charity or liquidates a client’s unclaimed safe custody assets and pays the proceeds to charity under CASS 6.2.10R it must make and retain, or where the firm already has such records, retain:

(a) records of all safe custody assets divested under CASS 6.2.10R (including details of the value of each asset at that time and the identity of the client to whom the asset was allocated);

(b) all relevant documentation (including charity receipts); and

(c) details of the communications the firm had or attempted to make with the client concerned pursuant to CASS 6.2.10R(4).

(2) Records in (1) must be retained indefinitely.

(3) If a member of the firm’s group has provided an undertaking under CASS 6.2.14R(1)(b), then the records in (1) must be readily accessible to that group member.

Costs associated with divesting allocated but unclaimed client assets

6.2.16 G Any costs associated with the firm divesting itself of safe custody assets pursuant to CASS 6.2.10R to CASS 6.2.15R should be paid for from the
firm's own funds, including:

(1) any costs associated with the firm carrying out the steps in CASS 6.2.10R(4) or CASS 6.2.11E; and

(2) the cost of any insurance purchased by a firm or the relevant member of its group to cover any legally enforceable claim in respect of the assets divested under CASS 6.2.10R.

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

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:

(1) that the title of the account indicates that any safe custody asset credited to it does not belong to the firm;

(2) that the third party will hold or record a safe custody asset belonging to the firm's client separately from any applicable asset belonging to the firm or to the third party;

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

(4) [deleted]

(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 safe custody asset caused by the fraud, wilful default or negligence of the third party or an agent appointed by him. [deleted]

Third-party custody agreements

6.3.4A R A firm must have entered into a written agreement with any person with whom it deposits clients’ safe custody assets under CASS 6.3.1R, or with
whom it arranges safeguarding and administration of assets which are clients’ safe custody assets. This agreement must, at minimum:

1. set out the binding terms of the arrangement between the firm and the third party;
2. be in force for the duration of that arrangement; and
3. clearly set out the custody service(s) that the third party is contracted to provide.

6.3.4B  

A firm should consider carefully the terms of any agreement entered into with a third party under CASS 6.3.4AR. The following terms are examples of the issues that should be addressed in these agreements (where relevant):

1. that the title of the account in the third party’s books and records indicates that any safe custody asset credited to it does not belong to the firm;
2. that the third party will hold or record a safe custody asset belonging to the firm’s client separately from any applicable asset belonging to the firm or to the third party;
3. the arrangements for registration or recording of the safe custody asset, if this will not be registered in the firm’s client’s name;
4. the restrictions over the circumstances in which the third party may withdraw assets from the account;
5. the procedures and authorities for the passing of instructions to, or by, the firm;
6. the procedures for the claiming and receiving of dividends, interest payments and other entitlements accruing to the firm’s client; and
7. the provisions detailing the extent of the third party’s liability in the event of the loss of a safe custody asset caused by the fraud, wilful default or negligence of the third party or an agent appointed by him.

…

7  

Client money rules

…

7.1.8  

The client money rules do not apply to a CRD credit institution in relation to deposits within the meaning of the CRD held by that institution. [Note: article 13(8) of MiFID and article 18(1) of the MiFID implementing
7.1.8A R In relation to the application of the client money rules (and any other rule in so far as it relates to matters covered by the client money rules) to the firms referred to in (1) and (2), the following is not client money:

(1) any deposits within the meaning of the CRD held by a CRD credit institution; and

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

(2) any money held by an approved bank that is not a CRD credit institution in an account with itself in relation to designated investment business carried on for its clients.

7.1.8B G A firm referred to in CASS 7.1.8AR must comply, as relevant, with CASS 7.1.8BAG to CASS 7.1.10CR.

7.1.8BA G The effect of CASS 7.1.8AR is that, unless notified otherwise in accordance with CASS 7.1.8DR or CASS 7.1.10AR, clients of CRD credit institutions or approved banks that are not CRD credit institutions should expect that where they pass money to such firms in connection with designated investment business these sums will not be held as client money.

7.1.8C R A firm holding money in either of the ways described in CASS 7.1.8AR must, before providing designated investment business services to the client in respect of those sums, notify the client that:

(1) the money held for that client is held by the firm as banker and not as a trustee under the client money rules; and

(2) if the firm fails, the client money distribution rules will not apply to these sums and so the client will not be entitled to share in any distribution under the client money distribution rules.

7.1.8D R A firm holding money in either of the ways described in CASS 7.1.8AR in respect of a client and providing the services to it referred to in CASS 7.1.8CR must:

(1) explain to its clients the circumstances, if any, under which it will cease to hold any money in respect of those services as banker and will hold the money as trustee in accordance with the client money rules; and

(2) set out the circumstances in (1), if any, in its terms of business so that they form part of its agreement with the client.

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:
7.1.10 Pursuant to Principle 10 (Clients’ assets), a credit institution that holds money as a deposit with itself. Where a firm receives money that would otherwise be held as client money but for CASS 7.1.8AR:

(1) it should be able to account to all of its clients for amounts held on their behalf; sums held for them at all times; and

(2) that money should, pursuant to Principle 10, be allocated to the relevant client promptly. This should be done no later than ten business days after the firm has received the money.

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.

7.1.10A If a CRD credit institution or an approved bank that is not a CRD credit institution wishes to hold client money for a client (rather than hold the money in either of the ways described in CASS 7.1.8AR) it must, before providing designated investment business services to the client, disclose the following information to the client:

(1) that the money held for that client in the course of or in connection with the business described under (2) is being held by the firm as client money under the client money rules;

(2) a description of the relevant business carried on with the client in respect of which the client money rules apply to the firm; and

(3) that, if the firm fails, the client money distribution rules will apply to money held in relation to the business in question.

7.1.10B Firms carrying on MiFID business are reminded of their obligation to supply investor compensation scheme information to clients under COBS 6.1.16R (Compensation Information).

7.1.10C A CRD credit institution or an approved bank that is not a CRD credit institution must, in respect of any client money held in relation to its
designated investment business that is not MiFID business, comply with the obligations referred to in COBS 6.1.16R (Compensation information).

7.11 G A credit institution is reminded that the exemption for deposits is not an absolute exemption from the client money rules. [deleted]

7.11A R (1) This rule applies to a firm which is an approved bank but not a CRD credit institution. [deleted]

(2) The client money rules do not apply to money held by the approved bank if it is undertaking business which is not MiFID business but only when the money is held in an account with itself, in which case the firm must notify the client in writing that:

(a) money held for that client in an account with the approved bank will be held by the firm as banker and not as trustee (or in Scotland as agent), and

(b) as a result, the money will not be held in accordance with the client money rules. [deleted]

7.2 Treatment of client money

...

7.2.3B R (1) A firm must ensure that any arrangement relating to the transfer of full ownership of a client’s money to the firm for the purposes set out in CASS 7.2.3R(1) and CASS 7.2.3AR(1) is the subject of a written agreement made on a durable medium between the firm and the client.

(2) Regardless of the form of the written agreement in (1) (which may have additional commercial purposes), it must cover the client’s agreement to:

(a) the terms for the arrangement relating to the transfer of the client’s full ownership of money to the firm;

(b) any terms under which the ownership of money is to transfer from the firm back to the client; and

(c) (to the extent not covered by the terms under (b)), any terms for the termination of:

(i) the arrangement under (a); or

(ii) the overall agreement in (1).

(3) A firm must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the
agreement is terminated.

7.2.3C G The terms referred to in CASS 7.2.3BR(2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of money to the firm is not in effect from time to time, or is contingent on some other condition.

Money in connection with a “delivery versus payment” transaction
Delivery versus payment transaction exemption

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. [deleted]

7.2.8A G The exclusion from the client money rules for delivery versus payment transactions under CASS 7.2.8R 7.2.8AAR is an example of an exclusion from the client money rules which is permissible by virtue of recital 26 of MiFID.

7.2.8AA R (1) Subject to (2) and CASS 7.2.8ABR and with the agreement of the relevant client, money need not be treated as client money in respect of a delivery versus payment transaction through a commercial settlement system if:

(a) in respect of a client's purchase, the firm intends for the money from the client to be due to it within one business day following the firm’s fulfilment of its delivery obligation to the client; or

(b) in respect of a client's sale, the firm intends for the money in question to be due to the client within one business day following the client's fulfilment of its delivery obligation to the firm.
(2) If the payment or delivery by the firm to the client has not occurred by the close of business on the third business day following the date on which the firm makes use of the exemption under (1), the firm must stop using that exemption for the transaction.

7.2.8AB R A firm cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under CASS 7.2.8AAR in either or both of the following circumstances:

(1) it is not a direct member or participant of the relevant commercial settlement system, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that commercial settlement system;

(2) the transaction in question is being settled by another person on behalf of the firm through an account held at the relevant commercial settlement system by that other person.

7.2.8AC R Where a firm does not meet the requirements in CASS 7.2.8AAR or CASS 7.2.8ABR for the use of the exemption in CASS 7.2.8AAR, the firm is subject to the client money rules in respect of any money it holds in connection with the delivery versus payment transaction in question.

7.2.8AD G (1) In line with CASS 7.2.8AAR, where a firm receives money from the client in fulfilment of the client’s payment obligation in respect of a delivery versus payment transaction the firm is carrying out through a commercial settlement system in respect of a client’s purchase and the firm has not fulfilled its delivery obligation to the client by close of business on the third business day following the date of the client’s fulfilment of its payment obligation to the firm, the firm must treat the client money in accordance with the client money rules until delivery by the firm to the client occurs.

(2) Upon settlement of a delivery versus payment transaction a firm is carrying out through a commercial settlement system (including when it is settled within the three business day period referred to in CASS 7.2.8AAR(2)) then, in respect of:

(a) a client’s purchase, the custody rules apply to the relevant safe custody asset the firm receives upon settlement; and

(b) a client’s sale, the client money rules will apply to the relevant money received on settlement.

7.2.8AE R (1) If a firm makes use of the exemption under CASS 7.2.8AAR, it must obtain the client’s written agreement to the firm’s use of the exemption.

(2) In respect of each client, the written agreement in (1) must be retained during the time that the firm makes use, or intends to make
use, of the exemption under CASS 7.2.8AAR in respect of that client’s monies.

...

7.2.15 R Money ceases to be client money (having regard to CASS 7.2.17R where applicable) if:

...

(2) it is:

...

(c) transferred in accordance with CASS 7.2.17BR; or

(d) transferred in accordance with CASS 7.2.17DR; or

...

(9) it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment directly to the indirect clients of the firm in accordance with CASS 7.2.15CR(2); or

(10) it is paid to charity under CASS 7.2.19R or CASS 7.2.25R.

...

Transfer of business

7.2.17A G A firm may transfer client money to a third party as part of transferring all or part of its business if, in respect of each client with an interest in the client money that is sought to be transferred, it:

(1) obtains the consent or instruction of that client at the time of the transfer of business (see CASS 7.2.15R(2)(a)); or

(2) complies with CASS 7.2.17BR (see CASS 7.2.15R(2)(c)); or

(3) complies with CASS 7.2.17DR (see CASS 7.2.15R(2)(d)).

7.2.17B R Subject to CASS 7.2.17DR, money ceases to be client money for a firm if:

(1) it is transferred by the firm to another person as part of a transfer of business to that person where the client money relates to the business being transferred;

(2) it is transferred on terms which require the other person to return a client’s transferred sums as soon as practicable at the client’s request;
(3) a written agreement between the firm and the relevant clients provides that:
  
  (a) the firm may transfer the client’s client money to another person; and
  
  (b) (i) the sums transferred will be held by the person to whom they are transferred in accordance with the client money rules for the clients; or
  
  (ii) if not held in accordance with (i), the firm will exercise all due skill, care and diligence in assessing whether the person to whom the client money is transferred will apply adequate measures to protect these sums; and
  
(4) the firm complies with the requirements in (3)(b)(ii) (if applicable).

7.2.17C G In considering how and whether to introduce the written agreement referred to in CASS 7.2.17BR(3), firms should have regard to any relevant obligations to clients, including requirements under the Unfair Terms Regulations.

Transfer of business: de minimis sums

7.2.17D R (1) Client money belonging to those categories of clients set out in (2) and in respect of those amounts set out in (2) ceases to be client money of the firm if it is transferred by the firm to another person:
  
  (a) as part of a transfer of business to that other person where these sums relate to the business being transferred; and
  
  (b) on terms which require the other person to return a client’s transferred sums as soon as practicable at the client’s request.
  
(2) (a) For retail clients the amount is £25.
  
  (b) For all other clients the amount is £100.

7.2.17E G For the avoidance of doubt, sums transferred under CASS 7.2.17DR do not, for the purposes of that rule, require the instruction or specific consent of each client at the time of the transfer or a written agreement as set out in CASS 7.2.17BR(3).

Transfer of business: client notifications

7.2.17F R Where a firm transfers client money belonging to its clients under either or both of CASS 7.2.17BR and CASS 7.2.17DR, it must ensure that those clients are notified no later than seven days after the transfer takes place:
whether or not the sums will be held by the person to whom they have been transferred in accordance with the client money rules and, if not, how the sums being transferred will be held by that person;

(2) the extent to which the sums transferred will be protected under a compensation scheme; and

(3) that the client may opt to have the client’s transferred sum returned to it as soon as practicable at the client’s request.

The firm must notify the FCA of its intention to effect any transfer of client money under either or both of CASS 7.2.17BR and CASS 7.2.17DR at least seven days before it transfers the client money in question.

The purpose of the CASS 7.2.19R rule on allocated but unclaimed client money is to allow a firm, in the normal course of its business, set out the requirements firms must comply with in order to cease to treat as client money any unclaimed balances balance which is, allocated to an individual client, when those balances remain unclaimed.

Before acting in accordance with CASS 7.2.19R to CASS 7.2.26R, a firm should consider whether its actions are permitted by law and consistent with the arrangements under which the client money is held. For the avoidance of doubt, these provisions relate to a firm’s obligations as an authorised person and to the treatment of client money under the client money rules.

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. A firm may pay away to a registered charity of its choice a client money balance which is allocated to a client and if it does so the released balance will cease to be client money under CASS 7.2.15R(10), provided:

(1) this is permitted by law and consistent with the arrangements under which the client money is held;

(2) the firm held the balance concerned for at least six years following the last movement on the client’s account (disregarding any payment or receipt of interest, charges or similar items);

(3) it can demonstrate that it has taken reasonable steps to trace the client concerned and to return the balance; and

(4) the firm complies with CASS 7.2.22R.

Where the client money balance held by a firm is, in aggregate, £100 or less for a client other than a retail client or, for a retail client, £25 or less,
the firm may comply with CASS 7.2.25R instead of CASS 7.2.19R.

7.2.20 E (1) Taking reasonable steps in CASS 7.2.19R(3) should include following this course of conduct:

(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 determining, as far as reasonably possible, the correct contact details for the relevant client;

(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) writing to the client at the last known address either by post or by electronic mail to inform it of the firm’s intention to no longer treat the client money balance as client money and to pay the sums concerned to charity if the firm does not receive instructions from the client within 28 days;

(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 where the client has not responded after the 28 days referred to in (b), attempting to communicate the information set out in (b) to the client on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;

(d) making and retaining records of all balances released from client bank accounts; and subject to (e) and (f), where the client has not responded within 28 days following the most recent communication, writing again to the client at the last known address either by post or by electronic mail to inform them that:

(i) as the firm did not receive a claim for the relevant client money balance, it will in 28 days pay the balance to a registered charity; and

(ii) an undertaking will be provided by the firm or a member of its group to pay to the client concerned a sum equal to the balance paid away to charity in the event of the client seeking to claim the balance in future;

(e) undertaking to make good any valid claim against any released balances, if the firm has carried out the steps in (b) or (c) and in response has received positive confirmation in
writing that the client is no longer at a particular address, the firm should not use that address for the purposes of (d);

(f) if, after carrying out the steps in (a), (b) and (c), the firm has obtained positive confirmation that none of the contact details it holds for the relevant client are accurate or, if utilised, the communication is unlikely to reach the client, the firm does not have to comply with (d); and

(g) waiting a further 28 days following the most recent communication under this rule before paying the balance to a registered charity.

7.2.20A G For the purpose of CASS 7.2.20E(1)(a), a firm may use any available means to determine the correct contact details for the relevant client, including telephoning the client, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.

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. [deleted]

7.2.22 R (1) Where a firm wishes to release a balance allocated to an individual client under CASS 7.2.19R it must comply with either (a) or (b) and, in either case, (2):

(a) the firm must unconditionally undertake to pay to the client concerned a sum equal to the balance paid away to charity in the event of the client seeking to claim the balance in future; or

(b) the firm must ensure that an unconditional undertaking in the terms set out in (a) is made by a member of its group and there is suitable information available for relevant clients to identify the member of the group granting the undertaking.

(2) The undertakings in this rule must be:

(a) authorised by the firm's governing body where (1)(a) applies or by the governing body of the group member where (1)(b) applies;

(b) legally enforceable by any person who had a legally enforceable claim to the balance in question at the time it was released by the firm, or by an assign or successor in title to such claim; and
(c) retained by the firm, and, where (1)(b) applies, by the group member, indefinitely.

7.2.23 R (1) If a firm pays away client money under CASS 7.2.19R(4) it must make and retain, or where the firm already has such records, retain:

(a) records of all balances released from client bank accounts under CASS 7.2.19R (including details of the amounts and the identity of the client to whom the money was allocated);

(b) all relevant documentation (including charity receipts); and

(c) details of the communications the firm had or attempted to make with the client concerned pursuant to CASS 7.2.19R(3).

(2) The records in (1) must be retained indefinitely.

(3) If a member of the firm’s group has provided an undertaking under CASS 7.2.22R(2) then the records in (1) must be readily accessible to that group member.

De minimis amounts of unclaimed client money

7.2.24 G The purpose of CASS 7.2.25R is to allow a firm to pay away to charity client money balances of (i) £25 or less for retail clients or (ii) £100 or less for other clients when those balances remain unclaimed. If a firm follows this process, the money will cease to be client money (see CASS 7.2.15R(10)).

7.2.25 R A firm may pay away to a registered charity of its choice a client money balance which is allocated to a client and if it does so the released balance will cease to be client money under CASS 7.2.15R(10), provided:

(1) the balance in question is (i) for a retail client, in aggregate, £25 or less, or (ii) for a professional client, in aggregate, £100 or less;

(2) the firm held the balance concerned for at least six years following the last movement on the client’s account (disregarding any payment or receipt of interest, charges or similar items);

(3) the firm has made at least one attempt to contact the client to return the balance using the most up-to-date contact details the firm has for the client, and the client has not responded to such communication within 28 days of the communication having been made; and

(4) the firm makes and/or retains records of all balances released from client bank accounts in accordance with this rule. Such records must include the information in CASS 7.2.23(1)(a) and (b).
Costs associated with paying away allocated but unclaimed client money

7.2.26 G Any costs associated with the firm ceasing to treat unclaimed client money balances as client money pursuant to CASS 7.2.18G to CASS 7.2.25R should be paid for from the firm’s own funds, including:

(1) any costs associated with the firm carrying out the steps in CASS 7.2.19R(3), CASS 7.2.20E or CASS 7.2.25R(3); and

(2) the cost of any insurance purchased by a firm or the relevant member of its group to cover any legally enforceable claim in respect of the client money paid away.

......

7.4 Segregation of client money

......

7.4.11C G CASS 7.4.11AR does not prevent a firm from depositing client money in overnight money market deposits which are clearly identified as being client money (for example in the client bank account acknowledgment letter).

7.4.11D G Firms are reminded of their obligations under CASS 7.8 (Notification and acknowledgement of trust Acknowledgment letters) for client bank accounts. Firms should also ensure that client bank accounts meet the requirements in the relevant Glossary definitions, including regarding the titles given to the accounts.

......

Payment Approaches for the segregation of client money into a client bank account

7.4.14 G Two The two approaches that a firm can adopt in discharging its obligations under the client money segregation requirements this section 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 FCA 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. [deleted]

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 can 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 accounts and client transaction accounts to determine what the client money requirement was at the close of the previous business day. [deleted]

... The alternative approach to client money segregation

7.4.17A G (1) In certain circumstances, use of the normal approach for a particular business line of a firm could lead to significant operational risks to client money protection. These may include a business line under which clients’ transactions are complex, numerous, closely related to the firm’s proprietary business and/or involve a number of currencies and time zones. In such circumstances, subject to meeting the relevant criteria and fulfilling the relevant notification and audit requirements, a firm may use the alternative approach to segregating client money for that business line.

(2) Under the alternative approach, client money is received into and paid out of a firm's own bank account. A firm that adopts the alternative approach to segregating client money should, if it is following the standard method of client money reconciliation (see CASS 7 Annex 1 paragraph 2), carry out an internal client money reconciliation on each business day (‘T0’) and calculate how much money it either needs to withdraw from, or place in from its own bank account or its client bank account as a result of any discrepancy arising between its client money requirement and its client money resource as at the close of business on the previous business day (‘T-1’).

(3) The alternative approach mandatory prudent segregation required under CASS 7.4.18BR is designed to address the risks that:

(a) client money in a firm’s own bank account may not be available to be pooled for distribution to clients on the occurrence of a primary pooling event; and

(b) at the time of a primary pooling event the firm may not have segregated in its client bank account a sufficient amount of client money to meet its client money requirement.

7.4.17B R A firm that wishes to adopt the alternative approach for a particular business line must first establish, and document in writing, its reasons for
concluding, that:

(1) adopting the normal approach would lead to greater operational risks to client money protection compared to the alternative approach;

(2) adopting the alternative approach (including complying with the requirements for alternative approach mandatory prudent segregation under CASS 7.4.18BR) would not result in undue operational risk to client money protection; and

(3) the firm has systems and controls that are adequate to enable it to operate the alternative approach effectively and in compliance with Principle 10 (Clients’ assets).

7.4.17C R A firm must retain any documents created under CASS 7.4.17BR in relation to a particular business line for a period of at least five years after the date it ceases to use the alternative approach in connection with that business line.

7.4.17D R At least three months before adopting the alternative approach for a particular business line, a firm must:

(1) inform the FCA in writing that it intends to adopt the alternative approach for that particular business line; and

(2) if requested by the FCA, make any documents it created under CASS 7.4.17BR available to the FCA for inspection.

7.4.17E R (1) In addition to the requirement under CASS 7.4.17DR, before adopting the alternative approach, a firm must send a written report to the FCA prepared by an independent auditor of the firm in line with a reasonable assurance engagement, stating the matters set out in (2).

(2) The written report in (1) must state whether, in the auditor’s opinion:

(a) the firm’s systems and controls are suitably designed to enable it to comply with CASS 7.4.18AR to CASS 7.4.18BR; and

(b) the firm’s calculation of its alternative approach mandatory prudent segregation amount under CASS 7.4.18BR is suitably designed to enable the firm to comply with CASS 7.4.18BR.

7.4.17F R (1) A firm that uses the alternative approach must review, at least on an annual basis and with no more than one year between each review, whether its reasons for adopting the alternative approach for a particular business line, as documented under CASS 7.4.17BR, continue to be valid.

(2) If, following the review in (1), a firm finds that its reasons for adopting the alternative approach are no longer valid for a particular business line, it must stop using the alternative approach for that
business line as soon as reasonably practicable, and in any event within six months of the conclusion of its review in (1).

7.4.17G R A firm that uses the alternative approach must not materially change how it will calculate and maintain the alternative approach mandatory prudent segregation amount under CASS 7.4.18BR unless:

(1) an auditor of the firm has prepared a report that complies with the requirements in CASS 7.4.17ER(2)(b) in respect of the firm’s proposed changes; and

(2) the firm provides a copy of the report prepared by the auditor under (a) to the FCA before implementing the change.

7.4.17H G A firm is reminded that, under SUP 3.4.2R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.

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), and where relevant SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (Compliance), 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). [deleted]

7.4.18A R A firm that uses the alternative approach for a particular business line must, on each business day (‘T0’):

(1) receive any money from and pay any money to (or, in either case, on behalf of) clients into and out of its own bank accounts;

(2) perform the necessary reconciliations of records and accounts required under CASS 7.6 (Records, accounts and reconciliations);

(3) adjust the balances held in its client bank account (by effecting transfers between its own bank account and its client bank account) to address any difference arising between its client money requirement and its client money resource as at the close of business on the previous business day (‘T-1’), so that the correct amount reflected in the reconciliations under (2) is segregated in its client bank account; and
(4) subject to CASS 7.4.18AAR below, keep segregated in its client bank account the balance held under (3) until it has performed a reconciliation on the following business day (‘T+1’) and as a result of that reconciliation is undertaking further adjustments under (3).

7.4.18A A R During the period between the adjustment in CASS 7.4.18AR(3) and the completion of the next reconciliations in CASS 7.4.18AR(2), a firm that uses the alternative approach for a particular business line may:

(1) increase the balance held in its client bank account by making intra-day transfers (during T0) from its own bank account to its client bank account before the completion of the internal client money reconciliation under CASS 7.4.18AR(2) (that is expected sometime later on T0) only if:

(a) the firm reasonably expects that the client money requirement for the previous business day (T-1) will increase above the client money resource currently (during T0) held in its client bank account; and

(b) such reasonable expectations are based on the working calculation of the client money requirement relating to the previous business day (T-1) that the firm has already determined on that business day (during T0) (as part of the process of completing its internal client money reconciliation); or

(2) decrease the balance held in its client bank account by making intra-day transfers (during T0) from its client bank account to its own bank account before the completion of the internal client money reconciliation under CASS 7.4.18AR(2) (that is expected sometime later on T0) only if:

(a) the firm reasonably expects that the client money requirement for the previous business day (T-1) will decrease below the client money resource currently held (during T0) in its client bank account; and

(b) such reasonable expectations are based on the working calculation of the client money requirement relating to the previous business day (T-1) that the firm has already determined on that business day (during T0) (as part of the process of completing its internal client money reconciliation).

However, in doing so, a firm must act prudently and should take appropriate steps to manage the risk of not having segregated an amount that appropriately reflects its actual client money requirement at any given time.
It is anticipated that *CASS 7.4.18AAR* may be used by *firms* which maintain *client bank accounts* in a number of different time zones and making adjustments to the balances of those *client bank accounts* is dependent on meeting cut off times for money transfers in those time zones.

A *firm* that uses the alternative approach must, in addition to *CASS 7.4.18AR*, pay an amount (determined in accordance with this *rule*) of its own *money* into its *client bank account* and subsequently retain that *money* in its *client bank account* (alternative approach mandatory prudent segregation). The amount segregated by a *firm* in its *client bank account* under this *rule* is *client money* for the purposes of the *client money rules* and the *client money distribution rules*.

The amount required to be segregated under this *rule* must be an amount that a *firm* reasonably determines would be sufficient, at the time it makes the determination, to protect *client money* against the risk that at any time in the following three months the following categories of *client money* may not have been fully segregated in its *client bank account* or may not be (or become) available for pooling under *CASS 7A.2.4R(1)*, were a *primary pooling event* to occur:

(a) *client money* that is received and held by the *firm* in its own bank account during the period between:

(i) the *firm*’s adjustment of *client bank account* balances under *CASS 7.4.18AR(3)* on a particular *business day*; and

(ii) the *firm*’s subsequent adjustments under *CASS 7.4.18AR(3)* on the following *business day*; and

(b) *money* received and held by the *firm* in its own bank account which the *firm* does not initially identify as part of its *client money requirement*, but which subsequently does become part of its *client money requirement*;

with the effect that the *firm*’s *alternative approach mandatory prudent segregation* under this *rule* will reduce, as far as possible, any *shortfall* that might have been produced as a result of (a) or (b) on the occurrence of a *primary pooling event*.

Subject to (c), in reaching its determination under (2) of the amount of *money* that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a *firm* must take into account the following in respect of each business line for which it uses the alternative approach, and for at least the previous three months:

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(i) the firm’s client money requirement over the course of that prior period (excluding any amount that was required to be segregated under this rule during that prior period for the purposes of alternative approach mandatory prudent segregation);

(ii) the daily adjustment payments that the firm made into its client bank account under CASS 7.4.18AR(3); during that prior period; and

(iii) the amount of money received by the firm in its own bank account which it did not initially identify as part of its client money requirement, but which subsequently, and during that prior period, became part of its client money requirement;

as shown in its internal records.

(b) In reaching its determination under (2) a firm must also take into account, but at all times having regard to the requirement under (2), any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business lines may have on:

(i) the firm’s client money requirement during the forthcoming three months for which the amount of alternative approach mandatory prudent segregation required under this rule is being determined;

(ii) the daily adjustment payments that the firm is likely to make into its client bank account under CASS 7.4.18AR(3) in that same period; and

(iii) the amount of unidentified receipts of money that the firm is likely to receive into its own bank account and which will subsequently, in that same period, become part of its client money requirement.

(c) If, at the time of its determination under (2), the firm has not been trading for three months in a business line for which it is using the alternative approach, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to establish a three-month reference period.

(4) (a) A firm must, at regular intervals that are at least quarterly, repeat and complete the combined process of:
(i) determining the amount that it is required to segregate for the purposes of alternative approach mandatory prudent segregation under (2) and (3);

(ii) making necessary adjustments to its records to reflect any changes to its client money requirement; and

(iii) paying any additional amounts of its own money into its client bank account to increase the firm’s alternative approach mandatory prudent segregation or withdrawing any excess amounts from its client bank account to decrease the firm’s alternative approach mandatory prudent segregation after it has adjusted its records under (ii).

(b) The combined process of (a)(i) to (iii) must take no longer than 10 business days.

(c) To the extent that a firm’s compliance with (a)(i) and (ii) results in there being an excess in the firm’s client bank account, the firm may cease to treat that money as client money.

(5) A firm must ensure that the individual responsible for CASS oversight under CASS 1A.3.1R, CASS 1A.3.1AR or CASS 1A.3.1CR (as appropriate) reviews the adequacy of the amount of the firm’s alternative approach mandatory prudent segregation maintained under this rule at least annually.

7.4.19 G 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 1G). [deleted]

Alternative approach mandatory prudent segregation record

7.4.19A R A firm must create and keep up-to-date records so that any amount of money that is, pursuant to CASS 7.4.18BR:

(1) paid into a client bank account and retained as client money; or
(2) withdrawn from a client bank account;

can be easily ascertained (the alternative approach mandatory prudent segregation record).

7.4.19B R The alternative approach mandatory prudent segregation record under CASS 7.4.19AR must record:

(1) the date of the first determination under CASS 7.4.18BR(2) and each subsequent review undertaken under CASS 7.4.18BR(4), and the total amount that the firm determined was required to be segregated under CASS 7.4.18BR(2) as at that date;

(2) the date of any payment of the firm’s own money into a client bank account, or withdrawal of any excess from a client bank account under CASS 7.4.18BR, and for each such occasion:

(a) the amount of the payment or withdrawal;

(b) the fact that the money was paid or withdrawn by the firm in accordance with CASS 7.4.18BR; and

(c) as at that date, the total amount actually segregated by the firm under CASS 7.4.18BR.

7.4.19C R The alternative approach mandatory prudent segregation record must be retained for five years after the firm ceases to segregate any money in accordance with CASS 7.4.18BR.

7.4.19D G Nothing in CASS 7.4.17AG to CASS 7.4.19CR prevents a firm from also making use of the prudent segregation rule in CASS 7.4.21R.

…

7.6 Records, accounts and reconciliations

…

Non-standard method of internal client money reconciliation

7.6.6A R (1) Before using a non-standard method of internal client money reconciliation, a firm must:

(a) establish and document in writing its reasons for concluding that the method of internal client money reconciliation it proposes to use will:

(i) (for the normal approach to segregating client money) check whether the amount of client money recorded in the firm’s records as being segregated in client bank accounts meets the firm’s obligation to its clients under the client money rules on a
daily basis; or

(ii) (for the alternative approach to segregating client money) calculate the amount of client money to be segregated in client bank accounts which meets the firm’s obligations to its clients under the client money rules on a daily basis;

(b) notify the FCA of its intentions to use a non-standard method of internal client money reconciliation; and

(c) send a written report to the FCA prepared by an independent auditor of the firm in line with a reasonable assurance engagement and stating the matters set out in CASS 7.6.6AR(2).

(2) The written report in (1)(c) must state whether in the auditor’s opinion:

(a) the method of internal client money reconciliation which the firm will use is suitably designed to enable it to (as applicable):

(i) (for the normal approach to segregating client money) check whether the amount of client money recorded in the firm’s records as being segregated in client bank accounts meets the firm’s obligation to its clients under the client money rules on a daily basis; or

(ii) (for the alternative approach to segregating client money) calculate the amount of client money to be segregated in client bank accounts which meets the firm’s obligations to its clients under the client money rules on a daily basis; and

(b) the firm’s systems and controls are suitably designed to enable it to carry out the method of internal client money reconciliation the firm will use.

(3) A firm using a non-standard method of internal client money reconciliation must not materially change its method of undertaking internal reconciliations of client money balances unless:

(a) the firm has established and documented in writing its reasons for concluding that the changed methodology will meet the requirements in (1)(a)(i) and (ii), as applicable;

(b) an auditor of the firm has prepared a report that complies with the requirements in (1)(c) and (2) in respect of the
firm’s proposed changes; and

(c) the firm provides a copy of the report prepared by the auditor under (3)(a) to the FCA before implementing the change.

7.6.6B G A firm is reminded that, under SUP 3.4.2R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.

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 distribution rules. [deleted]

(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 for a period of five years after ceasing to use it. [deleted]

7.6.8 R A firm that does not use the standard method of internal client money reconciliation must first ‘end a written confirmation to the FCA 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. [deleted]

7.8 Notification and acknowledgement of trust Acknowledgment letters

Purpose

7.8-1 G The main purposes of an acknowledgement letter are:

(1) to put the bank, exchange, clearing house, intermediate broker, OTC counterparty or other person (as the case may be) on notice of a firm’s clients’ interests in client money that has been deposited with, or has been allowed to be held by, such person;

(2) to ensure that the client bank account or client transaction account has been opened in the correct form (eg, whether the client bank account is being correctly opened as a general client bank account,
a designated client bank account or a designated client fund account), and is distinguished from any account containing money that belongs to the firm; and

(3) to ensure that the bank, exchange, clearing house, intermediate broker, OTC counterparty or other person (as the case may be) understands and agrees that it will not have any recourse or right against money standing to the credit of the client bank account or client transaction account, in respect of any sum owed to such person, or to any other third person, on any other account.

**Banks Client bank account acknowledgment letters**

7.8.1 R (1) When a firm opens a client bank account, the firm must give or have given written notice, in accordance with CASS 7.8.5R, complete and sign a client bank account acknowledgement letter clearly identifying the client bank account, and send it to the bank with whom the client bank account is, or will be, opened, requesting the bank to acknowledge 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. Subject to CASS 7.8.13R and CASS 7.8.14R, a firm must not hold or receive any client money in or into a client bank account unless it has received a duly countersigned client bank account acknowledgement letter from the relevant bank that has not been inappropriately redrafted (see CASS 7.8.7R) and clearly identifies the client bank account.

**Exchanges, clearing houses, intermediary brokers or OTC counterparties Client transaction account acknowledgement letters**

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: This rule does not apply to a firm to which CASS 7.8.3R(1) applies.

(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 exchange, 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. For each client transaction account, a firm must, in accordance with CASS 7.8.5R, complete and sign a client transaction account acknowledgement letter clearly identifying the client transaction account. That letter must be sent to the person with whom the client transaction account is, or will be, opened, requesting such person to acknowledge and agree to the terms of the letter by countersigning it and returning it to the firm.

(3) Subject to CASS 7.8.13R and CASS 7.8.14R, a firm must not allow the relevant person to hold any client money in a client transaction account maintained by that person for the firm unless the firm has received a duly countersigned client transaction account acknowledgement letter from that person that has not been inappropriately redrafted (see CASS 7.8.7R) and that clearly identifies the client transaction account.

Authorised central counterparty acknowledgment letters

7.8.3 R (1) A firm which places client money at an authorised central counterparty in connection with a regulated clearing arrangement must, in accordance with CASS 7.8.5R, complete and sign an authorised central counterparty acknowledgement letter clearly identifying the relevant client transaction account. That letter must be sent to the authorised central counterparty with whom the client transaction account is, or will be, opened, requesting such
authorised central counterparty to acknowledge receipt of the letter by countersigning it and returning it to the firm.

(2) A firm which has complied with CASS 7.8.3R(1) may allow the authorised central counterparty to hold client money on the relevant client transaction account, whether or not the authorised central counterparty has countersigned and returned the authorised central counterparty acknowledgement letter it received from the firm.

Acknowledgement letters in general

7.8.4 G In drafting acknowledgement letters under CASS 7.8.1R, CASS 7.8.2R or CASS 7.8.3R, a firm is required to use the relevant template in CASS 7 Annex 2R, CASS 7 Annex 3R or CASS 7 Annex 4R, respectively.

7.8.5 R When completing an acknowledgement letter under CASS 7.8.1R(1), CASS 7.8.2R(1) or CASS 7.8.3R(1), a firm:

(1) must not amend any of the acknowledgement letter fixed text;

(2) subject to (3), must ensure the acknowledgement letter variable text is removed, included or amended as appropriate; and

(3) must not amend any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.

7.8.6 G CASS 7 Annex 5G contains guidance on using the template acknowledgement letters, including when and how firms should amend the acknowledgement letter variable text that is in square brackets.

7.8.7 R (1) If, on countersigning and returning the acknowledgement letter to a firm, the relevant person has also:

(a) made amendments to any of the acknowledgement letter fixed text; or

(b) made amendments to any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text;

the acknowledgement letter will have been inappropriately redrafted for the purposes of CASS 7.8.1R(2) or CASS 7.8.2R(3) (as applicable).

(2) For the purposes of CASS 7.8.1R(2) or CASS 7.8.2R(3), amendments made to the acknowledgement letter variable text in the acknowledgement letter returned to a firm by the relevant person, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the acknowledgement letter fixed text, have been specifically agreed with the firm and do not cause the acknowledgement letter to be
inaccurate.

7.8.8  R  A firm must use reasonable endeavours to ensure that any individual that has countersigned an acknowledgement letter that has been returned to the firm was authorised to countersign the letter on behalf of the relevant person.

7.8.9  R  (1)  A firm must retain each countersigned client bank account acknowledgement letter and client transaction account acknowledgement letter it receives, from the date of receipt until the expiry of five years from the date on which the last client bank account or client transaction account to which the acknowledgement letter relates is closed.

(2)  A firm must retain a copy of each authorised central counterparty acknowledgment letter it sends to an authorised central counterparty under CASS 7.8.3R(1) from the date it was sent until the expiry of five years from the date the last client transaction account to which the acknowledgement letter relates is closed.

7.8.10  R  A firm must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an acknowledgement letter returned to the firm was authorised to countersign the letter on behalf of the relevant person).

7.8.11  R  (1)  This rule applies to:

(a)  any countersigned client bank account acknowledgement letter or client transaction account acknowledgement letter received by a firm under CASS 7.8.1R(2) or CASS 7.8.2R(3) respectively; and

(b)  any authorised central counterparty acknowledgement letter sent by a firm under CASS 7.8.3R(1), whether or not it has been countersigned by the relevant authorised central counterparty and received by the firm.

(2)  A firm must, periodically (at least annually and whenever it is aware that something referred to in an acknowledgement letter has changed) review each of its acknowledgement letters to ensure that they all remain accurate.

(3)  Whenever a firm finds an inaccuracy in an acknowledgement letter, it must promptly draw up a replacement acknowledgement letter under CASS 7.8.1R, CASS 7.8.2R or CASS 7.8.3R, as applicable, and, if it is an acknowledgement letter required to be sent under CASS 7.8.1R or CASS 7.8.2R, ensure that the new acknowledgement letter is duly countersigned and returned by the relevant person.

7.8.12  G  Under CASS 7.8.11R, a firm should draw up and send out a replacement
acknowledgement letter whenever:

(1) there has been a change in any of the parties’ names or addresses as set out in the letter; or

(2) the firm becomes aware of an error or misspelling in the drafting of the letter.

7.8.13 R If a firm’s client bank account or client transaction account is transferred to another person, the firm must promptly draw up a new acknowledgement letter under CASS 7.8.1R, CASS 7.8.2R or CASS 7.8.3R, as applicable, and, if it is an acknowledgement letter required to be sent under CASS 7.8.1R or CASS 7.8.2R, ensure that the new acknowledgement letter is duly countersigned and returned by the relevant person within 20 business days of the firm sending it to that person.

7.8.14 R If a firm opens a client bank account after a primary pooling event, the firm must:

(1) promptly draw up and send out a new acknowledgement letter under CASS 7.8.1R;

(2) not hold or receive any client money in or into the client bank account unless it has sent the acknowledgement letter to the relevant person; and

(3) if the firm has not received a duly countersigned acknowledgement letter that has not been inappropriately redrafted (see CASS 7.8.7R) within 20 business days of the firm sending the acknowledgement letter, 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.

…
After CASS 7 Annex 1G insert the following new annexes. The text is not underlined.

7 Annex 2R Client bank account acknowledgment letter template

[letterhead of firm subject to CASS 7.8.1R, including full name and address of firm]
[name and address of bank]
[ date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

We refer to the following [current/deposit account[s]] [and/or] [money market deposit[s]] which [name of CASS firm], regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), (“us”, “we” or “our”) [has opened or will open] [and/or] [has deposited or will deposit] with [name of bank] (“you” or “your”):

[insert the account title[s], the account unique identifier[s] (for example, as relevant, sort code and account number, deposit number or reference code) and (if applicable) any abbreviated name of the account[s] as reflected in the bank’s systems]

([collectively,] the “Client Bank Account[s]”).

In relation to [each of] the Client Bank Account[s] identified above you acknowledge that we have notified you that:

(a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;

(b) we have opened, or will open, the Client Bank Account for the purpose of depositing money with you on behalf of our clients; and

(c) we hold all money standing to the credit of the Client Bank Account in our capacity as trustee under the laws applicable to us.

In relation to [each of] the Client Bank Account[s] above you agree that:

(d) you do not have any recourse or right against money in the Client Bank Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Bank Account with any other account and any right of set-off or counterclaim against money in the Client Bank Account;

(e) you will title, or have titled, the Client Bank Account as stated above and that such title is different to the title of any other account containing money that belongs to us or to any third party; and

(f) you are required to release on demand all money standing to the credit of the Client Bank Account upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy (or similar procedure), in any relevant jurisdiction, except for:
(1) any properly incurred charges or liabilities owed to you on, and arising from the operation of, the Client Bank Account; and
(2) until the fixed term expires, any amounts held for the time being under a fixed term deposit arrangement which cannot be terminated before the expiry of the fixed term,
provided that you have a contractual right to retain such money under (1) or (2) and that this right is notwithstanding paragraphs (a) to (c) above and without breach of your agreement to paragraph (d) above.

We acknowledge that:

(g) you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Client Bank Account[s].

You and we agree that:

(h) the terms of this letter shall remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;
(i) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter;
(j) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement shall prevail;
(k) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;
(l) this letter shall be governed by the laws of [insert appropriate jurisdiction] [firms may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction]; and
(m) the courts of [insert same jurisdiction as previous] shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [name of CASS firm]

x___________________________

Authorised Signatory

[Signed by [name of third party administrator] on behalf of [CASS firm]]

Print Name:

Title:
ACKNOWLEDGED AND AGREED:
For and on behalf of [name of bank]
x___________________________

Authorised Signatory
Print Name:
Title:
Contact Information: [insert signatory’s phone number and email address]
Date:
7 Annex 3R Client transaction account acknowledgment letter template

[letterhead of firm subject to CASS 7.8.2R, including full name and address of firm]
[name and address of counterparty] [date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

We refer to the following transaction account[s] which [name of CASS firm], regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), (“us”, “we” or “our”) has opened or will open with [name of counterparty] (“you” or “your”):

[insert the account title[s], the account unique identifier[s] (for example, as relevant, account number, reference code or pool ID) and (if applicable) any abbreviated name of the account[s] as reflected in the counterparty’s systems]
(collectively,] the “Client Transaction Account[s]”).

In relation to [each of] the Client Transaction Account[s] identified above you acknowledge that we have notified you that:

(a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;

(b) we have opened, or will open, the Client Transaction Account for the purpose of placing money with you on behalf of our clients in connection with carrying out one or more transactions with or through you; and

(c) you are instructed to promptly credit to this Client Transaction Account any money you receive in respect of any transaction that we have notified to you as being carried out on behalf of our clients.

In relation to [each of] the Client Transaction Account[s] identified above you agree that:

(d) all money standing to the credit of the Client Transaction Account is payable to us in our capacity as trustee under the laws applicable to us, except where, in accordance with your default management procedures in respect of a default by us, you transfer money credited to the Client Transaction Account to anyone other than us in accordance with articles 4(4) or 4(5) of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012;

(e) you do not have any recourse or right against money credited to the Client Transaction Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Transaction Account with any other account and any right of set-off or counterclaim against money in the Client Transaction Account; and

(f) you will title, or have titled, the Client Transaction Account as stated above and that such title is different to the title of any other account containing money that is payable to us in a capacity other than as trustee or that is payable to any third party.
You and we agree that:

(g) the terms of this letter shall remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;

(h) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Transaction Account[s], to the extent that such previous agreement is inconsistent with this letter;

(i) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Transaction Account[s], this letter agreement shall prevail;

(j) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;

(k) this letter shall be governed by the laws of [insert appropriate jurisdiction] [firms may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction]; and

(l) the courts of [insert same jurisdiction as previous] shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to permit you to hold any money belonging to our clients on the Client Transaction Account[s] until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [name of CASS firm]

x __________________________
Authorised Signatory
Print Name: 
Title: 

ACKNOWLEDGED AND AGREED:
For and on behalf of [name of counterparty]

x __________________________
Authorised Signatory
Print Name: 
Title:
Contact Information: [insert signatory’s phone number and email address]
Date: 

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7 Annex 4R Authorised central counterparty acknowledgment letter template

[letterhead of firm subject to CASS 7.8.3R, including full name and address of firm]

[name and address of authorised central counterparty]

[date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

We refer to the following transaction account[s] which [name of CASS firm], regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), (“us”, “we” or “our”) has opened or will open with [name of authorised Central counterparty] (“you” or “your”):

[insert the account title[s], the account unique identifier[s] (for example, as relevant, account number, reference code or pool ID) and (if applicable) any abbreviated name of the account[s] as reflected in the authorised central counterparty’s systems]

(collectively,] the “Client Transaction Account[s]”).

In relation to [each of] the Client Transaction Account[s] identified above we are writing to put you on notice that:

(a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;
(b) we have opened, or will open, the Client Transaction Account for the purpose of placing money with you on behalf of our clients in connection with carrying out one or more transactions with or through you;
(c) you are instructed to promptly credit to this Client Transaction Account any money you receive in respect of any transaction that we have notified to you as being carried out on behalf of our clients;
(d) all money standing to the credit of the Client Transaction Account is payable to us in our capacity as trustee under the laws applicable to us, except where, as a part of your default management process in respect of a default by us, you transfer money credited to the Client Transaction Account to anyone other than us in accordance with article 48 of Regulation (EU) No 648/2012 of 4 July 2012;
(e) you do not have any recourse or right against money credited to the Client Transaction Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Transaction Account with any other account and any right of set-off or counterclaim against money in the Client Transaction Account; and
(f) we understand the title of the Client Transaction Account is, or will be, as stated above and that such title is different to the title of any other account containing money that is payable to us in a capacity other than as trustee or is payable to any third party.

[Please confirm your receipt of this letter by signing and returning the enclosed copy of this letter as soon as possible.]
For and on behalf of [name of CASS firm]

x __________________________

Authorised Signatory
Print Name: 
Title:

[RECEIPT CONFIRMED:
For and on behalf of [name of authorised central counterparty]

x __________________________

Authorised Signatory
Print Name: 
Title:

Contact Information: [insert signatory’s phone number and email address]
Date: ]
7 Annex 5G  Guidance notes for acknowledgement letters (CASS 7.8)

Introduction

1 This annex contains guidance on the use of the templates for acknowledgment letters in CASS 7 Annex 2R, CASS 7 Annex 3R and CASS 7 Annex 4R.

2 Unless stated otherwise, a reference to ‘counterparty’ in this annex is:

(a) in the context of a client bank account acknowledgment letter (and CASS 7 Annex 2R), to the relevant bank;

(b) in the context of a client transaction account acknowledgment letter (and CASS 7 Annex 3R), to the relevant exchange, clearing house, intermediate broker, OTC counterparty or other person (as the case may be); and

(c) in the context of an authorised central counterparty acknowledgment letter (and CASS 7 Annex 4R), to the relevant authorised central counterparty.

General

3 Under CASS 7.8.1R(2) and CASS 7.8.2R(3), firms are required to have in place a duly signed and countersigned acknowledgment letter for a client bank account or client transaction account (respectively) before they are allowed to hold or receive client money in or into the client bank account, or allow the relevant person to hold any client money on the client transaction account (respectively).

4 However, a firm may place client money at an authorised central counterparty in connection with a regulated clearing arrangement if it has provided the relevant authorised central counterparty with a signed and completed authorised central counterparty acknowledgement letter (see CASS 7.8.3R).

5 For each client bank account or client transaction account, a firm is required to complete, sign and send to the counterparty an acknowledgment letter identifying that account and in the form set out in CASS 7 Annex 2R (Client bank account acknowledgment letter template), CASS 7 Annex 3R (Client transaction account acknowledgment letter template) or CASS 7 Annex 4R (Authorised central counterparty acknowledgment letter), as appropriate.

6 When completing an acknowledgment letter using the appropriate template, a firm is reminded that it must not amend any of the text which is not in square brackets (acknowledgment letter fixed text). A firm should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed and italicised text with the necessary wording, in either case as appropriate. The notes below give further guidance on this.

Clear identification of relevant accounts

7 A firm is reminded that for each client bank account or client transaction account it
needs to have in place an acknowledgment letter. Accordingly, it is important that it is clear to which account or accounts each acknowledgment letter relates. As a result, the templates in CASS 7 Annex 2R, CASS 7 Annex 3R and CASS 7 Annex 4R require that the acknowledgment letter include the full title and at least one unique identifier, such as a sort code and account number, deposit number, reference code or pool ID, for each client bank account or client transaction account to which the letter relates.

8 The title and unique identifiers included in an acknowledgment letter for a client bank account or client transaction account should be the same as those reflected in both the records of the firm and the relevant counterparty, as appropriate, for that account. Where a counterparty’s systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

(a) the account may continue to be appropriately identified in accordance with the requirements of CASS 7 (eg, ‘designated’ may be shortened to ‘des’, ‘designated fund’ may be shortened to ‘des fnd’, ‘segregated’ may be shortened to ‘seg’, ‘account’ may be shortened to ‘acct’, etc); and

(b) when completing an acknowledgment letter, such letter must include both the long and short versions of the account title.

9 A firm should ensure that all relevant account information is contained in the space provided in the body of the acknowledgment letter. Nothing should be appended to an acknowledgement letter.

10 In the space provided in the template letters for setting out the account title and unique identifiers for each relevant account/deposit, a firm may include the required information in the format of the following table:

<table>
<thead>
<tr>
<th>Full account title</th>
<th>Unique identifier</th>
<th>Title reflected in [name of bank] systems</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Investment Firm Client Bank Account]</td>
<td>[00-00-00 12345678]</td>
<td>[INV FIRM CLIENT A/C]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11 Where an acknowledgment letter is intended to cover a range of client bank accounts or client transaction accounts, some of which may not exist as at the date the acknowledgment letter is countersigned by the relevant person (or, in the case of an authorised central counterparty acknowledgment letter, the date it is sent by the firm to the relevant authorised central counterparty), a firm should set out in the space provided in the body of the acknowledgment letter that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (eg, with the word ‘client’ in their title); and (b) which possess a common unique identifier.
or which may be clearly identified by a range of unique identifiers (eg, all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in CASS 7 Annex 2R which allows a firm to include the account title and a unique identifier for each relevant account, a firm should include a statement to the following effect:

Any account open at present or to be opened in the future which contains the term ['client'] [insert appropriate abbreviation of the term ‘client’ as agreed and to be reflected in the Bank’s systems] in its title and which may be identified with [the following [insert common unique identifier][an account number from and including [XXXX1111] to and including [ZZZZ9999]] [clearly identify range of unique identifiers].

Signature and countersignatures

12 A firm should ensure that each acknowledgment letter is signed and countersigned by all relevant parties and individuals (including where a firm or its counterparty may require more than one signatory).

13 An acknowledgment letter that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in CASS 7.8. However, where electronic signatures are used, a firm should consider whether, under CASS 7.4.7R and taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the letter.

Completing an acknowledgment letter

14 A firm should use at least the same level of care and diligence when completing an acknowledgment letter as it would in managing its own commercial agreements.

15 A firm should ensure that each acknowledgment letter is legible (eg, any handwritten details should be easy to read), produced on the firm’s own letter-headed paper, dated and addressed to the correct legal entity (eg, where the counterparty belongs to a group of companies).

16 A firm should also ensure each acknowledgment letter includes all the required information (such as account names and numbers, the parties’ full names, addresses and contact information, and each signatory’s printed name and title).

17 A firm should similarly ensure that no square brackets remain in the text of each acknowledgment letter (ie, after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the templates in CASS 7 Annex 2R, CASS 7 Annex 3R and CASS 7 Annex 4R) and that each page of the acknowledgment letter is numbered.

18 A firm should complete an acknowledgment letter so that no part of the letter can
be easily altered (eg, the letter should be signed in ink rather than pencil).

19 In respect of a client bank account acknowledgement letter’s governing law and choice of competent jurisdiction (see paragraphs (l) and (m) of the template in CASS 7 Annex 2R) or a client transaction account acknowledgement letter’s governing law and choice of competent jurisdiction (see paragraphs (k) and (l) of the template in CASS 7 Annex 3R), the letter should reflect a firm’s agreement with its counterparty that the laws of a particular jurisdiction will govern the acknowledgment letter and that the courts of that same jurisdiction will have non-exclusive jurisdiction to settle any disputes arising out of, or in connection with, the acknowledgment letter, its subject matter or formation.

20 If a firm does not, in any client bank account acknowledgement letter or client transaction account acknowledgement letter, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

(a) the law and the jurisdiction under which either the firm or the relevant counterparty are organised; and

(b) that specified in the underlying agreement/s (eg, banking, custody or clearing services agreement) with the relevant counterparty;

then the firm should consider whether it is at risk of breaching either CASS 7.8.5R(3) or, in the case of a client bank account acknowledgement letter, CASS 7.4.7R.

21 The FCA recognises that some firms and their counterparties may wish to clarify through additional words in the governing law provision (see paragraph (l) of the template in CASS 7 Annex 2R and paragraph (k) of the template in CASS 7 Annex 3R) that they are agreeing that the substantive law of the governing jurisdiction shall apply and that their intention is that a court should not decide to apply the substantive provisions of some other law instead of the parties’ chosen governing law (a ‘renvoi’). Where this is the case firms are permitted to insert additional text that seeks to provide increased legal certainty in the space provided. There is no restriction as to what additional words may be used (eg, additional words such as “without regard to the principles of choice of law” may be appropriate in the circumstances), but a firm should at all times have regard to the need to comply with CASS 7.8.5R(3). However, for the majority of firms the FCA does not expect additional wording for the governing law provision to be necessary. This is likely to be the case where only a court that is subject to ‘Rome I’ (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008) is likely to accept jurisdiction over a dispute arising out of or in connection with the relevant acknowledgment letter.

**Authorised signatories**

22 A firm is required, under CASS 7.8.8R, to use reasonable endeavours to ensure that any individual that has countersigned an acknowledgment letter returned to the firm was authorised to countersign the letter on behalf of the relevant counterparty.

23 If an individual that has countersigned an acknowledgment letter does not provide
the firm with sufficient evidence of his/her authority to do so then the firm is expected to make appropriate enquires to satisfy itself of that individual’s authority.

24 Evidence of an individual’s authority to countersign an acknowledgment letter may include a copy of the counterparty’s list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the acknowledgment letter.

25 A firm should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the acknowledgment letter as the firm would seek when managing its own commercial arrangements.

Third party administrators

26 If a firm uses a third party administrator (‘TPA’) to carry out the administrative tasks of drafting, sending and processing a client bank account acknowledgment letter, the text “[Signed by [Name of Third Party Administrator] on behalf of [CASS Firm]]” should be inserted to confirm that the acknowledgment letter was signed by the TPA on behalf of the firm.

27 In these circumstances, the firm should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the client bank account acknowledgment letter on the firm’s behalf. A firm should also ensure that the acknowledgment letter continues to be drafted on letter-headed paper belonging to the firm.

Designated client bank accounts and designated client fund accounts

28 A firm must ensure that each of its client bank accounts follows the naming conventions prescribed in the Glossary. This includes ensuring that (i) all client bank accounts include the term ‘client’ in their title; and (ii) all designated client bank accounts or designated client fund accounts include, as appropriate, the terms ‘designated’ or ‘designated fund’ in their title, or in each case an appropriate abbreviation in circumstances where this is permitted by the Glossary definition.

29 All references to the term “Client Bank Account[s]” in a client bank account acknowledgment letter should also be made consistently in either the singular or plural, as appropriate.

Indirect clearing arrangements

30 For use with client transaction accounts maintained with a clearing member who facilitates indirect clearing through a regulated clearing arrangement, the square-bracketed text in paragraph (d) of the template letter in CASS 7 Annex 3R should remain in the letter.

31 All references to the term “Client Transaction Account[s]” in a client transaction account acknowledgment letter should be made consistently in either the singular or plural, as appropriate.

Direct clearing arrangements
For use with client transaction accounts maintained with an authorised central counterparty in respect of a regulated clearing arrangement, a firm may identify whether each account is an omnibus client account or an individual client account in the space provided in the body of the template letter in CASS 7 Annex 4R. For example, if using the table mentioned in paragraph 10 above, a firm may include an additional column in which for each account it includes the reference “Individual Client Account” or “Omnibus Client Account”, as appropriate.

All references to the term “Client Transaction Account[s]” in an authorised central counterparty acknowledgment letter should be made consistently in either the singular or plural, as appropriate.

**Money market deposits**

The client bank account acknowledgment letter in CASS 7 Annex 2R may be used with money market deposits identified as being client money.

A firm should ensure that client money placed in a money market deposit is clearly identified as client money (see CASS 7.4.11CG).

Before a firm places client money in a money market deposit, it must have a client bank account acknowledgment letter for that deposit. If the unique identifier which will be associated with a money market deposit consisting of client money is unable to be included in a client bank account acknowledgment letter before it is duly countersigned and returned to the firm, a firm should set out in the body of the letter: (a) the title and other account information for the client bank account from which the deposits will be placed with the bank; and (b) how the firm will notify the bank that a money market deposit placed with it consists of client money (eg, by the inclusion of the words ‘Client Money Deposit’). For example, in the space provided in the template letter in CASS 7 Annex 2R which allows a firm to include the account title and a unique identifier for each relevant account/deposit, a firm should include a statement to the following effect:

```
[CASS Firm] money market deposits placed from [title of relevant [client bank account], [sort code], [account number]] and identified with the reference ‘[Client Money Deposit]’ as being client money]
```

A firm which operates the alternative approach to client money segregation (see CASS 7.4.18AR) might not make deposits of client money in a money market deposit from another client bank account. In these circumstances, the firm need only include in the body of the letter how the firm will notify the bank that a money market deposit placed with it consists of client money. For example, the relevant space in the template letter in CASS 7 Annex 2R may set out that:

```
[CASS firm] money market deposits identified with the reference ‘[Client Money Deposit]’ as being client money]
```
Amend the following as shown.

7A Client money distribution

... 

7A.2 Primary pooling events

...

7A.2.7A If a firm opens a client bank account after a primary pooling event, it must comply with CASS 7.8.14R regarding acknowledgement letters.

...

9 Prime-brokerage Information to clients

After CASS 9.3 insert the following new section. The text is not underlined.

9.4 Information to clients concerning custody assets and client money

9.4.1 Firms are reminded that, under COBS 6.1.7R, a firm that holds client designated investments or client money must provide its clients with specific information about how the firm holds those client designated investments and client money and how certain arrangements might give rise to specific consequences or risks for those client designated investments and client money.

9.4.2 A firm that holds custody assets or client money must:

(1) provide the information in COBS 6.1.7R for any custody assets the firm may hold for a client, including any custody assets which are not designated investments; and

(2) provide the information in COBS 6.1.7R and in (1) to each of its clients.

9.4.3 A firm should provide the information required in CASS 9.4.2R to any client for whom it holds custody assets or client money, including a retail client, a professional client and an eligible counterparty.

9.4.4 (1) Firms are reminded of their obligation, under COBS 4.2.1R, to be fair, clear and not misleading in their communications with clients.

(2) Firms are also reminded of the requirements in respect of communications made to retail clients under COBS 4.5.
### TP 1  Transitional Provisions

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: date in force</td>
<td>Handbook provisions: coming into force</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7A  CASS 6.1.6BR  R  
Firms need not comply with this rule in respect of any arrangement relating to the transfer of full ownership of a client’s safe custody asset to the firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) that existed before 1 December 2014, unless and until the arrangement is materially amended on or after that date. Firms must comply with this rule in respect of any arrangement for such purposes that is entered into on or after 1 December 2014.

From 1 December 2014 to 1 June 2015

1 December 2014

7B  CASS 6.1.12R to CASS 6.1.12CR  R  
(1) Firms need not comply with these rules in respect of a business relationship with a particular client consisting of the provision of either or both MiFID business and designated investment business services that

From 1 December 2014 to 1 June 2015

1 December 2014
<table>
<thead>
<tr>
<th>7C</th>
<th><strong>CASS 6.3.4BR</strong></th>
<th>R</th>
<th><strong>Firms</strong> need not comply with this rule in respect of arrangements with third parties with whom it deposits clients’ safe custody assets or arranges safeguarding and administration of assets which are clients’ safe custody assets that were entered into before 1 December 2014, unless and until they are materially amended on or after that date. <strong>Firms</strong> must comply with this rule in respect of any arrangements with such third parties that are entered into on or after 1 December 2014.</th>
<th>From 1 December 2014 to 1 June 2015</th>
<th>1 December 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>9A</td>
<td><strong>CASS 7.1.8CR to CASS 7.1.8DR and CASS 7.1.10A to CASS 7.1.10CR</strong></td>
<td>R</td>
<td><strong>Firms</strong> need not comply with these rules in respect of a business relationship with a particular client that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on</td>
<td>From 1 December 2014 to 1 June 2015</td>
<td>1 December 2014</td>
</tr>
<tr>
<td>Rule</td>
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</tr>
<tr>
<td><strong>9B</strong> CASS 7.2.3BR R <strong>Firms</strong> must comply with this <em>rule</em> in respect of any such relationship that is entered into on or after 1 December 2014. From 1 December 2014 to 1 June 2015 1 December 2014</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>10B</strong> CASS 7.2.8AAR to CASS 7.2.8ER R (1) <em>These rules</em> do not apply in respect of a business relationship with a particular <em>client</em> that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. <strong>Firms</strong> must comply with this <em>rule</em> in respect of any such relationship that is entered into on or after 1 December 2014. (2) Where the <em>rules</em> in column (2) are disapplied by (1), CASS 7.2.8R to CASS 7.2.11G will continue to apply as they were in force as at 30 November 2014. From 1 December 2014 to 1 June 2015 1 December 2014</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 10C | **CASS 7.4.17BR to CASS 7.4.19CR** | R | (1) *Firms* that are operating the alternative approach for any business line on 30 November 2014, having previously sent a written confirmation to the *FCA* under *CASS 7.4.15R*, need not comply with the *rules* in column (1) for such business line during the period in column (5) and may continue to segregate *client money* during that period for such business line on the basis set out in that confirmation to the *FCA*, unless and until during the period in column (5) they start complying with *CASS 7.4.18AR to CASS 7.4.19CR* for such business line having already complied with *CASS 7.4.17BR to CASS 7.4.17ER*.  
(2) In circumstances where the *rules* in column (2) are disapplied by (1), *CASS 7.4.16G to CASS 7.4.19G* will continue to apply as they were in force as at 30 November 2014. | From 1 December 2014 to 31 May 2015 | 1 December 2014 |
| 10D | **CASS 7.6.6AR** | R | (1) A *firm* operating an internal reconciliation of *client money* balances that is not a *standard method of internal client money reconciliation* as at 30 November 2014 need not comply with this *rule*, except to the extent referred to in (3).  
(2) Where a *firm* does not comply with the *rule* in column (2) in accordance | From 1 December 2014 to 31 May 2015 | 1 December 2014 |
with (1), CASS 7.6.7R and CASS 7.6.8R will continue to apply to that firm as they were in force as at 30 November 2014.

(3)(a) In order for a firm within (1) to operate an internal reconciliation that is not a standard method of internal client money reconciliation on 1 June 2015 it must, before that date, have complied with CASS 7.6.6AR(1)(b) and (c).

(3)(b) A firm within paragraph (1) that materially changes its internal reconciliation method that is not a standard method of internal client money reconciliation on or after 1 December 2014 must, notwithstanding (1), comply with the rule in column (2) from the date it makes these material changes.

(4) In order for any firm not within (1) to operate an internal reconciliation that is not a standard method of internal client money reconciliation on 1 December 2014 it must, before that date, have complied with CASS 7.6.6AR(1)(b) and (c).

| 10E | The changes to CASS 7.8 in Part 2 of Annex C of the Client Assets Sourcebook (Amendment No 5) Instrument 2014 | R | (1) Where the conditions in (2) are met in respect of a firm’s client bank account or client transaction account, the changes effected by the provisions in the Annex listed in column (2) do not apply to the firm in From 1 December 2014 to 1 June 2015 | 1 December 2014 |
respect of the client bank account or client transaction account and therefore the provisions in CASS 7.8.1R and CASS 7.8.2R amended by that Annex will continue to apply as they were in force as at 31 November 2014.

(2) The conditions are: (a) the client bank account or client transaction account was opened by the firm before 1 December 2014; (b) the firm complied with CASS 7.8.1R or CASS 7.8.2R (as appropriate) in respect of the client bank account or client transaction account before 1 December 2014; and (c) the client bank account or client transaction account is not transferred to another person during the period in column (5).

| 12A | CASS 9.4R | R | Firms need not comply with this rule in respect of a business relationship with a particular client consisting of the provision of either or both MiFID business and designated investment business services that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. Firms must comply with this rule in respect of any such relationship that is entered into on or after 1 December 2014. | From 1 December 2014 to 1 June 2015 | 1 December 2014 |
Insert the following new rows in the appropriate numerical position in **Schedule 1 (Record keeping requirements)**. The new text is not underlined.

### Sch 1.3G

<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>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CASS 6.1.6BR(3)</strong></td>
<td>Written agreement regarding any arrangement relating to the transfer of full ownership of a <em>client’s safe custody asset</em> to the <em>firm</em> for the purposes set out in <em>CASS 6.1.6R(1)</em> and <em>CASS 6.1.6AR(1)</em></td>
<td>The agreement</td>
<td>When agreement made</td>
<td>Five years from date agreement terminated</td>
</tr>
<tr>
<td><strong>CASS 6.1.12R(4)</strong></td>
<td><em>Firm’s</em> segregation of money as <em>client money</em> under this rule</td>
<td>Description of <em>safe custody asset</em> in question, identity of relevant <em>client</em>, amount of <em>money</em> segregated</td>
<td>Maintain up to date</td>
<td>Not specified (see default provision <em>CASS 6.5.3R)</em></td>
</tr>
<tr>
<td><strong>CASS 6.1.12ER</strong></td>
<td><em>Client’s</em> agreement to <em>firm’s</em> use of exemption in <em>CASS 6.1.12R</em></td>
<td><em>Client’s</em> written agreement</td>
<td>At the time of <em>client’s</em> agreement</td>
<td>During the time the <em>firm</em> makes use or intends to make use of the exemption in <em>CASS 6.1.12R</em> in respect of that <em>client’s safe custody assets</em></td>
</tr>
<tr>
<td><strong>CASS 6.2.15R</strong></td>
<td><em>Safe custody assets</em> divested by the <em>firm</em> under <em>CASS 6.2.10R</em></td>
<td>Details of asset divested, relevant documentation and the <em>firm’s</em> attempts to</td>
<td>When asset divested</td>
<td>Indefinite</td>
</tr>
<tr>
<td>CASS 7.2.8ADR</td>
<td>Client’s agreement to firm’s use of exemption in CASS 7.2.8R</td>
<td>Client’s written agreement</td>
<td>At the time of client’s agreement</td>
<td>During the time the firm makes use or intends to make use of the exemption in CASS 7.2.8R in respect of that client’s monies</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------------------------</td>
<td>---------------------------</td>
<td>-------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>CASS 7.2.23R</td>
<td>Client money paid to charity by the firm under CASS 7.2.19R</td>
<td>Details of balances released, relevant documentation and the firm’s attempts to contact the client concerned</td>
<td>When balance released</td>
<td>Indefinite</td>
</tr>
<tr>
<td>CASS 7.2.25R(4)</td>
<td>Client money paid to charity by the firm under CASS 7.2.25R</td>
<td>Details of balances released and relevant documentation</td>
<td>When balance released</td>
<td>Not specified (see default provision CASS 7.6.4R)</td>
</tr>
<tr>
<td>CASS 7.4.17BR</td>
<td>Firm’s adoption of the alternative approach</td>
<td>Reasons for concluding that the normal approach would lead to greater risk to client money, adopting the alternative approach would not result in undue risk to client money, the alternative approach is appropriate for use by the particular business line, and the firm has adequate systems and controls</td>
<td>Before adopting alternative approach</td>
<td>Five years after it ceases to use the alternative approach in connection with that business line</td>
</tr>
<tr>
<td><strong>CASS 7.4.19AR to CASS 7.4.1CR</strong></td>
<td>Alternative approach alternative approach mandatory prudent segregation record</td>
<td>Details of <em>money</em> segregated under <em>CASS 7.4.18BR</em> required by these rules</td>
<td>Maintain up to date</td>
<td>Five years (after the firm ceases to retain <em>money</em> as <em>client money</em> under <em>CASS 7.4.18BR</em>)</td>
</tr>
<tr>
<td><strong>CASS 7.8.9R(1)</strong></td>
<td><em>Acknowledgment letters</em></td>
<td>Countersigned <em>acknowledgment letter</em></td>
<td>From date of receipt</td>
<td>Five years from closure of last account to which the <em>acknowledgment letter</em> relates</td>
</tr>
<tr>
<td><strong>CASS 7.8.9R(2)</strong></td>
<td><em>Acknowledgment letters</em></td>
<td>Copy of <em>acknowledgment letter</em> sent to authorised central counterparty under <em>CASS 7.8.3R(1)</em></td>
<td>From date firm sends the letter</td>
<td>Five years from closure of last account to which the <em>acknowledgment letter</em> relates</td>
</tr>
<tr>
<td><strong>CASS 7.8.10R</strong></td>
<td><em>Acknowledgment letters</em></td>
<td>Any other documentation or evidence the firm believes necessary to demonstrate compliance with <em>CASS 7.8</em></td>
<td>None specified</td>
<td>None specified (see default provision <em>CASS 7.6.4R</em>)</td>
</tr>
</tbody>
</table>

Insert the following new rows in the appropriate numerical position in Schedule 2 (Notification requirements). The new text is not underlined.

Sch 2.1G

<table>
<thead>
<tr>
<th><strong>Handbook reference</strong></th>
<th><strong>Matter to be notified</strong></th>
<th><strong>Contents of notification</strong></th>
<th><strong>Trigger event</strong></th>
<th><strong>Time allowed</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CASS 7.2.17GR</strong></td>
<td>The firm’s intention to transfer <em>client money</em> under <em>CASS 7.2.17BR</em> and/or 7.2.17DR</td>
<td>That intention</td>
<td>Forming the intention</td>
<td>Not less than seven days before the transfer of the <em>client money</em> in question</td>
</tr>
<tr>
<td><strong>CASS 7.4.17DR</strong></td>
<td>Firm’s intention to adopt the alternative approach for a particular business line</td>
<td>Firm’s intention to adopt the alternative approach for a particular business line</td>
<td>At least three months prior to adopting the alternative approach for that business line</td>
<td>At least three months prior to adopting the alternative approach for that business line</td>
</tr>
<tr>
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<td>-----------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>CASS 7.6.6AR</strong></td>
<td>Firm’s intention to use a non-standard method of internal client money reconciliation</td>
<td>Firm’s intention to use a non-standard method of internal client money reconciliation</td>
<td>Forming the intention</td>
<td>Before using a non-standard method of internal client money reconciliation</td>
</tr>
</tbody>
</table>

**Part 3: Comes into force on 1 June 2015**

[Editor’s Note: Some of the amendments set out in this Part amend provisions set out in Parts 1 and 2 of this Annex.]

Application for affiliates

1.2.9A G ... 

(2) For business that is not *MiFID business*, the operation of the *custody chapter* or the *client money chapter* may differ if a *firm’s client* is an *affiliated company* and depending on certain other conditions (see, for example, *CASS 6.1.10BR* and *CASS 7.1.12AR 7.10.26R*).

... 

1.2.11 R (1) ... 

(2) In accordance with *CASS 7.1.15HR 7.10.36R*, a *firm* which is subject to the *client money chapter* and holds *money* both (i) in its capacity as a *trustee firm* and (ii) other than in its capacity as a *trustee firm* must not keep *money* held in in its capacity as a *trustee firm* in the same *client bank account* or *client transaction account* as *money* held other than in its capacity as a *trustee firm*. 

...
1.2.13 G A firm may opt to hold under a single chapter money that would otherwise be held under different chapters (see CASS 7.1.3R 7.10.3R and CASS 7.1.15BAR 7.10.30R). However, making such an election does not remove the requirement under CASS 1.2.11R(1).

3 Collateral

3.2 Requirements

3.2.4 G When appropriate, firms that enter into the arrangements with retail clients covered in this chapter will be expected to identify in the statement of custody assets sent to the client in accordance with COBS 16.4 (Statements of client designated investments or client money) or CASS 9.5 (Reporting to clients on request) 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.

6 Custody rules

6.1 Application

6.1.8A R (1) If a client communicates to a firm that it wishes (whether pursuant to a contractual right or otherwise) to terminate an arrangement relating to the transfer of full ownership of its safe custody asset to a firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) and the client’s communication is not in writing, the firm must make a written record of the client’s communication which also records the date the communication was received.

(2) A firm must keep a client’s written communication, or a written record of the client’s communication in (1), for five years, starting from the date the communication was received by the firm.

(3) (a) If a firm agrees to the termination of an arrangement relating to the transfer of full ownership of a client’s safe custody asset to the firm, it must notify the client of its agreement in writing. The notification must state when the termination is to take effect and whether or not the client’s safe custody...
asset will be held under the custody rules by the firm thereafter.

(b) If a firm does not agree to terminate an arrangement relating to the transfer of full ownership of a client’s safe custody asset to the firm, it must notify the client of its disagreement in writing.

(4) A firm must keep a written record of any notification it makes to a client under (3) for a period of five years, starting from the date the notification was made.

6.1.8B G CASS 6.1.8AR(3)(a) refers only to a firm’s agreement to terminate an existing arrangement relating to the transfer of full ownership of a client’s safe custody asset to the firm. Such agreement by a firm does not necessarily need to amount to the termination of its entire agreement with the client.

6.1.8C G When a firm notifies a client under CASS 6.1.8AR(3)(a) of when the termination of an arrangement relating to the transfer of full ownership of the safe custody asset to a firm is to take effect, it should take into account:

(1) any relevant terms relating to such a termination that have been agreed with the client; and

(2) the period of time it reasonably requires to return the safe custody asset to the client or to update the registration under CASS 6.2 (Holding of client assets) and update its records under CASS 6.6 (Records, accounts and reconciliations).

6.1.8D R If an arrangement relating to the transfer of full ownership of safe custody assets to a firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) is terminated, then the exemption at CASS 6.1.6R(1) no longer applies.

6.1.8E G (1) Following the termination of an arrangement relating to the transfer of full ownership of safe custody assets to a firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1), where a firm does not immediately return the safe custody assets to the client the firm should consider whether the custody rules apply in respect of the safe custody assets pursuant to CASS 6.1.1R(1A) to (1C).

(2) Where the custody rules apply to a firm for safe custody assets in these circumstances then the firm is required to comply with those rules and should, for example, update the registration under CASS 6.2 (Holding of client assets), update its records under CASS 6.6 (Records, accounts and reconciliations) and treat any shortfall in accordance with CASS 6.6.54R (in each case as appropriate).
6.1.12 R …

(4) Where a firm intends to segregate money as client money instead of the client’s safe custody asset under (3) it must, before doing so, ensure that this would result in money being held for the relevant client in respect of the shortfall under CASS 7.7.2R, 7.12.2R (statutory trust).

(5) …

(a) ensure the money is segregated under CASS 7.4 7.13 (Segregation of client money) and recorded as being held for the relevant client(s) under CASS 7.6 7.15 (Records, accounts and reconciliations);

6.1.16F R …

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
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<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>CASS 6.2.3R and CASS 6.2.6G CASS 6.2.3BG</td>
<td>Registration and recording of legal title</td>
</tr>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>CASS 6.5 6.6</td>
<td>Records, accounts and reconciliations</td>
</tr>
</tbody>
</table>

6.1.16IA R (1) Subject to (2), when a firm is acting as trustee or depositary of an AIF the firm need comply only with the custody rules in the table below:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>CASS 6.2.3R, CASS 6.2.4R 6.2.3BG to CASS 6.2.6G</td>
<td>Registration and recording of legal title</td>
</tr>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>CASS 6.3.1R(1A) and CASS 6.3.1R(4)</td>
<td>Arranging registration</td>
</tr>
<tr>
<td>CASS 6.5.1R, CASS 6.5.2AR, CASS 6.5.3R, CASS 6.5.13R(1A) and CASS 6.5.14G CASS 6.6.2R, CASS 6.6.4R, CASS 6.6.6R,</td>
<td>Records, accounts and reconciliations</td>
</tr>
</tbody>
</table>
When a firm is acting as trustee or depositary of an AIF that is an authorised AIF the firm must, in addition to the custody rules set out in (1), also comply with the custody rules in the table below:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.5.4G(1A) to CASS 6.5.4G(4), CASS 6.5.5R, CASS 6.5.7AG, CASS 6.5.8AG, CASS 6.5.9G and CASS 6.5.15G</td>
<td>Records, accounts and reconciliations</td>
</tr>
<tr>
<td>CASS 6.6.8R, CASS 6.6.11R to CASS 6.6.32G, CASS 6.6.41G, CASS 6.6.43G and CASS 6.6.47G</td>
<td></td>
</tr>
</tbody>
</table>

Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.3.1R(1A) and CASS 6.3.2G</td>
<td>Arranging for assets to be deposited with third parties</td>
</tr>
</tbody>
</table>

To the extent practicable, a firm must effect appropriate registration or recording of legal title to a safe custody asset 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. any other third party, if the firm is not a trustee firm but is prevented from registering or recording legal title in the way set out in (1) or (2) and provided that:
(4) the firm, if either:

(a) it is not a trustee firm but is prevented from registering or recording legal title in the way set out in (1), (2) or (3) and provided that:

(i) the safe custody asset 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

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

(b) it is a trustee firm and is prevented from registering or recording legal title in the way set out in (1) or (2).

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

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

6.2.5 A firm may only register or record legal title to its own applicable asset in the same name as that in which legal title to a client's safe custody asset is registered or recorded if the firm's applicable asset is separately identified from the client's safe custody asset in the firm's records, and either or both of the conditions in (1) and (2) are met:

(1) the firm's applicable assets are separately identified in the firm's records from the safe custody assets; or

(a) designated investment business it carries on for the account of any client; or

(b) steps taken by the firm to comply with an applicable custody rule;

and, in the case of either (a) or (b), the situation where registration or
recording of legal title of the firm’s applicable asset is in the same name as the client’s safe custody asset under this rule remains in place only to the extent that it is reasonably necessary.

(2) The registration or recording of legal title of the firm’s own applicable asset in the same name as the client’s safe custody asset is only as a result of the law or market practice of a jurisdiction outside of the United Kingdom the firm registers or records a safe custody asset 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.

(1) Consistent with a firm’s requirements to protect clients’ safe custody assets and have adequate organisation arrangements in place (CASS 6.2.1R and CASS 6.2.2R), before a firm registers or records legal title to its own applicable asset in the same name as that in which legal title to a client’s safe custody asset is registered or recorded under CASS 6.2.5R, it should consider whether there are any means to avoid doing so.

(2) Examples of where the conditions under CASS 6.2.5R(1) might be met include in the course of a firm:

(a) correcting a dealing error that relates to a transaction for the account of a client; or

(b) maintaining a small balance of the firm’s own applicable assets for purely operational or compliance purposes (eg, as a float to cover potential custody shortfalls) in an amount that is proportionate to the total amount of safe custody assets held for clients; or

(c) allocating safe custody assets to clients following settlement of a bulk order; or

(d) facilitating a client transaction that involves fractional entitlements; or

(e) making good a shortfall.

…

Deposit safe custody assets with third parties

6.3.1 R …

(1A) A firm which arranges the registration of a safe custody investment through a third party must exercise all due skill, care and diligence in
the selection and appointment of the third party. [deleted]

(2) A firm must take the necessary steps to ensure that any client's safe custody assets deposited with a third party, in accordance with this rule are identifiable separately from the applicable assets belonging to the firm and from the applicable assets 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. [deleted]

…

(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 safe custody assets belonging to clients. [deleted]

[Note: articles 16(1)(d) and article 17(1) of the MiFID implementing Directive]

6.3.2 G In discharging its obligations under this section CASS 6.3.1R, a firm should also consider, as appropriate, together with any other relevant matters:

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

…

(3) current industry standard reports, for example Financial Reporting and Auditing Group (FRAG) 21 report “Assurance reports on internal controls of services organisations made available to third parties” made in line with Technical Release AAF 01/06 of The Institute of Chartered Accountants in England and Wales or its equivalent;

…

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

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

(7) whether the third party has the appropriate regulatory permissions.

6.3.2A R (1) A firm must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under CASS 6.3.1R. The firm must make the record on the date it makes the selection or appointment and must keep it from that date until five years after the firm ceases to use the third party to
hold safe custody assets belonging to clients.

(2) A firm must make a record of each periodic review of its selection and appointment of a third party that it conducts under CASS 6.3.1R, its considerations and conclusions. The firm must make the record on the date it completes the review and must keep it from that date until five years after the firm ceases to use the third party to hold safe custody assets belonging to clients.

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:

(1) that the title of the account indicates that any safe custody asset credited to it does not belong to the firm;

(2) that the third party will hold or record a safe custody asset belonging to the firm's client separately from any applicable asset belonging to the firm or to the third party;

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

(4) [deleted]

(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 safe custody asset caused by the fraud, wilful default or negligence of the third party or an agent appointed by him. [deleted]

6.3.4 R (1) A Subject to (2), a firm must only deposit safe custody assets with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of safe custody assets for the account of another person with a third party who is subject to such regulation.

…

6.3.4A-1 R A firm must take the necessary steps to ensure that any client's safe custody assets deposited with a third party are identifiable separately from the applicable assets belonging to the firm and from the applicable assets 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.

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

...

CASS 6.5 (Records, accounts and reconciliations) is deleted in its entirety. The deleted text is not shown.

After CASS 6.5 (deleted) insert the following new section. The text is not underlined

6.6 Records, accounts and reconciliations

Records and accounts

6.6.1 G This section sets out the requirements a firm must meet when keeping records and accounts of the safe custody assets it holds for clients.

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

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

6.6.3 R A firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the safe custody assets held for clients.

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

6.6.4 R A firm must maintain a client-specific safe custody asset record.

6.6.5 G The requirements in CASS 6.6.2R to CASS 6.6.4R are for a firm to keep internal records and accounts of clients' safe custody assets. Therefore, any records falling under those requirements should be maintained by the firm, and should be separate to any records the firm may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, clients' safe custody assets.

Right to use agreements

6.6.6 R A firm must keep a copy of every executed client agreement that includes that firm's right to use safe custody assets for its own account (see CASS 6.4.1R), including in the case of a prime brokerage agreement the disclosure annex referred to in CASS 9.3.1R.

General record-keeping
6.6.7 R Unless otherwise stated, a firm must ensure that any record made under the custody rules is retained for a period of five years starting from the later of:

(1) the date it was created; and

(2) (if it has been modified since the date it was created), the date it was most recently modified.

6.6.8 R For each internal custody record check, each physical asset reconciliation and each external custody reconciliation carried out by a firm, it must make a record including:

(1) the date it carried out the relevant process;

(2) the actions the firm took in carrying out the relevant process; and

(3) a list of any discrepancies the firm identified and the actions the firm took to resolve those discrepancies.

Policies and procedures

6.6.9 G Firms are reminded that they must, under SYSC 6.1.1R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm with the rules in this chapter. This should include, for example, establishing and maintaining policies and procedures concerning:

(1) the frequency and method of the checks and reconciliations the firm is required to carry out under this section;

(2) the frequency with which the firm is required to review its arrangements in compliance with this chapter; and

(3) the resolution of discrepancies and the treatment of shortfalls under this section.

Internal custody record checks

6.6.10 G (1) An internal custody record check is one of the steps a firm takes to satisfy its obligations under:

(a) Principle 10 (Clients’ assets);

(b) CASS 6.2.2R (Requirement to have adequate organisational arrangements);

(c) CASS 6.6.2R to CASS 6.6.4R (Records and accounts); and

(d) where relevant, SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (Compliance).

(2) An internal custody record check is a check as to whether the firm’s records and accounts of the safe custody assets held by the firm
(including, for example, those deposited with third parties under CASS 6.3 (Depositing safe custody assets with third parties)) correspond with the firm’s obligations to its clients to hold those safe custody assets.

6.6.11 R (1) A firm must perform an internal custody record check:

(a) subject to (2), as regularly as is necessary but without allowing more than one month to pass between each internal custody record check; and

(b) as soon as reasonably practicable after the date to which the internal custody record check relates.

(2) A firm that holds no safe custody assets other than physical safe custody assets must perform an internal custody record check as regularly as necessary but, in any case, no less often than its physical asset reconciliations under CASS 6.6.22R.

6.6.12 G CASS 6.6.44R sets out the matters which a firm must have regard to when determining the frequency at which to undertake an internal custody record check.

6.6.13 R A firm must perform an internal custody record check using either the internal custody reconciliation method or the internal system evaluation method. It must not use a combination of these methods.

6.6.14 R A firm must only use its internal records (for example, its depot and client-specific ledgers for safe custody assets or other internal accounting records) in order to perform an internal custody record check.

6.6.15 G CASS 6.6.14R means that a firm must not base its internal custody record checks on any records that the firm may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, clients’ safe custody assets.

The internal custody reconciliation method for internal custody record checks

6.6.16 R A firm may only use the internal custody reconciliation method if:

(1) it separately maintains an aggregate safe custody asset record and a client-specific safe custody asset record; and

(2) its aggregate safe custody asset record and its client-specific safe custody asset record are capable of being compared.

6.6.17 R The internal custody reconciliation method requires a firm to perform a comparison between its aggregate safe custody asset record and its client-specific safe custody asset record, as at the date of the internal custody record check.
The internal system evaluation method for internal custody record checks

6.6.18 G (1) The internal system evaluation method is available to any firm, including one that is not able to use the internal custody reconciliation method because it does not meet the requirements at CASS 6.6.16R(1) and (2).

(2) The purpose of the internal system evaluation method is to detect weaknesses in a firm’s systems and controls and any recordkeeping discrepancies. However, this method is not designed to substitute a firm’s other measures for ensuring compliance with the custody rules, such as monitoring the accuracy of its records (see also CASS 6.2.2R and CASS 6.6.3R).

6.6.19 R The internal system evaluation method requires a firm to:

(1) establish a process that evaluates:

(a) the completeness and accuracy of the firm’s internal records and accounts of safe custody assets held by the firm for clients, in particular whether sufficient information is being completely and accurately recorded by the firm to enable it to:

(i) comply with CASS 6.6.4R; and

(ii) readily determine the total of all the safe custody assets that the firm holds for its clients; and

(b) whether the firm’s systems and controls correctly identify and resolve all discrepancies in its internal records and accounts of safe custody assets held by the firm for clients;

(2) run the evaluation process established under (1) on the date of each internal custody record check; and

(3) promptly investigate and, without undue delay, resolve any causes of discrepancies that the evaluation process reveals.

6.6.20 G The evaluation process under CASS 6.6.19R(1) should verify that the firm’s systems and controls correctly identify and resolve at least the following types or causes of discrepancies:

(1) items in the firm’s records and accounts that might be erroneously overstating or understating the safe custody assets held by a firm (for example, ‘test’ entries and ‘balancing’ entries);

(2) negative balances;

(3) processing errors;
(4) journal entry errors (eg, omissions and unauthorised system entries); and

(5) IT errors (eg, software issues that could lead to inaccurate records).

Physical asset reconciliations

6.6.21 G (1) A physical asset reconciliation is a separate process to the internal custody record check. Firms that hold physical safe custody assets for clients are required to perform both processes.

(2) The purpose of a physical asset reconciliation is to check that a firm’s internal records and accounts of the physical safe custody assets kept by the firm for clients are accurate and complete, and to ensure any discrepancies are investigated and resolved.

6.6.22 R A firm that holds physical safe custody assets must perform a physical asset reconciliation for all the physical safe custody assets it holds for clients:

(1) as regularly as is necessary but without allowing more than six months to pass between each physical asset reconciliation; and

(2) as soon as reasonably practicable after the date to which the physical asset reconciliation relates.

6.6.23 G CASS 6.6.44R sets out the matters which a firm must have regard to when determining the frequency at which to undertake a physical asset reconciliation.

6.6.24 R When performing a physical asset reconciliation a firm must:

(1) count all the physical safe custody assets held by the firm for clients as at the date to which the physical asset reconciliation relates; and

(2) compare the count in (1) against what the firm’s internal records and accounts state as being in the firm’s possession as at the same date.

6.6.25 R A firm must perform each physical asset reconciliation under CASS 6.6.24R using the total count method or the rolling stock method.

6.6.26 G Regardless of the method used, a firm should ensure that all safe custody assets held by the firm as physical safe custody assets for clients are subject to a physical asset reconciliation at the frequency required under CASS 6.6.22R.

6.6.27 R If a firm completes a physical asset reconciliation in a single stage, such that the firm:

(1) performs a single count under CASS 6.6.24R(1) which encompasses all the physical safe custody assets held by the firm for clients as at the date to which the physical asset reconciliation relates; and
(2) compares that count against the firm’s internal records and accounts in accordance with CASS 6.6.24R(2),

then the firm will have used the total count method for that physical asset reconciliation.

6.6.28 R If a firm completes a physical asset reconciliation in two or more stages, such that the firm:

(1) performs two or more counts under CASS 6.6.24R(1) (each on a separate occasion and relating to a different stock line or group of stock lines forming part of the firm’s overall holdings of physical safe custody assets) which, once all of the counts are complete, encompass all the physical safe custody assets held by the firm for clients; and

(2) compares each of those counts against the firm’s internal records and accounts in accordance with CASS 6.6.24R(2),

then the firm will have used the rolling stock method for that physical asset reconciliation.

6.6.29 G (1) The rolling stock method allows a firm to perform its physical asset reconciliation in several stages, with each stage referring to a line of stock or group of stock lines in a designated investment selected by a firm (for example, all the shares with an issuer whose name begins with the letter ‘A’ or all the stock lines held in connection with a particular business line).

(2) Where a firm uses the rolling stock method to perform a physical asset reconciliation, all the stages in that physical asset reconciliation must be completed in time to ensure the firm complies with CASS 6.6.22R.

6.6.30 R (1) If a firm wishes to use the rolling stock method to perform a physical asset reconciliation it must first establish and document in writing its reasons for concluding that the way in which it will carry out its physical asset reconciliation is adequately designed to mitigate the risk of the firm’s records being manipulated or falsified.

(2) A firm must retain any documents created under (1) for a period of at least five years after the date it ceases to use the rolling stock method to perform its physical asset reconciliation.

6.6.31 G The documents under CASS 6.6.30R(1) should, for example, cover the systems and controls the firm will have in place to mitigate the risk of ‘teeming and lading’ in respect of all the physical safe custody assets held by the firm for clients and across all the firm’s business lines.

6.6.32 G To meet the requirement to have adequate organisational arrangements under CASS 6.2.2R, a firm should consider performing ‘spot checks’ as to
whether title to an appropriate sample of physical safe custody assets that it holds is registered correctly under CASS 6.2.3R (Registration and recording of legal title).

External custody reconciliations

6.6.33  G  The purpose of an external custody reconciliation is to ensure the completeness and accuracy of a firm’s internal records and accounts of safe custody assets held by the firm for clients against those of relevant third parties.

6.6.34  R  A firm must conduct, on a regular basis, reconciliations between its internal records and accounts of safe custody assets held by the firm for clients and those of any third parties by whom those safe custody assets are held.

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

6.6.35  R  In CASS 6.6.34R, the third parties whose records and accounts a firm is required to reconcile its own internal records and accounts with must include:

(1) the third parties with which the firm has deposited clients’ safe custody assets; and

(2) where the firm has not deposited a client’s safe custody asset with a third party, the third parties responsible for the registration of legal title to that safe custody asset.

6.6.36  G  Examples of the sorts of third parties referred to at CASS 6.6.35R(2) include central securities depositaries, operators of collective investment schemes, and administrators of offshore funds.

6.6.37  R  A firm must conduct external custody reconciliations:

(1) as regularly as necessary but with no more than one month between each external custody reconciliation; and

(2) as soon as reasonably practicable after the date to which the external custody reconciliation relates.

6.6.38  G  CASS 6.6.44R sets out the matters which a firm must consider when determining the frequency at which to undertake an external custody reconciliation.

6.6.39  G  Where a firm holds clients’ safe custody assets electronically with a central securities depositary which is able to provide adequate information to the firm on its holdings on a daily basis, it is best practice under CASS 6.6.37R(1) for the firm to conduct an external custody reconciliation each business day in respect of those assets.

6.6.40  G  Where a firm deposits safe custody assets belonging to a client with a third party, in complying with the requirements of CASS 6.6.34R, the firm should
seek to ensure that the third party provides the firm with adequate information (for example, in the form of a statement) as at a date specified by the firm which details the description and amounts of all the safe custody assets credited to the relevant account(s) and that this information is provided in sufficient time to allow the firm to carry out its external custody reconciliations under CASS 6.6.37R.

6.6.41 G If a firm acting as trustee or depositary of an AIF deposits safe custody assets belonging to a client with a third party, under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation, the firm should seek to ensure that the third party provides the firm with adequate information (for example, in the form of a statement) as at a date or dates specified by the firm which details the description and amounts of all the safe custody assets credited to the account(s) and that this information is provided in adequate time to allow the firm to carry out the periodic reconciliations required under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation.

6.6.42 G External custody reconciliations must be performed for each safe custody asset held by the firm for its clients, except for physical safe custody assets. A reconciliation of transactions involving safe custody assets, rather than of the safe custody assets themselves, will not satisfy the requirement under CASS 6.6.34R.

6.6.43 G A firm acting as trustee or depositary of an AIF that is an authorised AIF should perform the reconciliation under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation:

(1) as regularly as is necessary having regard to the frequency, number and value of transactions which the firm undertakes in respect of safe custody assets, but with no more than one month between each reconciliation; and

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

to ensure the accuracy of its internal records and accounts against those of third parties by whom client’s safe custody assets are held.

Frequency of checks and reconciliations under this section

6.6.44 R When determining the frequency at which it will undertake its internal custody record checks under CASS 6.6.11R, physical asset reconciliations under CASS 6.6.22R, and external custody reconciliations under CASS 6.6.37R, a firm must have regard to:

(1) the frequency, number and value of transactions which the firm undertakes in respect of clients’ safe custody assets; and

(2) the risks to which clients’ safe custody assets are exposed, such as
the nature, volume and complexity of the firm’s business and where and with whom safe custody assets are held.

6.6.45 R (1) A firm must make and retain records sufficient to show and explain any decision it has taken under CASS 6.6.44R when determining the frequency of its internal record custody checks, physical asset reconciliations and external custody reconciliations. Subject to (2), such records must be retained indefinitely.

(2) If any decision under CASS 6.6.44R is superseded by a subsequent decision under that rule then the record of that earlier decision retained in accordance with (1) need only be retained for a further period of five years from the subsequent decision.

6.6.46 R (1) Subject to (3), a firm must review the frequency at which it conducts internal custody record checks, physical asset reconciliations and external custody reconciliations at least annually to ensure that it continues to comply with CASS 6.6.11R, CASS 6.6.22R and CASS 6.6.37R, respectively, and has given due consideration to the matters in CASS 6.6.44R.

(2) For each review a firm undertakes under (1), it must record the date and the actions it took in reviewing the frequency of its internal custody record checks, physical asset reconciliations and external custody reconciliations.

(3) A firm need not carry out a review under (1) in respect of its internal custody record checks, physical asset reconciliations or external custody reconciliations, if it already conducts the particular process in respect of all relevant safe custody assets each business day.

Independence of person performing checks and reconciliations

6.6.47 G Whenever possible, a firm should ensure that checks and 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 checked and/or reconciled.

Resolution of discrepancies

6.6.48 G In this section, a discrepancy should not be considered to be resolved until it is fully investigated and corrected, and any associated shortfall is made good by way of the firm ensuring that:

(1) it is holding (under the custody rules) each of the safe custody assets that the firm ought to be holding for each of its clients; and

(2) its own records, and the records of any relevant other person (such as a third party with whom the firm deposited the safe custody assets) accurately correspond to the position under (1).
6.6.49 R When a firm identifies a discrepancy as a result of carrying out an internal custody record check, physical asset reconciliation or external custody reconciliation, the firm must promptly investigate the reason for the discrepancy and resolve it without undue delay and must take appropriate steps under CASS 6.6.54R for the treatment of any shortfalls until that discrepancy is resolved.

6.6.50 R When a firm identifies a discrepancy outside of its processes for an internal custody record check, physical asset reconciliation or external custody reconciliation, the firm must take all reasonable steps both to investigate the reason for the discrepancy and to resolve it. It must also take appropriate steps under CASS 6.6.54R for the treatment of shortfalls until that discrepancy is resolved.

6.6.51 G Where the discrepancy identified under CASS 6.6.49R or CASS 6.6.50R has arisen as a result of a breach of the custody rules, the firm should ensure it takes sufficient steps to avoid a reoccurrence of that breach (see Principle 10 (Clients’ assets), CASS 6.6.3R and, as applicable, SYSC 4.1.1R(1) and SYSC 6.1.1R).

6.6.52 G Items recorded or held within a suspense or error account fall within the scope of discrepancies in this section.

6.6.53 G Items recorded in a firm’s records and accounts that are no longer recorded by relevant third parties (such as ‘liquidated stocks’) also fall within the scope of discrepancies in this section.

Treatment of shortfalls

6.6.54 R (1) This rule applies where a firm identifies a discrepancy as a result of, or that reveals, a shortfall, which the firm has not yet resolved.

(2) Subject to (3), until the discrepancy is resolved a firm must do one of the following:

(a) appropriate a sufficient number of its own applicable assets to cover the value of the shortfall and hold them for the relevant clients under the custody rules in such a way that the applicable assets, or the proceeds of their liquidation, will be available for distribution for the benefit of the relevant clients in the event of the firm’s failure and, in doing so:

(i) ensure that the applicable assets are clearly identifiable as separate from the firm’s own property and are recorded by the firm in its client-specific safe custody asset record as being held for the relevant client;

(ii) keep a record of the actions the firm has taken under this rule which includes a description of the shortfall, identifies the relevant affected clients, and
lists the applicable assets that the firm has appropriated to cover the shortfall; and

(iii) update the record made under (ii) whenever the discrepancy is resolved and the firm has re-appropriated the applicable assets; or

(b) (provided that doing so is consistent with the firm’s permissions and would result in money being held for the relevant client) in respect of the shortfall under CASS 7.7.2R (statutory trust) appropriate a sufficient amount of its own money to cover the value of the shortfall, hold it for the relevant client as client money under the client money rules and, in doing so:

(i) ensure the money is segregated under CASS 7.13 (Segregation of client money) and recorded as being held for the relevant client under CASS 7.15 (Records, accounts and reconciliations);

(ii) keep a record of the actions the firm has taken under this rule which includes a description of the shortfall, identifies the relevant affected clients, and specifies the amount of money that the firm has appropriated to cover the shortfall; and

(iii) update the record made under (ii) whenever the discrepancy is resolved and the firm has re-appropriated the money; or

(c) appropriate a number of applicable assets in accordance with (a) and an amount of money in accordance with (b) which, in aggregate, are sufficient to cover the value of the shortfall.

(3) If the firm, where justified, concludes that another person is responsible for the discrepancy then, regardless of any dispute with that other person or whether the discrepancy is due to a timing difference between the accounting systems of that other person and that of the firm, the firm must take all reasonable steps to resolve the situation without undue delay with the other person. Until the discrepancy is resolved the firm must consider whether it would be appropriate to notify the affected client of the situation, and may take steps under (2) for the treatment of shortfalls until that discrepancy is resolved.

6.6.55 G In considering whether it should notify affected clients under CASS 6.6.54R (3), a firm should have regard to its obligations under the client’s best interests rule to act honestly, fairly and professionally in accordance with the best interests of its clients, and to Principle 7 (communications with clients).
6.6.56 G (1) The value of a *shortfall* for the purposes of *CASS 6.6.54R* may be determined by the previous day’s closing mark to market valuation or, if in relation to a particular *safe custody asset* none is available, the most recently available valuation.

(2) Where a *firm* is taking the measures under *CASS 6.6.54R(2)* in respect of a particular *shortfall* it should, as regularly as necessary, and having regard to *Principle 10*:

(a) review the value of the *shortfall* in line with (1); and

(b) where the *firm* has found that the value of the *shortfall* has changed, adjust either or both the number of own *applicable assets* and the amount of *money* it has appropriated to ensure that in aggregate the assets and monies set aside are sufficient to cover the changed value of the *shortfall*.

Notification requirements

6.6.57 R A *firm* must inform the *FCA* in writing without delay if:

(1) its internal records and accounts of the *safe custody assets* held by the *firm* for *clients* are materially out of date, or materially inaccurate or invalid, so that the *firm* is no longer able to comply with the requirements in *CASS 6.6.2R* to *CASS 6.6.4R*; or

(2) if it is a *firm acting as trustee or depositary of an AIF* and has not complied with, or is materially unable to comply with, the requirements in *CASS 6.6.2R* or in article 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*; or

(3) it will be unable, or materially fails, to take the steps required under *CASS 6.6.54R* for the treatment of *shortfalls*; or

(4) it will be unable, or materially fails, to conduct an *internal custody record check* in compliance with *CASS 6.6.11R* to *CASS 6.6.19R*; or

(5) it will be unable, or materially fails, to conduct a *physical asset reconciliation* in compliance with *CASS 6.6.22R* to *CASS 6.6.30R*; or

(6) it will be unable, or materially fails, to conduct an *external custody reconciliation* in compliance with *CASS 6.6.34R* to *CASS 6.6.37R*.

Annual audit of compliance with the custody rules

6.6.58 G *Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FCA* 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 *custody rules*. 
CASS 7.1 to CASS 7.8 and CASS 7 Annex 1 are deleted in their entirety. The deleted text is not shown.

After CASS 7.9 [deleted] insert the following new sections. The text is not underlined.

7 Client money rules

7.10 Application and purpose

7.10.1 This chapter applies to a firm that receives money from or holds money for, or on behalf of, a client in the course of, or in connection with, its:

(1) MiFID business; and/or

(2) designated investment business;

unless otherwise specified in this section.

7.10.2 A firm is reminded that when CASS 7.10.1 applies it should treat client money in an appropriate manner so that, for example:

(1) if it holds client money in a client bank account that account is held in the firm’s name in accordance with CASS 7.13.13R;

(2) if it allows another person to hold client money this is effected under CASS 7.14; and

(3) its internal client money reconciliation takes into account any client equity balance relating to its margined transaction requirements.

Opt-in to the client money rules

7.10.3 A firm that receives or holds money to which this chapter applies in relation to:

(a) its MiFID business; or

(b) its MiFID business and its designated investment business which is not MiFID business;

and holds money in respect of which CASS 5 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 that receives or holds money to which this chapter applies solely in relation to its designated investment business which is not MiFID
business and receives or holds money in respect of which 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 designated investment business.

(3) 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.

(4) This rule is subject to CASS 1.2.11R.

7.10.4 G Firms are reminded that, under CASS 1.2.11R, they must not keep money in respect of which the client money chapter applies in the same client bank account or client transaction account as money for which the insurance client money chapter applies.

7.10.5 G The opt-in to the client money rules in this chapter does not apply in respect of money that a firm holds outside of the scope of the insurance client money chapter.

7.10.6 G If a firm has opted to comply with this chapter, the insurance client money chapter will have no application to the activities to which the election applies.

7.10.7 G A firm that is only subject to the insurance client money chapter may not opt to comply with this chapter.

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

7.10.8 R CASS 7.10.9G to CASS 7.10.15G do not apply to a firm in relation to money held in connection with its MiFID business to which this chapter applies or in relation to money for which the firm has made an election under CASS 7.10.3R(1).

Professional client opt-out

7.10.9 G The 'opt out' provisions provide a firm with the option of allowing a professional client to choose whether their money is subject to the client money rules (unless the firm is conducting insurance mediation activity).

7.10.10 R Subject to CASS 7.10.12R, money is not client money when a firm (other than a sole trader) holds that money on behalf of, or receives it from, a professional client, other than in the course of insurance mediation activity, and the firm has obtained written acknowledgement from the professional client that:
(1) 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 professional client will rank only as a general creditor of the firm.

'Opt-outs' for non-IMD business

7.10.11 G For a firm whose business is not governed by the Insurance Mediation Directive, 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, 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.

7.10.12 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 listed activity or insurance mediation activity:

(1) holds it on behalf of or receives it from a professional client who is not an authorised person; and

(2) has sent a separate written notice to the professional client stating the matters set out in CASS 7.10.10R (1) to (3).

7.10.13 G When a firm undertakes a range of business for a professional client 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 7.10.10R or CASS 7.10.12R, elect to segregate client money in connection with securities transactions and not segregate (by complying with CASS 7.10.10R or CASS 7.10.12R) money in connection with contingent liability investments for the same client.

7.10.14 R When a firm transfers client money to another person, the firm must not enter into an agreement under CASS 7.10.10R or CASS 7.10.12R with that other person in relation to that client money or represent to that other person that the money is not client money.

7.10.15 G CASS 7.10.14R prevents a firm, when passing client money to another person under CASS 7.14.2R (Transfer of client money to a third party), from making use of the 'opt out' provisions under CASS 7.10.10R or CASS 7.10.12R.

Credit institutions and approved banks

7.10.16 R In relation to the application of the client money rules (and any other rule in so far as it relates to matters covered by the client money rules) to the firms referred to in (1) and (2), the following is not client money:

(1) any deposits within the meaning of the CRD held by a CRD credit
institution; and

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

(2) any money held by an approved bank that is not a CRD credit institution in an account with itself in relation to designated investment business carried on for its clients.

7.10.17 G A firm referred to in CASS 7.10.16R must comply, as relevant, with CASS 7.10.18G to CASS 7.10.24R.

7.10.18 G The effect of CASS 7.10.16R is that, unless notified otherwise in accordance with CASS 7.10.20R or CASS 7.10.22R, clients of CRD credit institutions or approved banks that are not CRD credit institutions should expect that where they pass money to such firms in connection with designated investment business these sums will not be held as client money.

7.10.19 R A firm holding money in either of the ways described in CASS 7.10.16R must, before providing designated investment business services to the client in respect of those sums, notify the client that:

(1) the money held for that client is held by the firm as banker and not as a trustee under the client money rules; and

(2) if the firm fails, the client money distribution rules will not apply to these sums and so the client will not be entitled to share in any distribution under the client money distribution rules.

7.10.20 R A firm holding money in either of the ways described in CASS 7.10.16R in respect of a client and providing the services to it referred to in CASS 7.10.19R must:

(1) explain to its clients the circumstances, if any, under which it will cease to hold any money in respect of those services as banker and will hold the money as trustee in accordance with the client money rules; and

(2) set out the circumstances in (1), if any, in its terms of business so that they form part of its agreement with the client.

7.10.21 G Where a firm receives money that would otherwise be held as client money but for CASS 7.10.16R:

(1) it should be able to account to all of its clients for sums held for them at all times; and

(2) that money should, pursuant to Principle 10, be allocated to the relevant client promptly. This should be done no later than ten business days after the firm has received the money.

7.10.22 R If a CRD credit institution or an approved bank that is not a CRD credit
institution wishes to hold client money for a client (rather than hold the money in either of the ways described in CASS 7.10.16R) it must, before providing designated investment business services to the client, disclose the following information to the client:

(1) that the money held for that client in the course of or in connection with the business described under (2) is being held by the firm as client money under the client money rules;

(2) a description of the relevant business carried on with the client in respect of which the client money rules apply to the firm; and

(3) that, if the firm fails, the client money distribution rules will apply to money held in relation to the business in question.

7.10.23 G Firms carrying on MiFID business are reminded of their obligation to supply investor compensation scheme information to clients under COBS 6.1.16R (Compensation Information).

7.10.24 R A CRD credit institution or an approved bank that is not a CRD credit institution must, in respect of any client money held in relation to its designated investment business that is not MiFID business, comply with the obligations referred to in COBS 6.1.16R (Compensation information).

Affiliated companies: MiFID business

7.10.25 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.

Affiliated companies: non-MiFID business

7.10.26 R A firm that holds money on behalf of, or receives money from, an affiliated company in respect of designated investment business which is not MiFID business must not treat the money as client money unless:

(1) the firm has been notified by the affiliated company that the money belongs to a client of the affiliated company; or

(2) the affiliated company is a client dealt with at arm's length; or

(3) the affiliated company is a manager of an occupational pension scheme or is an overseas company; and

(a) the money is given to the firm in order to carry on designated investment business for or on behalf of the clients of the affiliated company; and

(b) the firm has been notified by the affiliated company that the money is to be treated as client money.

Coins
7.10.27 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

7.10.28 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 that, with respect to its regulated activities, is subject to the following rules of its designated professional body, must comply with those rules and, where relevant paragraph (3), and if it does so, it will be deemed to comply with the client money rules.

(2) The relevant rules are:

(a) if the firm is regulated by the Law Society (of England and Wales), the SRA Accounts Rules 2011;

(b) if the firm is regulated by the Law Society of Scotland, the Law Society of Scotland Practice Rules 2011; and

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

(3) If the firm in (1) is a MiFID investment firm that receives or holds money for, or on behalf of a client in the course of, or in connection with its MiFID business, it must also comply with the MiFID client money (minimum implementing) rules in relation to that business.

Long term insurers and friendly societies

7.10.29 R This chapter does not apply to the permitted activities of a long-term insurer or a friendly society, unless it is a MiFID investment firm that receives money from or holds money for or on behalf of a client in the course of, or in connection with, its MiFID business.

Contracts of insurance

7.10.30 R (1) Provided it complies with CASS 1.2.11R, a firm that receives or holds client money in relation to contracts of insurance may elect to comply with the provisions of the insurance client money chapter, instead of this chapter, in respect of all such money.

(2) This rule is subject to CASS 1.2.11R.

7.10.31 R A firm must make and retain a written record of any election which it makes under CASS 7.10.30R.

Life assurance business
7.10.32 G (1) A firm which receives and holds client money in respect of life assurance business in the course of its designated investment business that is not MiFID business may:

(a) under CASS 7.10.3R (2) elect to comply with the client money chapter in respect of such client money and in doing so avoid the need to comply with the insurance client money chapter which would otherwise apply to the firm in respect of client money received in the course of its insurance mediation activity; or

(b) under CASS 7.10.30R, elect to comply with the insurance client money chapter 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 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.

Trustee firms

7.10.33 R A trustee firm which holds money in relation to its designated investment business which is not MiFID business to which this chapter applies, must hold any such client money separate from its own money at all times.

7.10.34 R Subject to CASS 7.10.35R only the client money rules listed in the table below apply to a trustee firm in connection with money that the firm receives, or holds for or on behalf of a client in the course of or in connection with its designated investment business which is not MiFID business.

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7.10.35  R  
(1) A trustee firm to which CASS 7.10.34R applies may, in addition to the client money rules set out at CASS 7.10.34R, also elect to comply with:

(a) all the client money rules in CASS 7.13 (Segregation of client money);

(b) CASS 7.14 (Client money held by a third party);

(c) all the client money rules in CASS 7.15 (Records, accounts and reconciliations); or

(d) CASS 7.18 (Acknowledgement letters).

(2) A trustee firm must make 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.

(3) Where a trustee firm has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and keep that record from the date the decision is made for a period of five years after the date it is to be effective.

7.10.36  R  
A trustee firm to which CASS 7.10.34R applies and which is otherwise subject to the client money rules must ensure that any client money it holds other than in its capacity as trustee firm is segregated from client money it holds as a trustee firm.

7.10.37  G  
A trustee firm to which CASS 7.10.34R applies and which is otherwise subject to the client money rules should ensure that in designing its systems and controls it:

(1) takes into account that the client money distribution rules will only apply in relation to any client money that the firm holds other than in its capacity as trustee firm; and

(2) has regard to other legislation that may be applicable.
7.10.38 R (1) A trustee firm to which CASS 7.10.34R applies may elect that:

(a) the applicable provisions of CASS 7.13 (Segregation of client money) and CASS 7.15 (Records, accounts and reconciliations) under CASS 7.10.34R; and

(b) and any further provisions it elects to comply with under CASS 7.10.35R(1);

will apply separately and concurrently for each distinct trust that the trustee firm acts for.

(2) A trustee firm must make 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.

(3) Where a trustee firm has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and must keep that record from the date the decision is made for a period of five years after the date it is to be effective.

7.10.39 G A trustee firm may wish to make an election under CASS 7.10.38G if, for example, it acts for a number of distinct trusts which it wishes, or is required, to keep operationally separate. If a firm makes such an election then it should:

(1) establish and maintain adequate internal systems and controls to effectively segregate client money held for one trust from client money held for another trust; and

(2) conduct internal client money reconciliations as set out in CASS 7.16 and external client money reconciliations under CASS 7.15.20R for each trust.

7.10.40 G The provisions in CASS 7.10.34R to CASS 7.10.39G do not affect the general application of the client money rules regarding money that is held by a firm other than in its capacity as a trustee firm.

General purpose

7.10.41 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, where relevant, implement the
provisions of MiFID which regulate the obligations of a firm when it holds client money in the course of its MiFID business.

7.11 Treatment of client money

Title transfer collateral arrangements

7.11.1 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 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.

7.11.2 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 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.

7.11.3 R (1) A firm must ensure that any arrangement relating to the transfer of full ownership of a client's money to the firm for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1) is the subject of a written agreement made on a durable medium between the firm and the client.
(2) Regardless of the form of the written agreement in (1) (which may have additional commercial purposes), it must cover the client’s agreement to:

(a) the terms for the arrangement relating to the transfer of the client’s full ownership of money to the firm;

(b) any terms under which the ownership of money is to transfer from the firm back to the client; and

(c) (to the extent not covered by the terms under (b)), any terms for the termination of:

(i) the arrangement under (a); or

(ii) the overall agreement in (1).

(3) A firm must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.

7.11.4 G The terms referred to in CASS 7.11.3R(2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of money to the firm is not in effect from time to time, or is contingent on some other condition.

7.11.5 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.

7.11.6 G Where a firm has received full title or full ownership to money under a collateral arrangement, the fact that it has also granted a security interest 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, 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 client bank account to the firm.

7.11.7 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.

7.11.8 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.

Termination of title transfer collateral arrangements

7.11.9 R (1) If a client communicates to a firm that it wishes (whether pursuant to a contractual right or otherwise) to terminate an arrangement relating to the transfer of full ownership of its money to the firm for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1), and the client’s communication is not in writing, the firm must make a written record of the client’s communication, which also records the date the communication was received.

(2) A firm must keep a client’s written communication, or a written record of the client’s communication in (1), for five years starting from the date the communication was received by the firm.

(3) (a) If a firm agrees to the termination of an arrangement relating to the transfer of full ownership of a client’s money to the firm, it must notify the client of its agreement in writing. The notification must state when the termination is to take effect and whether or not the client’s money will be treated as client money by the firm thereafter.

(b) If a firm does not agree to terminate an arrangement relating to the transfer of full ownership of a client’s money to the firm, it must notify the client of its disagreement in writing.

(4) A firm must keep a written record of any notification it makes to a client under (3) for a period of five years, starting from the date the notification was made.

7.11.10 G CASS 7.11.9R(3)(a) refers only to a firm’s agreement to terminate an existing arrangement relating to the transfer of full ownership of a client’s money to the firm. Such agreement by a firm does not necessarily need to amount to the termination of its entire agreement with the client.

7.11.11 G When a firm notifies a client under CASS 7.11.9R(3)(a) of when the termination of an arrangement relating to the transfer of full ownership of
the client’s money to the firm is to take effect, it should take into account:

(1) any relevant terms relating to such a termination that have been agreed with the client; and

(2) the period of time it reasonably requires to return the money to the client, or to update its records under CASS 7.15 (Records, accounts and reconciliations) and to segregate the money as client money under CASS 7.13 (Segregation of client money).

7.11.12 R If an arrangement relating to the transfer of full ownership of a client’s money to a firm for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1) is terminated then, unless otherwise permitted under the client money rules and notified to the client under CASS 7.11.9R(3)(a), the firm must treat that money as client money from the start of the next business day following the date of termination as set out in the firm’s notification under CASS 7.11.9R(3)(a). Where the firm’s notification under CASS 7.11.9R(3)(a) does not state when the termination of the arrangement will take effect, the firm must treat that money as client money from the start of the next business day following the date on which the firm’s notification is made.

7.11.13 G A firm to which CASS 7.11.12R applies should, for example, update its records under CASS 7.15 (Records, accounts and reconciliations) and segregate the money as client money under CASS 7.13 (Segregation of client money), from the relevant time at which the firm is required to treat the money as client money.

Delivery versus payment transaction exemption

7.11.14 R (1) Subject to (2) and CASS 7.11.16R and with the agreement of the relevant client, money need not be treated as client money in respect of a delivery versus payment transaction through a commercial settlement system if:

(a) in respect of a client's purchase, the firm intends for the money from the client to be due to it within one business day following the firm’s fulfilment of its delivery obligation to the client; or

(b) in respect of a client's sale, the firm intends for the money in question to be due to the client within one business day following the client's fulfilment of its delivery obligation to the firm.

(2) If the payment or delivery by the firm to the client has not occurred by the close of business on the third business day following the date on which the firm makes use of the exemption under (1), the firm must stop using that exemption for the transaction.

7.11.15 G The exclusion from the client money rules for delivery versus payment transaction exemption...
transactions under *CASS 7.11.14R* is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 26 of *MiFID*.

7.11.16 R A *firm* cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under *CASS 7.11.14R* in either or both of the following circumstances:

1. it is not a direct member or participant of the relevant *commercial settlement system*, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that *commercial settlement system*;

2. the transaction in question is being settled by another *person* on behalf of the *firm* through an account held at the relevant *commercial settlement system* by that other *person*.

7.11.17 R Where a *firm* does not meet the requirements in *CASS 7.11.14R* or *CASS 7.11.16R* for the use of the exemption in *CASS 7.11.14R*, the *firm* is subject to the *client money rules* in respect of any *money* it holds in connection with the delivery versus payment transaction in question.

7.11.18 G (1) In line with *CASS 7.11.14R*, where a *firm* receives *money* from the *client* in fulfilment of the *client’s* payment obligation in respect of a delivery versus payment transaction the *firm* is carrying out through a *commercial settlement system* in respect of a *client’s* purchase, and the *firm* has not fulfilled its delivery obligation to the *client* by close of business on the third *business day* following the date of the *client’s* fulfilment of its payment obligation to the *firm*, the *firm* must treat the *client money* in accordance with the *client money rules* until delivery by the *firm* to the *client* occurs.

(2) Upon settlement of a delivery versus payment transaction a *firm* is carrying out through a *commercial settlement system* (including when it is settled within the three *business day* period referred to in *CASS 7.11.14R*(2)) then, in respect of:

- a *client’s* purchase, the *custody rules* apply to the relevant *safe custody asset* the *firm* receives upon settlement; and

- a *client’s* sale, the *client money rules* will apply to the relevant *money* received on settlement.

7.11.19 R A *firm* will not be in breach of the requirement under *CASS 7.13.6R* to receive *client money* directly into a *client bank account* if it:

1. receives the *money* in question:

   (a) in accordance with *CASS 7.11.14R*(1)(a) but it is subsequently required under *CASS 7.11.14R*(2) to hold that *money* in accordance with the *client money rules*; or
(b) in the circumstances referred to in CASS 7.11.18G(2)(b); and

(2) pays the money in question into a client bank account promptly, and in any event by close of business on the business day following:

(a) the expiration of the relevant period referred to in CASS 7.11.14R(2); or

(b) receipt of the money in the circumstances referred to in CASS 7.11.18G(2)(b).

7.11.20 R (1) If a firm makes use of the exemption under CASS 7.11.14R, it must obtain the client’s written agreement to the firm’s use of the exemption.

(2) In respect of each client, the record created in (1) must be retained during the time that the firm makes use, or intends to make use, of the exemption under CASS 7.11.14R in respect of that client’s monies.

7.11.21 R (1) Subject to (2), money need not be treated as client money:

(a) in respect of a delivery versus payment transaction for the purpose of settling a transaction in relation to units in a regulated collective investment scheme in either of the following circumstances:

(i) the authorised fund manager receives the money from a client in relation to the authorised fund manager’s obligation to issue units, in an AUT or ACS, or to arrange for the issue of units in an ICVC, in accordance with COLL; or

(ii) the money is held in the course of redeeming units where the proceeds of that redemption are paid to a client within the time specified in COLL;

(2) Where, in respect of money received in any of the circumstances set out in (1), the authorised fund manager has not, by close of business on the business day following the date of receipt of the money, paid this money to the depositary of an AUT or ACS, the ICVC or to the client as the case may be, the authorised fund manager must stop using the exemption under (1) for that transaction.

7.11.22 R An authorised fund manager will not be in breach of the requirement under CASS 7.13.6R to receive client money directly into a client bank account if it received the money in accordance with CASS 7.11.21R(1) and is subsequently required under CASS 7.11.21R(2) to hold that money in accordance with the client money rules.

7.11.23 G Where proceeds of redemption paid to the client in accordance with CASS
7.11.21R(1)(a)(ii) are paid by cheque, the cheque should be issued from the relevant client bank account.

7.11.24 R (1) If a firm makes use of the exemption under CASS 7.11.21R, it must obtain the client’s written agreement to the firm’s use of the exemption.

(2) In respect of each client, the record created in (1) must be retained for the duration of the time that the firm makes use of the exemption under CASS 7.11.21R in respect of that client’s money.

Money due and payable to the firm

7.11.25 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.

7.11.26 G Money will not become properly due and payable to the firm merely through the firm holding that money for a specified period of time. If a firm wishes to cease to hold client money for a client it must comply with CASS 7.11.34R (Discharge of fiduciary duty) or, if the balance is allocated but unclaimed client money, CASS 7.11.50R (Allocated but unclaimed client money) or CASS 7.11.57R (De minimis amounts of unclaimed client money).

7.11.27 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.

7.11.28 G 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 7.15.2R, firms must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out internal client money reconciliations either in accordance with the standard methods of internal client money reconciliation or the requirements for a non-standard method of internal client money reconciliation.

7.11.29 G When a client's obligation or liability, which 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

7.11.30 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.

7.11.31 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 7.11.34R);

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 7.11.1R (Title transfer collateral arrangements)).

Interest

7.11.32 R A *firm* must pay a *retail client* any interest earned on *client money* held for that *client* unless it has otherwise notified him in writing.

7.11.33 G (1) The *firm* may, under the terms of its agreement with the *client*, pay some, none, or all interest earned to the relevant *client*.

(2) Where interest is payable on *client money* by a *firm* to *clients*:

(a) such sums are *client money* and so, if not paid to, or to the order of the *clients*, are required to be segregated in accordance with CASS 7.13 (Segregation of client money);

(b) the interest should be paid to *clients* in accordance with the *firm’s* agreement with each *client*; and

(c) if the *firm’s* agreement with the *client* is silent as to when interest should be paid to the *client* the *firm* should follow CASS 7.13.36R (Allocation of client money receipts);

irrespective of whether the *client* is a *retail client* or otherwise.

Discharge of fiduciary duty

7.11.34 R *Money* ceases to be *client money* (having regard to CASS 7.11.40R where applicable) if:

(1) it is paid to the *client*, or a duly authorised representative of the
(2) it is:

(a) paid to a third party on the instruction of, or with the specific consent of, the client unless it is transferred to a third party in the course of effecting a transaction under CASS 7.14.2R (Transfer of client money to a third party); or

(b) paid to a third party pursuant to an obligation on the firm where:

(i) that obligation arises under an enactment; and

(ii) the obligation under that enactment is applicable to the firm as a result of the nature of the business being undertaken by the firm for its client; or

(c) transferred in accordance with CASS 7.11.42R; or

(d) transferred in accordance with CASS 7.11.44R; or

(3) subject to CASS 7.11.38R, 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) it is due and payable to the firm in accordance with CASS 7.11.25R (Money due and payable to the firm); or

(5) it is paid to the firm as an excess in the client bank account (see CASS 7.15.29R(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 7.11.35R; or

(7) it is paid by an authorised central counterparty directly to the client in accordance with CASS 7.11.36R; or

(8) it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment to another firm or to another clearing member in accordance with CASS 7.11.37R(1); or

(9) it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment directly to the indirect clients of the firm in accordance with CASS 7.11.38R(2); or

(10) it is paid to charity under CASS 7.11.50R or 7.11.57R.
in connection with a regulated clearing arrangement 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.

7.11.36 R Client money which the firm places at an authorised central counterparty in connection with a regulated clearing arrangement 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.

7.11.37 R Client money received or held by the firm and transferred to a clearing member who facilitates indirect clearing through a regulated clearing arrangement ceases to be client money for that firm and, if applicable, the clearing member, if the clearing member:

(1) remits payment to another firm or to another clearing member in accordance with default management procedures adopted by the clearing member which comply with the requirements of article 4(4) of the EMIR L2 Regulation; or

(2) remits payment to the indirect clients of the firm in accordance with default management procedures adopted by the clearing member which comply with the requirements of articles 4(4) and 4(5) of the EMIR L2 Regulation.

7.11.38 R Client money received or held by the firm for a sub-pool ceases to be client money for that firm to the extent that such client money is transferred by the firm to an authorised central counterparty or a clearing member as a result of porting.

7.11.39 R A firm must not pay client money into a bank account of the client that has been opened without the consent of that client.

7.11.40 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.

Transfer of business

7.11.41 G A firm may transfer client money to a third party as part of transferring all or part of its business if, in respect of each client with an interest in the client money that is sought to be transferred, it:

(1) obtains the consent or instruction of that client at the time of the transfer of business (see CASS 7.11.34R(2)(a)); or

(2) complies with CASS 7.11.42R (see CASS 7.11.34R(2)(c)); or
(3) complies with CASS 7.11.44R (see CASS 7.11.34R(2)(d)).

7.11.42 R Subject to CASS 7.11.44R, money ceases to be client money for a firm if:

(1) it is transferred by the firm to another person as part of a transfer of business to that person where the client money relates to the business being transferred;

(2) it is transferred on terms which require the other person to return a client’s transferred sums to the client as soon as practicable at the client’s request;

(3) a written agreement between the firm and the relevant client provides that:

(a) the firm may transfer the client’s client money to another person; and

(b) (i) the sums transferred will be held by the person to whom they are transferred in accordance with the client money rules for the clients; or

(ii) if not held in accordance with (i), the firm will exercise all due skill, care and diligence in assessing whether the person to whom the client money is transferred will apply adequate measures to protect these sums; and

(4) the firm complies with the requirements in (3)(b)(ii) (if applicable).

7.11.43 G In considering how and whether to introduce the written agreement referred to in CASS 7.11.42R (3), firms should have regard to any relevant obligations to clients, including requirements under the Unfair Terms Regulations.

Transfer of business: de minimis sums

7.11.44 R (1) Client money belonging to those categories of clients set out in (2) and in respect of those amounts set out in (2) ceases to be client money of the firm if it is transferred by the firm to another person:

(a) as part of a transfer of business to that other person where these sums relate to the business being transferred; and

(b) on terms which require the other person to return a client’s transferred sums as soon as practicable at the client’s request.

(2) (a) For retail clients the amount is £25.

(b) For all other clients the amount is £100.
7.11.45 G For the avoidance of doubt, sums transferred under CASS 7.11.44R do not, for the purposes of that rule, require the instruction or specific consent of each client at the time of the transfer or a written agreement as set out in CASS 7.11.42R (3).

Transfer of business: client notifications

7.11.46 R Where a firm transfers client money belonging to its clients under either or both of CASS 7.11.42R and CASS 7.11.44R, it must ensure that those clients are notified no later than seven days after the transfer taking place:

(1) whether or not the sums will be held by the person to whom they have been transferred in accordance with the client money rules and, if not, how the sums being transferred will be held by that person;

(2) the extent to which the sums transferred will be protected under a compensation scheme; and

(3) that the client may opt to have the client’s transferred sum returned to it as soon as practicable at the client’s request.

7.11.47 R The firm must notify the FCA of its intention to effect any transfer of client money under either or both of CASS 7.11.42R and CASS 7.11.44R at least seven days before it transfers the client money in question.

Allocated but unclaimed client money

7.11.48 G The purpose of CASS 7.11.50R is to set out the requirements firms must comply with in order to cease to treat as client money any unclaimed balance which is allocated to an individual client.

7.11.49 G Before acting in accordance with CASS 7.11.50R to CASS 7.11.58G, a firm should consider whether its actions are permitted by law and consistent with the arrangements under which the client money is held. For the avoidance of doubt, these provisions relate to a firm’s obligations as an authorised person and to the treatment of client money under the client money rules.

7.11.50 R A firm may pay away to a registered charity of its choice a client money balance which is allocated to a client and if it does so the released balance will cease to be client money under CASS 7.11.34R(10), provided:

(1) this is permitted by law and consistent with the arrangements under which the client money is held;

(2) the firm held the balance concerned for at least six years following the last movement on the client’s account (disregarding any payment or receipt of interest, charges or similar items);

(3) it can demonstrate that it has taken reasonable steps to trace the
client concerned and to return the balance; and

(4) the firm complies with CASS 7.11.54R.

7.11.51 G Where the client money balance held by a firm is, in aggregate, £100 or less for a client other than a retail client or, for a retail client, £25 or less, the firm may comply with CASS 7.11.57R instead of CASS 7.11.50R.

7.11.52 E (1) Taking reasonable steps in CASS 7.11.50R(3) includes following this course of conduct:

(a) determining, as far as reasonably possible, the correct contact details for the relevant client;

(b) writing to the client at the last known address either by post or by electronic mail to inform it of the firm’s intention to no longer treat the client money balance as client money and to pay the sums concerned to charity if the firm does not receive instructions from the client within 28 days;

(c) where the client has not responded after the 28 days referred to in (b), attempting to communicate the information set out in (b) to the client on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;

(d) subject to (e) and (f), where the client has not responded within 28 days following the most recent communication, writing again to the client at the last known address either by post or by electronic mail to inform them that:

(i) as the firm did not receive a claim for the relevant client money balance, it will in 28 days pay the balance to a registered charity; and

(ii) an undertaking will be provided by the firm or a member of its group to pay to the client concerned a sum equal to the balance paid away to charity in the event of the client seeking to claim the balance in future;

(e) if the firm has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the client is no longer at a particular address, the firm should not use that address for the purposes of (d);

(f) if, after carrying out the steps in (a), (b) and (c), the firm has obtained positive confirmation that none of the contact details it holds for the relevant client are accurate or, if utilised, the communication is unlikely to reach the client, the firm does not have to comply with (d); and
(g) waiting a further 28 days following the most recent communication under this rule before paying the balance to a registered charity.

(2) Compliance with (1) may be relied on as tending to establish compliance with CASS 7.11.50R.

(3) Contravention of (1) may be relied on as tending to establish contravention of CASS 7.11.50R.

7.11.53 G For the purpose of CASS 7.11.52R(1)(a), a firm may use any available means to determine the correct contact details for the relevant client, including telephoning the client, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.

7.11.54 R (1) Where a firm wishes to release a balance allocated to an individual client under CASS 7.11.50R it must comply with either (a) or (b) and, in either case, (2):

(a) the firm must unconditionally undertake to pay to the client concerned a sum equal to the balance paid away to charity in the event of the client seeking to claim the balance in future; or

(b) the firm must ensure that an unconditional undertaking in the terms set out in (a) is made by a member of its group and there is suitable information available for relevant clients to identify the member of the group granting the undertaking.

(2) The undertakings in this rule must be:

(a) authorised by the firm’s governing body where (1)(a) applies or by the governing body of the group member where (1)(b) applies;

(b) legally enforceable by any person who had a legally enforceable claim to the balance in question at the time it was released by the firm, or by an assign or successor in title to such claim; and

(c) retained by the firm, and where (1)(b) applies, by the group member indefinitely.

7.11.55 R (1) If a firm pays away client money under CASS 7.11.50R(4) it must make and retain, or where the firm already has such records, retain:

(a) records of all balances released from client bank accounts under CASS 7.11.50R (including details of the amounts and the identity of the client to whom the money was allocated);
(b) all relevant documentation (including charity receipts); and

c) details of the communications the firm had or attempted to make with the client concerned pursuant to CASS 7.11.50R(3).

(2) The records in (1) must be retained indefinitely.

(2) If a member of the firm's group has provided an undertaking under CASS 7.11.54R(2) then the records in (1) must be readily accessible to that group member.

De minimis amounts of unclaimed client money

7.11.56 G The purpose of CASS 7.11.57R is to allow a firm to pay away to charity client money balances of (i) £25 or less for retail clients or (ii) £100 or less for other clients when those balances remain unclaimed. If a firm follows this process, the money will cease to be client money (see CASS 7.11.34R(10)).

7.11.57 R A firm may pay away to a registered charity of its choice a client money balance which is allocated to a client and if it does so the released balance will cease to be client money under CASS 7.11.34R(10), provided:

(1) the balance in question is (i) for a retail client, in aggregate, £25 or less, or (ii) for a professional client, in aggregate, £100 or less;

(2) the firm held the balance concerned for at least six years following the last movement on the client’s account (disregarding any payment or receipt of interest, charges or similar items);

(3) the firm has made at least one attempt to contact the client to return the balance using the most up-to-date contact details the firm has for the client, and the client has not responded to such communication within 28 days of the communication having been made; and

(4) the firm makes and/or retains records of all balances released from client bank accounts in accordance with this rule. Such records must include the information in CASS 7.11.55R (1)(a) and (b).

Costs associated with paying away allocated but unclaimed client money

7.11.58 G Any costs associated with the firm ceasing to treat unclaimed client money balances as client money pursuant to CASS 7.11.50R to CASS 7.11.57R should be paid for from the firm’s own funds, including:

(1) any costs associated with the firm carrying out the steps in CASS 7.11.50R(3), CASS 7.11.51 or CASS 7.11.57R(3); and

(2) the cost of any insurance purchased by a firm or the relevant
member of its group to cover any legally enforceable claim in respect of the client money paid away.

7.12 Organisational requirements: client money

Requirement to protect client money

7.12.1 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

7.12.2 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]

7.12.3 G The risk of loss or diminution of rights in connection with client money can arise where a firm’s organisational arrangements give rise to the possibility that client money held by the firm may be paid for the account of a client whose money is yet to be received by the firm. Consistent with the requirement to hold client money as trustee (see CASS 7.17.5G), a firm should ensure its organisational arrangements are adequate to minimise such a risk. This may include, for example, allowing for sufficient periods of time for payments of client money to the firm to become available for use (including automated payments, credit card payments and payments by cheque), and setting up safeguards to ensure that payments out of client bank accounts do not take effect before the relevant amount of client money has become available for use by the firm.

7.13 Segregation of client money

Application and purpose

7.13.1 G The segregation of client money from a firm’s own money is an important safeguard for its protection.

7.13.2 R Where a firm establishes one or more sub-pools, the provisions of CASS 7.13 (Segregation of client money) shall be read as applying separately to the firm’s general pool and each sub-pool in line with CASS 7.19.3R and CASS 7.19.12R.
Depositing client money

7.13.3 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 CRD 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]

7.13.4 G A firm should ensure that any money other than client money that is deposited in a client bank account is promptly paid out of that account unless such money is a minimum sum required to open the account, or to keep the account open.

Approaches for the segregation of client money

7.13.5 G The two approaches that a firm can adopt in discharging its obligations under this section are:

(1) the 'normal approach'; or
(2) the 'alternative approach' (see CASS 7.13.54G to CASS 7.13.69G).

The normal approach

7.13.6 R Unless otherwise permitted by any other rule in CASS 7.13, a firm using the normal approach must ensure that all client money it receives is paid directly into a client bank account at an institution referred to in CASS 7.13.3R(1) to (3), rather than being first received into the firm's own account and then segregated.

7.13.7 G Firms should ensure that clients and third parties make transfers and payments of any money which will be client money directly into the firm’s client bank accounts.

Selection, appointment and review of third parties

7.13.8 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 CRD 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]
7.13.9 G Firms should ensure that their consideration of a CRD credit institution, bank or qualifying money market fund under CASS 7.13.8R focuses on the specific legal entity in question and not simply that person’s group as a whole.

7.13.10 R When a firm makes the selection, appointment and conducts the periodic review of a CRD 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]

7.13.11 G In complying with CASS 7.13.8R and CASS 7.13.10R, a firm should consider, as appropriate, together with any other relevant matters:

(1) the capital of the CRD credit institution or bank;

(2) the amount of client money placed, as a proportion of the CRD 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;

(3) the extent to which client money that the firm deposits or holds with any CRD credit institution or bank incorporated outside the UK would be protected under a deposit protection scheme in the relevant jurisdiction;

(4) the credit-worthiness of the CRD 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 CRD credit institution or bank and affiliated companies.

Client bank accounts

7.13.12 R A firm must take the necessary steps to ensure that client money deposited, in accordance with CASS 7.13.3R, 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]

7.13.13 R (1) An account which the firm uses to deposit client money under CASS 7.13.3R(1) to (3) must be a client bank account.

(2) Each client bank account used by a firm must be held on terms under which:
(a) the relevant bank’s contractual counterparty is the firm that is subject to the requirement under CASS 7.13.3R; and

(b) unless the firm has agreed terms that comply with CASS 7.13.13R(3), the firm is able to make withdrawals of client money promptly and, in any event, within one business day of a request for withdrawal.

Transitional provision CASS TP 1.1.10AR applies to (2).

(3) Firms may use client bank accounts held on terms under which withdrawals are, without exception, prohibited until the expiry of a fixed term or a notice period of a maximum of 30 days.

(4) Paragraphs (2)(b) and (3) do not apply in respect of client money received by a firm in its capacity as a trustee firm.

7.13.14 G CASS 7.13.13R(2)(b) and (3) do not prevent a firm from depositing client money on terms under which a withdrawal may be made before the expiry of a fixed term or a notice period (whatever the duration), including where such withdrawal would incur a penalty charge to the firm.

7.13.15 G CASS 7.13.13R does not prevent a firm from depositing client money in overnight money market deposits which are clearly identified as being client money (for example, in the client bank account acknowledgment letter).

7.13.16 G Firms are reminded of their obligations under CASS 7.18 (Acknowledgment letters) for client bank accounts. Firms should also ensure that client bank accounts meet the requirements in the relevant Glossary definitions, including regarding the titles given to the accounts.

7.13.17 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 7A.2.1G (Failure of the authorised firm: primary pooling event)). The requirements of CASS 7.13.13R (2) and (3) apply for each type of client bank account.

7.13.18 G A designated client bank account may be used for a client only where that client has consented to the use of that account. If a firm deposits client money into a designated client bank account then, in the event of a secondary pooling event in respect of the relevant bank, the account will not be pooled with any general client bank account or designated client fund account.

7.13.19 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. If a firm deposits client money into a designated client fund account then, in the event of a secondary pooling event...
event in respect of the relevant bank, the account will not be pooled with any general client bank account or designated client bank account.

Diversification of client money

7.13.20 R Notwithstanding the requirement at CASS 7.13.22R a firm must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that the value of those funds do not at any point in time exceed 20 per cent of the total of all the client money held by the firm in its client bank accounts.

7.13.21 R For the purpose of CASS 7.13.20R an entity is a relevant group entity if it is:

(1) a CRD credit institution or a bank authorised in a third country; and

(2) a member of the same group as that firm.

7.13.22 R Subject to the requirement at CASS 7.13.20R, and in accordance with Principle 10 and CASS 7.12.1R, a firm must:

(1) periodically assess whether it is appropriate to diversify (or further diversify) the third parties with which it deposits some or all of the client money that the firm holds; and

(2) whenever it concludes that it is appropriate to do so, it must make adjustments accordingly to the third parties it uses and to the amounts of client money deposited with them.

7.13.23 G In complying with the requirement in CASS 7.13.22R to periodically assess whether diversification (or further diversification) is appropriate, a firm should have regard to:

(1) whether it would be appropriate to deposit client money in client bank accounts opened at a number of different third parties;

(2) whether it would be appropriate to limit the amount of client money the firm holds with third parties that are in the same group as each other;

(3) whether risks arising from the firm’s business models create any need for diversification (or further diversification);

(4) the market conditions at the time of the assessment; and

(5) the outcome of any due diligence carried out in accordance with CASS 7.13.8R and CASS 7.13.10R.

7.13.24 G The rules in SUP 16.14 provide that CASS large firms and CASS medium firms must report to the FCA in relation to the identity of the entities with which they deposit client money and the amounts of client money deposited with those entities. The FCA will use that information to monitor compliance with the diversification rule in CASS 7.13.20R.
7.13.25 R  

(1) **A firm** must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a bank or a **qualifying money market fund** under **CASS 7.13.8R**. The **firm** must make the record on the date it makes the selection or appointment and must keep it from that date until five years after the **firm** ceases to use that particular **person** for the purposes of depositing **client money** under **CASS 7.13.3R**.

(2) A **firm** must make a record of each periodic review of its selection and appointment of a bank or a **qualifying money market fund** that it conducts under **CASS 7.13.8R**, its considerations and conclusions. The **firm** must make the record on the date it completes the review and must keep it from that date until five years after the **firm** ceases to use that particular **person** for the purposes of depositing **client money** under **CASS 7.13.3R**.

(3) A **firm** must make a record of each periodic review that it conducts under **CASS 7.13.22R**, its considerations and conclusions. The **firm** must make the record on the date it completes out the review and must keep it for five years from that date.

**Qualifying money market funds**

7.13.26 R  

Where a **firm** deposits **client money** with a **qualifying money market fund**, the **firm's** holding of those units in that fund will be subject to any applicable requirements of the **custody rules**.

[Note: recital 23 to the MiFID implementing Directive]

7.13.27 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.

7.13.28 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]

7.13.29 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**; and

3. if it is the case, that the **units** will be held as the **client's safe custody assets** in accordance with the custody rules.
Segregation in different currency

7.13.30 R A firm may segregate client money in a different currency from that in which it was received or in which the firm is liable to the relevant client. 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.

Mixed remittance

7.13.31 R Except in the circumstances described in CASS 7.13.72R(1)(a), where a firm using the normal approach receives a mixed remittance it should:

(1) in accordance with CASS 7.13.6R, take necessary steps to ensure the mixed remittance is paid directly into a client bank account; and

(2) promptly and, in any event no later than one business day after the payment of the mixed remittance into the client bank account has cleared, pay the money that is not client money out of the client bank account.

Physical receipts of client money

7.13.32 R Where a firm receives client money in the form of cash, a cheque or other payable order, it must:

(1) pay the money in accordance with CASS 7.13.6R, promptly, and no later than on the business day after it receives the money into a client bank account, unless either:

(a) the money is received by a business line for which the firm uses the alternative approach, in which case the money must be paid into the firm’s own bank account promptly, and no later than on the business day after it receives the money; or

(b) the firm is unable to meet the requirement in (1) because of restrictions under the regulatory system or law regarding the receipt and processing of money, in which case the money must be paid in accordance with CASS 7.13.6R as soon as possible;

(2) if the firm holds the money in the meantime before paying it in accordance with CASS 7.13.6R (or in the case of (1)(a), into its own bank account), hold it in a secure location in accordance with Principle 10; and

(3) in any case, record the receipt of the money in the firm’s books and records in accordance with CASS 7.15 (Records, accounts and reconciliations).
Where a firm receives client money in the form of a cheque that is dated with a future date, unless the firm returns the cheque it must:

1. pay the money in accordance with CASS 7.13.6R, promptly, and no later than the date on the cheque if the date is a business day or the next business day after the date on the cheque;

2. in the meantime, hold it in a secure location in accordance with Principle 10; and

3. record the receipt of the money in the firm’s books and records in accordance with CASS 7.15 (Records, accounts and reconciliations).

Appointed representatives, tied agents, field representatives and other agents

A firm must ensure that client money received by its appointed representatives, tied agents, field representatives or other agents is:

1. received directly into a client bank account of the firm, where this would have been required if such client money had been received by the firm otherwise than through its appointed representatives, tied agents, field representatives or other agents (see CASS 7.13.6R and CASS 7.13.7G); or

2. if it is received in the form of a cheque or other payable order:

   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, 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.

Under CASS 7.13.34R(2)(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 the 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 and, in any event, no later than the next business day after receipt, would fulfil CASS 7.13.34R (2)(b).

A firm must allocate any client money it receives to an individual client promptly and, in any case, no later than ten business days following the receipt (or where subsequent to the receipt of money
it has identified that the money, or part of it, is client money under CASS 7.13.37R, no later than ten business days following that identification).

(2) Pending a firm’s allocation of a client money receipt to an individual client under (1), it must record the received client money in its books and records as “unallocated client money”.

7.13.37 R If a firm receives money (either in a client bank account or an account of its own) which it is unable to immediately identify as client money or its own money, it must:

(1) take all necessary steps to identify the money as either client money or its own money;

(2) if it considers it reasonably prudent to do so, given the risk that client money may not be adequately protected if it is not treated as such, treat the entire balance of money as client money and record the money in its books and records as “unidentified client money” while it performs the necessary steps under (1).

7.13.38 G If a firm is unable to identify money that it has received as either client money or its own money under CASS 7.13.37R, it should consider whether it would be appropriate to return the money to the person who sent it or to the source from where it was received, for example, the banking institution).

Money due to a client from a firm

7.13.39 R Pursuant to the client money segregation requirements, a firm that is operating the normal approach and 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.

7.13.40 G Where the firm has payment instructions from the client the firm should pay the money to the order of the client, rather than into a client bank account.

Prudent segregation

7.13.41 R If it is prudent to do so to prevent a shortfall in client money on the occurrence of a primary pooling event, a firm may pay money of its own into a client bank account and subsequently retain that money in the client bank account (prudent segregation). Money that the firm retains in a client bank account under this rule is client money for the purposes of the client money rules and the client money distribution rules.
7.13.42 G A firm must make and retain an up-to-date record of all payments made under CASS 7.13.41R. (See further CASS 7.13.50R to 7.13.53R: the prudent segregation record.)

7.13.43 R If a firm intends to pays its own money into a client bank account under CASS 7.13.41R it must establish a written policy that is approved by its governing body (and retain such policy for a period of at least five years after the date it ceases to retain such money in a client bank account under CASS 7.13.41R) detailing:

(1) the specific anticipated risks in relation to which it would be prudent for the firm to make such payments into a client bank account;

(2) why the firm considers that the use of such a payment is a reasonable means of protecting client money against each of the risks set out in the policy; and

(3) the method that the firm will use to calculate the amount required to address each risk set out in the policy.

7.13.44 R The firm may amend its written policy to reflect changes in the specific anticipated risks in relation to which it would be prudent for the firm to make payments into a client bank account under CASS 7.13.41R.

7.13.45 R The firm’s written policy must not conflict with the client money rules or the client money distribution rules. If there is a conflict, the client money rules and the client money distribution rules will prevail.

7.13.46 G In the event the firm faces a risk not contemplated under its current policy it will not be prevented from prudently segregating money as client money in accordance with these rules but the policy must be created or amended, as applicable, as soon as reasonably practicable.

7.13.47 G Examples of the types of risks that a firm may wish to provide protection for under CASS 7.13.41R include systems failures and business that is conducted on non-business days where the firm would be unable to pay any anticipated shortfall into its client bank accounts.

7.13.48 R To the extent that the firm no longer considers it prudent to retain money in its client bank account pursuant to CASS 7.13.41R in order to ensure that client money is protected, the firm may cease to treat that money as client money.

7.13.49 R Any money that the firm ceases to treat as client money pursuant to CASS 7.13.48R must be withdrawn from its client bank account as an excess under CASS 7.15.29R as part of its next reconciliation.

Prudent segregation record

7.13.50 R A firm must create and keep up-to-date records so that the amount of money
paid into client bank accounts and retained as client money pursuant to CASS 7.13.41R or withdrawn pursuant to CASS 7.13.49R, and the reasons for such payment, retention and withdrawal can be easily ascertained (the prudent segregation record).

7.13.51 R The prudent segregation record must record:

1. the outcome of the firm’s calculation of its prudent segregation;

2. the amounts paid into or withdrawn from a client bank account pursuant to CASS 7.13.41R or CASS 7.13.49R;

3. why each payment or withdrawal is made;

4. in respect of the firm’s written policy required by CASS 7.13.43R the firm must record, as applicable, either:
   a. that the payment or withdrawal is made in accordance with that policy; or
   b. that the policy will be created or amended to include the reasons for this payment or withdrawal;

5. that the money was paid by the firm in accordance with CASS 7.13.41R or withdrawn by the firm in accordance with CASS 7.13.49R; and

6. the up-to-date total amount of client money held pursuant to CASS 7.13.41R.

7.13.52 G Firms are reminded that payments and records made in accordance with CASS 7.13.51R should not be used as a substitute for a firm keeping accurate and timely records in accordance with CASS 7.15 (Records, accounts and reconciliations) and requirements under SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (Compliance).

7.13.53 R The prudent segregation record must be retained for five years after the firm ceases to retain money as client money pursuant to CASS 7.13.41R.

The alternative approach to client money segregation

7.13.54 G (1) In certain circumstances, use of the normal approach for a particular business line of a firm could lead to significant operational risks to client money protection. These may include a business line under which clients’ transactions are complex, numerous, closely related to the firm’s proprietary business and/or involve a number of currencies and time zones. In such circumstances, subject to meeting the relevant criteria and fulfilling the relevant notification and audit requirements, a firm may use the alternative approach to segregating client money for that business line.
(2) Under the alternative approach, client money is received into and paid out of a firm's own bank account. A firm that adopts the alternative approach to segregating client money should (in line with CASS 7.15.16R(2)) carry out an internal client money reconciliation on each business day (‘T0’) and calculate how much money it either needs to withdraw from, or place in from its own bank account or its client bank account as a result of any discrepancy arising between its client money requirement and its client money resource as at the close of business on the previous business day (‘T-1’).

(3) The alternative approach mandatory prudent segregation required under CASS 7.13.65R is designed to address the risks that:

(a) client money in a firm’s own bank account may not be available to be pooled for distribution to clients on the occurrence of a primary pooling event; and

(b) at the time of a primary pooling event the firm may not have segregated in its client bank account a sufficient amount of client money to meet its client money requirement.

7.13.55 R A firm that wishes to adopt the alternative approach for a particular business line must first establish, and document in writing, its reasons for concluding, that:

(1) adopting the normal approach would lead to greater operational risks to client money protection compared to the alternative approach;

(2) adopting the alternative approach (including complying with the requirements for alternative approach mandatory prudent segregation under CASS 7.13.65R), would not result in undue operational risk to client money protection; and

(3) the firm has systems and controls that are adequate to enable it to operate the alternative approach effectively and in compliance with Principle 10 (Clients’ assets).

7.13.56 R A firm must retain any documents created under CASS 7.13.55R in relation to a particular business line for a period of at least five years after the date it ceases to use the alternative approach in connection with that business line.

7.13.57 R At least three months before adopting the alternative approach for a particular business line, a firm must:

(1) inform the FCA in writing that it intends to adopt the alternative approach for that particular business line; and

(2) if requested by the FCA, make any documents it created under
7.13.54

CASS 7.13.54R available to the FCA for inspection.

7.13.58 R (1) In addition to the requirement under CASS 7.13.57R, before adopting the alternative approach, a firm must send a written report to the FCA prepared by an independent auditor of the firm in line with a reasonable assurance engagement, stating the matters set out in (2).

(2) The written report in (1) must state whether, in the auditor’s opinion:

(a) the firm’s systems and controls are suitably designed to enable it to comply with CASS 7.13.62R to CASS 7.13.65R; and

(b) the firm’s calculation of its alternative approach mandatory prudent segregation amount under CASS 7.13.65R is suitably designed to enable the firm to comply with CASS 7.13.65R.

7.13.59 R (1) A firm that uses the alternative approach must review, at least on an annual basis and with no more than one year between each review, whether its reasons for adopting the alternative approach for a particular business line, as documented under CASS 7.13.55R, continue to be valid.

(2) If, following the review in (1), a firm finds that its reasons for adopting the alternative approach are no longer valid for a particular business line, it must stop using the alternative approach for that business line as soon as reasonably practicable, and in any event within six months of the conclusion of its review in (1).

7.13.60 R A firm that uses the alternative approach must not materially change how it will calculate and maintain the alternative approach mandatory prudent segregation amount under CASS 7.13.65R unless:

(1) an auditor of the firm has prepared a report that complies with the requirements in CASS 7.13.58R(2)(b) in respect of the firm’s proposed changes; and

(2) the firm provides a copy of the report prepared by the auditor under (a) to the FCA before implementing the change.

7.13.61 G A firm is reminded that, under SUP 3.4.2R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.

7.13.62 R A firm that uses the alternative approach for a particular business line must, on each business day (‘T0’):

(1) receive any money from and pay any money to (or, in either case,
on behalf of) clients into and out of its own bank accounts;

(2) perform the necessary reconciliations of records and accounts required under CASS 7.15 (Records, accounts and reconciliations);

(3) adjust the balances held in its client bank account (by effecting transfers between its own bank account and its client bank account) to address any difference arising between its client money requirement and its client money resource as at the close of business on the previous business day (‘T-1’), so that the correct amount reflected in the reconciliations under (2) is segregated in its client bank account; and

(4) subject to CASS 7.13.63R below, keep segregated in its client bank account the balance held under (3) until it has performed a reconciliation on the following business day (‘T+1’) and as a result of that reconciliation is undertaking further adjustments under (3).

7.13.63 R During the period between the adjustment in CASS 7.13.62R(3) and the completion of the next reconciliations in CASS 7.13.62R(2), a firm that uses the alternative approach for a particular business line may:

(1) increase the balance held in its client bank account by making intraday transfers (during T0) from its own bank account to its client bank account before the completion of the internal client money reconciliation under CASS 7.13.62R(2) (that is expected sometime later on T0) only if:

(a) the firm reasonably expects that the client money requirement for the previous business day (T-1) will increase above the client money resource currently (during T0) held in its client bank account; and

(b) such reasonable expectations are based on the working calculation of the client money requirement relating to the previous business day (T-1) that the firm has already determined on that business day (during T0) (as part of the process of completing its internal client money reconciliation); or

(2) decrease the balance held in its client bank account by making intraday transfers (during T0) from its client bank account to its own bank account before the completion of the internal client money reconciliation under CASS 7.13.62R (2) (that is expected sometime later on T0) only if:

(a) the firm reasonably expects that the client money requirement for the previous business day (T-1) will decrease below the client money resource currently held (during T0) in its client bank account; and
such reasonable expectations are based on the working calculation of the client money requirement relating to the previous business day (T-1) that the firm has already determined on that business day (during T0) (as part of the process of completing its internal client money reconciliation).

However, in doing so, a firm must act prudently and should take appropriate steps to manage the risk of not having segregated an amount that appropriately reflects its actual client money requirement at any given time.

7.13.64 G It is anticipated that CASS 7.13.63R may be used by firms which maintain client bank accounts in a number of different time zones and making adjustments to the balances of those client bank accounts is dependent on meeting cut off times for money transfers in those time zones.

7.13.65 R (1) A firm that uses the alternative approach must, in addition to CASS 7.13.62R, pay an amount (determined in accordance with this rule) of its own money into its client bank account and subsequently retain that money in its client bank account (alternative approach mandatory prudent segregation). The amount segregated by a firm in its client bank account under this rule is client money for the purposes of the client money rules and the client money distribution rules.

(2) The amount required to be segregated under this rule must be an amount that a firm reasonably determines would be sufficient, at the time it makes the determination, to protect client money against the risk that at any time in the following three months the following categories of client money may not have been fully segregated in its client bank account or may not be (or become) available for pooling under CASS 7A.2.4R(1), were a primary pooling event to occur:

(a) client money that is received and held by the firm in its own bank account during the period between:

(i) the firm’s adjustment of client bank account balances under CASS 7.13.62R(3) on a particular business day; and

(ii) the firm’s subsequent adjustments under CASS 7.13.62R(3) on the following business day; and

(b) money received and held by the firm in its own bank account which the firm does not initially identify as part of its client money requirement, but which subsequently does become part of its client money requirement;

with the effect that the firm’s alternative approach mandatory prudent segregation under this rule will reduce, as far as possible,
any shortfall that might have been produced as a result of (a) or (b) on the occurrence of a primary pooling event.

(3) (a) Subject to (c), in reaching its determination under (2) of the amount of money that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a firm must take into account the following in respect of each business line for which it uses the alternative approach, and for at least the previous three months:

(i) the firm’s client money requirement over the course of that prior period (excluding any amount that was required to be segregated under this rule during that prior period for the purposes of alternative approach mandatory prudent segregation);

(ii) the daily adjustment payments that the firm made into its client bank account under CASS 7.13.62R(3) during that prior period; and

(iii) the amount of money received by the firm in its own bank account which it did not initially identify as part of its client money requirement, but which subsequently, and during that prior period, became part of its client money requirement; as shown in its internal records.

(b) In reaching its determination under (2) a firm must also take into account, but at all times having regard to the requirement under (2), any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business lines may have on:

(i) the firm’s client money requirement during the forthcoming three months for which the amount of alternative approach mandatory prudent segregation required under this rule is being determined;

(ii) the daily adjustment payments that the firm is likely to make into its client bank account under CASS 7.13.62R(3) in that same period; and

(iii) the amount of unidentified receipts of money that the firm is likely to receive into its own bank account and which will subsequently, in that same period, become part of its client money requirement.

(c) If, at the time of its determination under (2), the firm has not
been trading for three months in a business line for which it is using the alternative approach, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to establish a three-month reference period.

(4) (a) A firm must, at regular intervals that are at least quarterly, repeat and complete the combined process of:

(i) determining the amount that it is required to segregate for the purposes of alternative approach mandatory prudent segregation under (2) and (3);

(ii) making necessary adjustments to its records to reflect any changes to its client money requirement (in accordance with CASS 7.16.16R(3) and CASS 7.16.17R(2)); and

(iii) paying any additional amounts of its own money into its client bank account to increase the firm’s alternative approach mandatory prudent segregation or withdrawing any excess amounts from its client bank account to decrease the firm’s alternative approach mandatory prudent segregation after it has adjusted its records under (ii).

(b) The combined process of (a)(i) to (iii) must take no longer than ten business days.

(c) To the extent that a firm’s compliance with (a)(i) and (ii) results in there being an excess in the firm’s client bank account, the firm may cease to treat that money as client money.

(5) A firm must ensure that the individual responsible for CASS oversight under CASS 1A.3.1R, CASS 1A.3.1AR or CASS 1A.3.1CR (as appropriate) reviews the adequacy of the amount of the firm’s alternative approach mandatory prudent segregation maintained under this rule at least annually.

Alternative approach mandatory prudent segregation record

7.13.66 R A firm must create and keep up-to-date records so that any amount of money that is, pursuant to CASS 7.13.65R:

(1) paid into a client bank account and retained as client money; or

(2) withdrawn from a client bank account;

can be easily ascertained (the alternative approach mandatory prudent
7.13.67 R The alternative approach mandatory prudent segregation record under CASS 7.13.66R must record:

(1) the date of the first determination under CASS 7.13.65R(2) and each subsequent review undertaken under CASS 7.13.65R(4), and the total amount that the firm determined was required to be segregated under CASS 7.13.65R(2) as at that date;

(2) the date of any payment of the firm's own money into a client bank account, or withdrawal of any excess from a client bank account under CASS 7.13.65R, and for each such occasion:

(a) the amount of the payment or withdrawal;

(b) the fact that the money was paid or withdrawn by the firm in accordance with CASS 7.13.65R; and

(c) as at that date, the total amount actually segregated by the firm under CASS 7.13.65R.

7.13.68 R The alternative approach mandatory prudent segregation record must be retained for five years after the firm ceases to segregate any money in accordance with CASS 7.13.65R.

7.13.69 G Nothing in CASS 7.13.54G to CASS 7.13.68R prevents a firm from also making use of the prudent segregation rule in CASS 7.13.41R.

Use of the normal approach in relation to certain regulated clearing arrangements

7.13.70 G CASS 7.13.72R sets out the circumstances under which a firm, that would otherwise be required to comply with the requirement in CASS 7.13.6R to receive client money directly into a client bank account, must receive client money into its own bank account.

7.13.71 R A firm that is also a clearing member that is using the normal approach in connection with regulated clearing arrangements must use reasonable endeavours to ensure it is not required under its arrangements with an authorised central counterparty to receive mixed remittances from or pay mixed remittances to the authorised central counterparty through a single bank account.

7.13.72 R (1) If, notwithstanding its reasonable endeavours in accordance with CASS 7.13.71R, the firm is required under its arrangements with an authorised central counterparty to:

(a) receive mixed remittances into a single bank account and pay mixed remittances to the authorised central counterparty from that bank account; or
(b) pay mixed remittances to the authorised central counterparty using a single bank account;

it must comply, as applicable, with (2) and CASS 7.13.73R.

(2) (a) In either or both of the circumstances described in (1), the firm must pay any mixed remittances from its own bank account.

(b) Where, in the circumstances described in (1)(a) mixed remittances from an authorised central counterparty are received into a firm’s own account it must transfer the client money element of the mixed remittance to its client bank account promptly and, in any event, no later than the next business day after receipt.

7.13.73 R (1) Where the circumstances described in CASS 7.13.72(1)(a) apply to a firm it must pay an amount (determined in accordance with this rule) of its own money into its client bank account and retain that money in its client bank account (clearing arrangement mandatory prudent segregation). The amount segregated by a firm in its client bank account under this rule will be client money for the purposes of the client money rules and the client money distribution rules.

(2) The amount required to be segregated under this rule must be an amount that a firm reasonably determines would be sufficient, at the time it makes the determination, to protect client money against the risk that at any time in the following three months client money received from the authorised central counterparty and held by the firm in its own bank account following receipt of these monies under CASS 7.13.72R(1)(a) and until their transfer in accordance with CASS 7.13.72R(2)(b) may not have been fully segregated in its client bank account or may not be (or become) available for pooling under CASS 7A.2.4R(1), were a primary pooling event to occur with the effect that the firm’s clearing arrangement mandatory prudent segregation under this rule will reduce, as far as possible, any shortfall that might have been produced as a result of this risk on the occurrence of a primary pooling event.

(3) (a) Subject to (c), in reaching its determination under (2) of the amount of money that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a firm must take into account the following for at least the previous three months:

(i) the firm’s client money requirement over the course of that prior period (excluding any amount that was required to be segregated under this rule during that prior period for the purposes of clearing arrangement mandatory prudent segregation); and
(ii) the payments that the firm made into its client bank account under CASS 7.13.72R(2)(b) during that prior period;

as shown in its internal records.

(b) In reaching its determination under (2) a firm must also take into account, at all times having regard to the requirement under (2), any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business line(s) may have on:

(i) the firm’s client money requirement during the forthcoming three months for which the amount of clearing arrangement mandatory prudent segregation required under this rule is being determined; and

(ii) the payments that the firm is likely to make into its client bank account under CASS 7.13.72R(2)(b).

(c) If, at the time of its determination under (2), the firm has not been trading for three months in a business line for which it is using the normal approach in connection with regulated clearing arrangements, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to make up a three-month reference period.

(4) (a) A firm must, at regular intervals that are at least quarterly, repeat and complete the combined process of:

(i) determining the amount that it is required to segregate for the purposes of clearing arrangement mandatory prudent segregation under (2) and (3);

(ii) making necessary adjustments to its records to reflect any changes to its client money requirement in accordance with CASS 7.16.16R(3) and CASS 7.16.17R(1); and

(iii) paying any additional amounts of its own money into its client bank account to increase the firm’s clearing arrangement mandatory prudent segregation or withdrawing any excess amounts from its client bank account to decrease the firm’s clearing arrangement mandatory prudent segregation after it has adjusted its records under (ii).

(b) The combined process of (a)(i) to (iii) must take no longer
than ten business days.

(c) To the extent that a firm’s compliance with (a)(i) and (ii) results in there being an excess in the firm’s client bank account, the firm may cease to treat that money as client money.

(5) A firm must ensure that the individual responsible for CASS oversight under CASS 1A.3.1R, CASS 1A.3.1AR or CASS 1A.3.1CR (as appropriate) reviews the adequacy of the amount of the firm’s clearing arrangement mandatory prudent segregation maintained under this rule at least annually.

Clearing arrangement mandatory prudent segregation record

7.13.74 R A firm must create and keep up-to-date records so that any amount of money that is, pursuant to CASS 7.13.73R:

(1) paid into a client bank account and retained as client money; or

(2) withdrawn from a client bank account;

can be easily ascertained (the clearing arrangement mandatory prudent segregation record).

7.13.75 R The clearing arrangement mandatory prudent segregation record under CASS 7.13.74R must record:

(1) the date of the first determination under CASS 7.13.73R(2) and each subsequent review undertaken under CASS 7.13.73R(4), and the total amount that the firm determined was required to be segregated under CASS 7.13.73R(2) as at that date;

(2) the date of any payment of the firm’s own money into a client bank account, or withdrawal of any excess from a client bank account under CASS 7.13.73R(4)(a)(iii), and for each such occasion:

(a) the amount of the payment or withdrawal;

(b) the fact that the money was paid or withdrawn by the firm in accordance with CASS 7.13.73R; and

(c) as at that date, the total amount actually segregated by the firm under CASS 7.13.73R.

7.13.76 R The clearing arrangement mandatory prudent segregation record must be retained for five years after the firm ceases to segregate any money in accordance with CASS 7.13.73R.

7.13.77 G Nothing in CASS 7.13.73R to CASS 7.13.76R prevents a firm from making use of the prudent segregation rule in CASS 7.13.41R.
7.13.78 G The obligation to use reasonable endeavours referred to in CASS 7.13.71R is a continuing obligation. Firms should assess, at least on an annual basis, whether it is possible for payments of client money between the firm and the authorised central counterparties to be made separately from house monies and for such payments to be received into and made from its client bank accounts.

7.13.79 G Where a firm operates a sub-pool in accordance with CASS 7.19 (Clearing member client money sub-pools), the references to client bank accounts in CASS 7.13.70G to CASS 7.13.78G should be read as client bank accounts pertaining to the relevant sub-pool.

7.14 Client money held by a third party

7.14.1 G This section sets out the requirements a firm must comply with when it allows another person to hold client money, other than under CASS 7.13.3R, without discharging its fiduciary duty 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 equity balance held at the intermediate broker until the contract is terminated and all of that client's positions at that broker closed. Similarly, this section applies where a firm allows a broker to hold client money in respect of the firm's client's non-margined transactions, again without the firm discharging its fiduciary duty to that client. In all cases, 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 7.11.34R).

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

(1) the firm allows that person to hold the client money:

(a) for the purpose of one or more transactions 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 firm may allow the other person to hold its client money.

7.14.3 G Client money that a firm allows another person to hold under CASS 7.14.2R:
(1) should only be held for transactions which are likely to occur (and for which the other person needs to receive client money) or have recently settled (and such that the other person has received client money); and

(2) should be recorded in client transaction accounts by that other person.

7.14.4 G Apart from client money held by a firm in an individual client account or an omnibus client account at an authorised central counterparty, a firm should not hold excess client money in its client transaction accounts.

Client money arising from, or in connection with, safe custody assets

7.14.5 G (1) Money arising from, or in connection with, the holding of a safe custody assets by a firm which is due to clients should, unless treated otherwise under the client money rules, be treated as client money by the firm.

(2) Firms are reminded of the guidance in CASS 6.1.2G.

7.14.6 R If a firm has deposited safe custody assets with a third party under CASS 6.3 and client money arises from, or in connection with, those safe custody assets then the firm must ensure that the third party either deposits the money in a client bank account of the firm or records it in a client transaction account for the benefit of the firm clients as appropriate.

7.14.7 G Firms are reminded of the guidance in CASS 7.14.4G which is applicable to client transaction accounts.

7.14.8 G If the third party holding the safe custody assets under CASS 7.14.6R is a bank with which the firm is permitted to deposit client money under CASS 7.13.3R, then the client bank account referred to in CASS 7.14.6R may be an account with that bank.

7.14.9 G Firms are reminded of the requirements under CASS 7.18 for acknowledgement letters, which must be complied with before using client bank accounts and client transaction accounts.

7.15 Records, accounts and reconciliations

7.15.1 G (1) This section sets out the requirements a firm must meet when keeping records and accounts of the client money it holds.

(2) Where a firm establishes one or more sub-pools, the provisions of CASS 7.15 (Records, accounts and reconciliations) shall be read as applying separately to the firm’s general pool and each sub-pool in line with CASS 7.19.3R and CASS 7.19.4R.
7.15.2 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]

7.15.3 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]

7.15.4 G The requirements in CASS 7.15.2R to CASS 7.15.3R are for a firm to keep internal records and accounts of client money. Therefore, any records falling under those requirements should be maintained by the firm and should be separate to any records the firm may have obtained from any third parties, such as those with or through whom it may have deposited, or otherwise allowed to hold, client money.

Record keeping

7.15.5 R (1) A firm must maintain records so that it is able to promptly determine the total amount of client money it should be holding for each of its clients.

(2) A firm must ensure that its records are sufficient to show and explain its transactions and commitments for its client money.

(3) Unless otherwise stated, a firm must ensure that any record made under the this chapter is retained for a period of five years starting from the later of:

(a) the date it was created; and

(b) (if it has been modified since the date it was created), the date it was most recently modified.

7.15.6 G Unless required sooner under another rule in this chapter, in complying with CASS 7.15.5R(1) a firm should ensure it is able to determine the total amount of client money it should be holding for each client within two business days of having taken a decision to do so or at the request of the FCA.

7.15.7 R For each internal client money reconciliation and external client money reconciliation the firm conducts, it must ensure that it records:

(1) the date it carried out the relevant process;

(2) the actions the firm took in carrying out the relevant process; and

(3) the outcome of its calculation of its client money requirement and
Policies and procedures

7.15.8 G Firms are reminded that they must, under SYSC 6.1.1R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm with the rules under this chapter. This should include, for example, establishing and maintaining policies and procedures concerning:

(1) the frequency and method of the reconciliations the firm is required to carry out under this section;

(2) the resolution of reconciliation discrepancies under this section; and

(3) the frequency at which the firm is required to review its arrangements in compliance with this chapter.

Receipts of client money

7.15.9 R A firm must maintain appropriate records that account for all receipts of client money in the form of cash, cheque or other payable order that are not yet deposited in a client bank account (see CASS 7.13.32R and CASS 7.13.33R).

7.15.10 G Firms following one of the standard methods of internal client money reconciliation in CASS 7.16 are also reminded that they must, as part of their internal client money reconciliation, take into account all receipts of client money in the form of cash, cheque or other payable order that are not yet deposited in a client bank account (see CASS 7.13.32R and CASS 7.13.33R).

Payments made to discharge fiduciary duty

7.15.11 R If a firm draws a cheque, or other payable order, to discharge its fiduciary duty to its clients, it must continue to record its obligation to its clients until the cheque, or other payable order, is presented and paid by the bank.

Internal client money reconciliations

7.15.12 R An internal client money reconciliation requires a firm to carry out a reconciliation of its internal records and accounts of the amount of client money that the firm holds for each client with its internal records and accounts of the client money the firm should hold in client bank accounts or has placed in client transaction accounts.

7.15.13 R In carrying out an internal client money reconciliation, a firm must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records) rather than the values contained in the records it has obtained from banks and other third parties with whom it has placed client money (for example, bank statements).
7.15.14 G An internal client money reconciliation should:

(1) be one of the steps a firm takes to arrange adequate protection for clients’ assets when the firm is responsible for them (see Principle 10 (Clients’ assets), as it relates to client money);

(2) be one of the steps a firm takes to satisfy its obligations under CASS 7.12.2R and CASS 7.15.3R and, where relevant, SYSC 4.1.1R(1) and SYSC 6.1.1R, to ensure the accuracy of the firm’s records and accounts;

(3) for the normal approach to segregating client money (CASS 7.13.6R), check whether the amount of client money recorded in the firm’s records as being segregated in client bank accounts meets the firm’s obligations to its clients under the client money rules on a daily basis; and

(4) for the alternative approach to segregating client money (CASS 7.13.62R), calculate the amount of client money to be segregated in client bank accounts which meets the firm's obligations to its clients under the client money rules on a daily basis.

7.15.15 R (1) A firm must perform an internal client money reconciliation:

(a) each business day; and

(b) based on the records of the firm as at the close of business on the previous business day.

(2) When performing an internal client money reconciliation, a firm must, subject to (3), follow one of the standard methods of internal client money reconciliation in CASS 7.16.

(3) A firm proposing to follow a non-standard method of internal client money reconciliation must comply with the requirements in CASS 7.15.17R to CASS 7.15.19G.

7.15.16 R (1) A firm which has adopted the normal approach to segregating client money (see CASS 7.13.6R) must use the internal client money reconciliation to check whether its client money resource, as at the close of business on the previous business day, was equal to its client money requirement at the close of business on that previous day.

(2) A firm that adopts the alternative approach to segregating client money (see CASS 7.13.54G) must use the internal client money reconciliation to ensure that its client money resource as at the close of business on any day it carries out an internal client money reconciliation is equal to its client money requirement at the close of business on the previous day.

Non-standard method of internal client money reconciliation
A non-standard method of internal client money reconciliation is a method of internal client money reconciliation which does not meet the requirements in CASS 7.16 (The standard methods of internal client money reconciliation).

Before using a non-standard method of internal client money reconciliation, a firm must:

(a) establish and document in writing its reasons for concluding that the method of internal client money reconciliation it proposes to use will:

(i) (for the normal approach to segregating client money) check whether the amount of client money recorded in the firm’s records as being segregated in client bank accounts meets the firm’s obligation to its clients under the client money rules on a daily basis; or

(ii) (for the alternative approach to segregating client money) calculate the amount of client money to be segregated in client bank accounts which meets the firm’s obligations to its clients under the client money rules on a daily basis;

(b) notify the FCA of its intentions to use a non-standard method of internal client money reconciliation; and

(c) send a written report to the FCA prepared by an independent auditor of the firm in line with a reasonable assurance engagement and stating the matters set out in (2).

The written report in (1)(c) must state whether in the auditor’s opinion:

(a) the method of internal client money reconciliation which the firm will use is suitably designed to enable it to (as applicable):

(i) (for the normal approach to segregating client money) check whether the amount of client money recorded in the firm’s records as being segregated in client bank accounts meets the firm’s obligation to its clients under the client money rules on a daily basis; or

(ii) (for the alternative approach to segregating client money) calculate the amount of client money to be segregated in client bank accounts which meets the firm’s obligations to its clients under the client money rules on a daily basis; and

(b) the firm’s systems and controls are suitably designed to
enable it to carry out the method of internal client money reconciliation the firm will use.

(3) A firm using a non-standard method of internal client money reconciliation must not materially change its method of undertaking internal client money reconciliations unless:

(a) the firm has established and documented in writing it reasons for concluding that the changed methodology will meet the requirements in (1)(a)(i) and (ii), as applicable;

(b) an auditor of the firm has prepared a report that complies with the requirements in (1)(c) and (2) in respect of the firm’s proposed changes; and

(c) the firm provides a copy of the report prepared by the auditor under (2) to the FCA before implementing the change.

7.15.19 G A firm is reminded that, under SUP 3.4.2R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.

External client money reconciliations

7.15.20 R A firm must conduct, on a regular basis, reconciliations between its internal records and accounts and those of any third parties which hold client money.

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

7.15.21 G The purpose of an external client money reconciliation is to ensure the accuracy of a firm’s internal records and accounts against those of any third parties by whom client money is held.

Frequency of external client money reconciliations

7.15.22 R A firm must perform an external client money reconciliation:

(1) as regularly as is necessary but without allowing more than one month to pass between each external client money reconciliation; and

(2) as soon as reasonably practicable after the date to which the external client money reconciliation relates.

7.15.23 R When determining the frequency at which it will undertake external client money reconciliations, a firm must have regard to:

(1) the frequency, number and value of transactions which the firm undertakes in respect of client money; and

(2) the risks to which the client money is exposed, such as the nature, volume and complexity of the firm’s business and where and with
whom client money is held.

7.15.24 R (1) A firm must make and retain records sufficient to show and explain any decision it has taken under CASS 7.15.23R when determining the frequency of its external client money reconciliation. Subject to (2), any such records must be retained indefinitely.

(2) If any decision under CASS 7.15.23R is superseded by a subsequent decision under that rule then the record of that earlier decision retained in accordance with (1) need only be retained for a further period of five years from the subsequent decision.

7.15.25 G In most circumstances, firms which undertake transactions on a daily basis should conduct an external client money reconciliation each business day.

7.15.26 R (1) Subject to (3), a firm must review the frequency it conducts its external client money reconciliations at least annually to ensure that it continues to comply with CASS 7.15.22R and has given due consideration to the matters in CASS 7.15.23R.

(2) For each review a firm undertakes under (1), it must record the date and the actions it took in reviewing the frequency of its external client money reconciliations.

(3) A firm need not carry out a review under (1) if it is conducting external client money reconciliations each business day.

Method of external client money reconciliations

7.15.27 R An external client money reconciliation requires a firm to:

(1) compare:

(a) the balance, currency by currency, on each client bank account recorded by the firm, as set out in the most recent statement or other form of confirmation issued by the bank with which those accounts are held; and

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

(2) promptly identify and resolve any discrepancies between those balances under CASS 7.15.31R and CASS 7.15.32R.

7.15.28 R A firm must ensure it includes the following items within its external client money reconciliation:

(1) any client's approved collateral a firm holds which secures an individual negative client equity balance (see CASS 7.16.32R); and
(2) any of its own approved collateral a firm holds which is used to meet the total margin transaction requirement in CASS 7.16.33R.

Reconciliation discrepancies

7.15.29 R When a discrepancy arises between a firm’s client money resource and its client money requirement identified by a firm's internal client money reconciliations, the firm must determine 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 from a client bank account within the same time period.

7.15.30 G Where the discrepancy identified under CASS 7.15.29R has arisen as a result of a breach of the client money segregation requirements, the firm should ensure it takes sufficient steps to avoid a reoccurrence of that breach (see Principle 10 (Clients’ assets), as it relates to client money, CASS 7.15.3R and, where relevant, SYSC 4.1.1R(1) and SYSC 6.1.1R).

7.15.31 R If any discrepancy is identified by an external client money reconciliation, the firm must investigate the reason for the discrepancy and take all reasonable steps to correct it without undue delay, 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.

7.15.32 R While a firm is unable to immediately resolve a discrepancy identified by an external client money reconciliation, and one record or set of records examined by the firm during its external client money reconciliation indicates that there is a need to have a greater amount of client money or, if appropriate, approved collateral than is the case, the firm must assume, until the matter is finally resolved, that that record or set of records is accurate and pay its own money into a relevant account.

Notification requirements

7.15.33 R A firm must inform the FCA in writing without delay if:

(1) its internal records and accounts of client money are materially out of date, inaccurate or invalid so that the firm is no longer able to comply with the requirements in CASS 7.15.2R, CASS 7.15.3R or CASS 7.15.5R(1);

(2) it will be unable to, or materially fails to, pay any shortfall into a client bank account or withdraw any excess from a client bank account so that the firm is unable to comply with CASS 7.15.29R after having carried out an internal client money reconciliation;
(3) it will be unable to, or materially fails to, identify and resolve any discrepancies under CASS 7.15.31R to CASS 7.15.32R after having carried out an external client money reconciliation;

(4) it will be unable to, or materially fails to, conduct an internal client money reconciliation in compliance with CASS 7.15.12R and CASS 7.15.15R;

(5) it will be unable to, or materially fails to, conduct an external client money reconciliation in compliance with CASS 7.15.20R to CASS 7.15.28R; and

(6) it becomes aware that, at any time in the preceding 12 months, the amount of client money segregated in its client bank accounts materially differed from the total aggregate amount of client money the firm was required to segregate in client bank accounts under the client money segregation requirements.

Annual audit of compliance with the client money rules

7.15.34 Firms are reminded that the auditor of the firm has to confirm in the report submitted to the FCA 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.

7.16 The standard methods of internal client money reconciliation

7.16.1 Firms are required to carry out an internal client money reconciliation each business day (CASS 7.15.12R and CASS 7.15.15R). This section sets out methods of reconciliation that are appropriate for these purposes (the standard method of internal client money reconciliation).

(2) Where a firm establishes one or more sub-pools, the provisions of CASS 7.16 (The standard methods of internal client money reconciliation) shall be read as applying to the firm’s general pool and each sub-pool individually, in line with CASS 7.19.3R and CASS 7.19.4R.

7.16.2 A non-standard method of internal client money reconciliation is a method of internal client money reconciliation which does not meet the requirements of this section.

(2) Where a firm uses a non-standard method of internal client money reconciliation it is reminded that it must comply with the requirements in CASS 7.15.18R.

7.16.3 Regardless of whether a firm is following one of the standard methods of internal client money reconciliation or a non-standard method of internal
client money reconciliation, it is reminded that it must maintain its records so that it is able to promptly calculate the total amount of client money it should be holding for each client (see CASS 7.15.5R(1)).

7.16.4 G Firms are reminded that the internal client money reconciliation should achieve the purposes set out in CASS 7.15.14G.

7.16.5 G (1) A firm that adopts the normal approach to segregating client money (CASS 7.13.6R) will be using the methods in this section to check whether it has correctly segregated client money in its client bank accounts.

(2) A firm that adopts the alternative approach to segregating client money (CASS 7.13.54G) will be using the methods in this section to calculate how much money it needs to withdraw from, or place in, client bank accounts as a result of any discrepancy arising between its client money requirement and its client money resource at the close of business on the previous business day.

7.16.6 G Unless otherwise stated, firms are reminded that they are required to receive all client money receipts directly into a client bank account (see CASS 7.13.6R).

7.16.7 G A firm that receives client money in the form of cash, a cheque or other payable order is reminded that it must pay that money (eg, into a client bank account) no later than on the business day after it receives the money (see CASS 7.13.32R). Once deposited into a client bank account, that receipt of client money should form part of the firm’s client money resource (see CASS 7.16.8R). In calculating its client money requirement, a firm will need to take into account any client money received as cash, cheques or payment orders but not yet deposited into a client bank account (see CASS 7.16.25R(3) and CASS 7.16.26G).

Client money resource

7.16.8 R The client money resource is the aggregate balance on the firm’s client bank accounts.

7.16.9 G (1) A firm should ensure that the amount it reflects in its internal client money reconciliation as its client money resource is equal to the aggregate balance on its client bank accounts. For example, if:

(a) a firm holds client money received as cash, cheques or payment orders but not yet deposited in a client bank account (in accordance with CASS 7.13.32R); and

(b) that firm records all receipts from clients, whether or not yet deposited with a bank, in its cashbook (see CASS 7.16.26G(1)(a));

its client money resource should not include the cash, cheques or payment orders received but not yet deposited in a client bank
account.

(2) The guidance in (1) is consistent with a firm’s obligations to maintain its internal records in an accurate way, particularly their correspondence to the client money held for clients.

Client money requirement

7.16.10 R Subject to CASS 7.16.12R, the client money requirement must be calculated by one, but not both, of the following of two methods:

(1) the individual client balance method (CASS 7.16.16R); or

(2) the net negative add-back method (CASS 7.16.17R).

7.16.11 R The net negative add-back method may only be used, under this section, by a CASS 7 asset management firm or a CASS 7 loan-based crowdfunding firm and only if such firms do not undertake any margined transactions for, or on behalf of, their clients.

7.16.12 R A CASS 7 loan-based crowdfunding firm must not use the individual client balance method under this section.

7.16.13 G (1) The client money requirement should represent the total amount of client money a firm is required to have segregated in client bank accounts under the client money rules.

(2) CASS 7.16.11R does not prevent a firm from adopting a net negative add-back method as part of a non-standard method of internal client money reconciliation.

(3) CASS 7.16.12R does not prevent a CASS loan-based crowdfunding firm from adopting the individual client balance method as part of a non-standard method of internal client money reconciliation.

(4) If a firm uses the individual client balance method in respect of some of its business lines and the net negative add-back method in respect of others it will be conducting a non-standard method of internal client money reconciliation.

7.16.14 G (1) The individual client balance method (CASS 7.16.16R) may be applied by any firm except a CASS 7 loan-based crowdfunding firm. This method requires a firm to calculate the total amount of client money it should be segregating in client bank accounts by reference to how much the firm should be holding in total (ie, across all its client bank accounts and businesses) for each of its individual clients for:

(a) non-margined transactions (CASS 7.16.16R(1) and CASS 7.16.21R);
(b) margined transactions (CASS 7.16.16R(2) and CASS 7.16.32R); and

certain other matters (CASS 7.16.16R(3) and CASS 7.16.25R).

(2) (a) CASS 7.16.22E is an evidential provision which sets out a method firms should use for calculating how much they should be holding in total for each individual client for non-margined transactions.

(b) The calculation in CASS 7.16.22E permits a firm to calculate either one individual client balance across all its products for each client or a number of individual client balances per client equal to the number of products operated by the firm for each client (see CASS 7.16.22E(1)).

(c) The calculation referred to in (2)(b) may also be applied by different types of firms and, as a result, each firm will need to apply the calculation in way which recognises the business model under which that firm operates.

7.16.15 G The net negative add-back method (CASS 7.16.17R) is available to CASS 7 asset management firms and CASS 7 loan-based crowdfunding firms, many of whom may operate internal ledger systems on a bank account by bank account, not client-by-client, basis. This method allows a firm to calculate the total amount of client money it is required to have segregated in client bank accounts by reference to:

(1) the balances in each client bank account (see CASS 7.16.17R(1) and CASS 7.16.18G(2));

(2) whether any individual client’s net position in a specific client bank account is negative (see CASS 7.16.17R(2) and CASS 7.16.18G(2)); and

(3) certain other matters (see CASS 7.16.17R(2) and CASS 7.16.25R).

Client money requirement calculation: individual client balance method

7.16.16 R Subject to CASS 7.16.25R and CASS 7.16.37R, under this method the client money requirement must be calculated by taking the sum of, for all clients and across all products and accounts:

(1) the individual client balances calculated under CASS 7.16.21R, excluding:

(a) individual client balances which are negative (ie, debtors); and

(b) clients’ equity balances;
(2) the total margined transaction requirement (calculated under CASS 7.16.32R); and

(3) any amounts that have been segregated as client money according to the firm’s records under any of the following: CASS 7.13.51R(1) (prudent segregation record), CASS 7.13.66R (alternative approach mandatory prudent segregation record) and/or CASS 7.13.74R (clearing arrangement mandatory prudent segregation record).

Client money requirement calculation: net negative add-back method

7.16.17 R Subject to CASS 7.16.25R, under this method the client money requirement must be calculated by taking the sum of, for each client bank account:

(1) the amount which the firm’s internal records show as held on that account; and

(2) an amount that offsets each negative net amount which the firm’s internal records show attributed to that account for an individual client.

7.16.18 G (1) A firm which utilises the net negative add-back method is reminded that it must do so in a way which allows it to maintain its records so that, at any time, the firm is able to promptly determine the total amount of client money it should be holding for each client (see CASS 7.15.5R(1)).

(2) For the purposes of CASS 7.16.17R, a firm should be able to readily use the figures previously recorded in its internal records and ledgers (for example, its cashbook or other internal accounting records) as at the close of business on the previous business day without undertaking any additional steps to determine the balances in the firm’s client bank accounts.

7.16.19 G A firm which utilises the net negative add-back method may:

(1) calculate its client money requirement and client money resource on a bank account by bank account basis;

(2) for the purposes of CASS 7.16.17R, a firm should take into account any amounts that have been segregated as client money according to the firm’s records under either or both CASS 7.13.50R (prudent segregation record) and CASS 7.13.66R (alternative approach mandatory prudent segregation record).

Non-margined transactions (eg, securities): individual client balance

7.16.20 G The sum of positive individual client balances for each client should represent the total amount of all money the firm holds, has received or is obligated to have received or be holding as client money in a client bank account for that client for non-margined transactions.
7.16.21 R  A firm must calculate a client’s individual client balances in a way which captures the total amount of all money the firm should be holding as client money in a client bank account for that client for non-margined transactions under the client money rules.

7.16.22 E  (1)  A firm may calculate either:

(a) one individual client balance for each of its clients, based on the total of the firm’s holdings for each client; or

(b) a number of individual client balances per client, equal to the number of products the firm operates for each client.

(2) Each individual client balance for a client should be calculated in accordance with this table:

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<th>Individual client balance calculation</th>
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<tr>
<td>Free money (sums held for a client free of sale or purchase (eg, see (3)(a)) and</td>
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<td>sale proceeds due to the client:</td>
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<tr>
<td>(a) for principal deals when the client has delivered the designated investments; and</td>
<td>B</td>
</tr>
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<td>(b) for agency deals, when:</td>
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<tr>
<td>(i) the sale proceeds have been received by the firm and the client has delivered the designated investments; or</td>
<td>C1</td>
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<td>(ii) the firm holds the designated investments for the client; and</td>
<td>C2</td>
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<tr>
<td>the cost of purchases:</td>
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<tr>
<td>(c) for principal deals, paid for by the client when the firm has not delivered the designated investments to the client; and</td>
<td>D</td>
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<tr>
<td>(d) for agency deals, paid for by the client when:</td>
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<tr>
<td>(i) the firm has not remitted the money to, or to the order of, the counterparty; or</td>
<td>E1</td>
</tr>
<tr>
<td>(ii) the designated investments have been received by the firm but have not</td>
<td>E2</td>
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been delivered to the client;

Less

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

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proceeds remitted to the client for sales transactions by, or for, the client if the client has not delivered the designated investments.

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<td>G</td>
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\[ Individual \text{ client balance 'X'} = \left( A+B+C1+C2+D+E1+E2 \right) - F-G \]

(3) When calculating an individual client balance for each client, a firm should also:

(a) ensure it includes:

(i) client money consisting of dividends received and interest earned and allocated (see CASS 7.11.32R);

(ii) client money consisting of dividends (actual or payments in lieu), stock lending fees and other payments received and allocated (see CASS 6.1.2G);

(iii) money the firm appropriates and segregates as client money to cover an unresolved shortfall in safe custody assets it identifies in its internal records which is attributable to an individual client (see CASS 6.6.54R(2)); and

(iv) money the firm segregates as client money instead of an individual client’s safe custody asset until such time as the relevant delivery versus payment transaction settles under CASS 6.1.12R(2); and

(b) deduct any amounts due and payable by the client to the firm (see CASS 7.11.25R).

(4) Compliance with (1), (2), (3) and (4) may be relied on as tending to establish compliance with CASS 7.16.21R.

7.16.23 R A firm must calculate an individual client balance using the contract value of any client purchases or sales, being the value to which the client would be contractual entitled to receive or contractually obligated to pay.

7.16.24 G If a firm calculates each individual client balance on a product-by-product basis under CASS 7.16.22E(1)(b), the result should be that the firm does not net client positions across all products and accounts.
Other requirements for calculating the client money requirement

7.16.25 R When calculating the client money requirement under either of the methods in CASS 7.16.10R, a firm must:

1. include any unallocated client money (see CASS 7.13.36R) and unidentified receipts of money it considers prudent to segregate as client money (see CASS 7.13.37R);

2. include any money the firm appropriates and holds as client money to cover an unresolved shortfall in safe custody assets identified in its internal records which is not attributable, or cannot be attributed to, an individual client (see CASS 6.6.49R, CASS 6.6.50R and CASS 6.6.54R);

3. take into account any client money received as cash, cheques or payment orders but not yet deposited into a client bank account under CASS 7.13.32R (see also CASS 7.15.9R);

4. if it has drawn any cheques or other payable orders, to discharge its fiduciary duty to its clients and continue to treat the sum concerned as forming part of its client money requirement until the cheque or order is presented and paid by the bank (see CASS 7.11.40R); and

5. ensure it has taken into account all client money the firm should be holding in connection with clients’ non-margined transactions.

7.16.26 G (1) Under CASS 7.16.25R(3), where a firm holds client money received as cash, cheques or payment orders but not yet deposited in a client bank account under CASS 7.13.32R, it may:

(a) include these balances when calculating its client money requirement (eg, where the firm records all receipts from clients, whether or not yet deposited with a bank, in its cashbook); or

(b) exclude these balances when calculating its client money requirement (eg, where the firm only records client receipts to its cashbook once deposited with a bank).

(2) In line with (1)(a), the firm will need to ensure that, before finalising the calculation of its client money requirement within this section, it deducts these balances, to ensure that they do not give rise to a discrepancy between the firm’s client money requirement and client money resource (see CASS 7.15.29R).

(3) In line with (1)(b), although the balances concerned do not form part of the firm’s client money requirement, the firm must continue to account for all receipts of client money as cash, cheques or payment orders but not yet deposited in a client bank account in its records and accounts (see CASS 7.13.32R and CASS 7.15.9R).
In accordance with CASS 7.16.25R(5), where a firm has allowed another person to hold client money in connection with a client’s non-margined transaction (eg, in a client transaction account under CASS 7.14 (Client money held by a third party), the firm should include these balances when calculating its client money requirement.

If a firm is utilising the individual client balance method (CASS 7.16.16R) to calculate its client money requirement, CASS 7.16.21R requires the firm to include the sums its holds for each client that are placed with another person in connection with a client’s non-margined transaction when calculating a client’s individual client balance (eg, see CASS 7.16.22E and items C1 and E2).

Under (1) and (2), the firm will need to ensure that, before finalising the calculation of its client money requirement within this section, it deducts the balances held for clients’ non-margined transactions in client transaction accounts, to ensure that they do not give rise to a discrepancy between the firm’s client money requirement and client money resource (see CASS 7.15.29R).

Under (1), (2) and (3), in determining the balances of client money a firm has allowed another person to hold in connection with a client’s non-margined transaction or the balances held for clients’ non-margined transactions in client transaction accounts, a firm should use the values contained in its internal records and ledgers (see CASS 7.15.13R).

Margined transactions (eg, derivatives): equity balances

Subject to CASS 7.16.30R, a client’s equity balance is the amount which the firm would be liable to pay to the client (or the client to the firm) under the client money rules for margined transactions if each of the open positions were liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the account with the firm were closed. This notional balance should include any unrealised losses or profits associated with that client’s open positions, and any margin the firm has received from the client in connection with those positions.

Subject to CASS 7.16.30R, a firm’s equity balance is the amount which the firm would be liable to pay to the exchange, clearing house, intermediate broker or OTC counterparty (or vice-versa) for the firm’s margined transactions if each of the open positions of those of the firm’s clients that are entitled to protection under the client money rules were liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the firm’s client transaction accounts with that exchange, clearing house, intermediate broker or OTC counterparty were closed. This notional balance should include any unrealised losses or profits associated with the open positions the firm holds for clients and any margin the firm holds for clients in the relevant client transaction accounts.
7.16.30  R  The terms 'client’s equity balance' and 'firm's equity balance' refer to cash values and do not include non-cash collateral or other designated investments (including approved collateral) the firm holds for a margined transaction.

Margined transactions (eg, derivatives): margined transaction requirement

7.16.31  G  The margined transaction requirement should represent the total amount of client money a firm is required under the client money rules to segregate in client bank accounts for margined transactions. The calculation in CASS 7.16.33R is designed to ensure that an amount of client money is held in client bank accounts which equals at least the difference between the equity the firm holds at exchanges, clearing houses, intermediate brokers and OTC counterparties for margined transactions for clients entitled to protection under the client money rules, and the amount due to clients under the client money rules for those same margined transactions. With this calculation, a firm’s margined transaction requirement should represent, if positions were unwound, the firm’s gross liabilities to clients entitled to protection under the client money rules for margined transactions.

7.16.32  R  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 client approved collateral; and

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

7.16.33  R  (1) To meet the total margin transaction requirement, a firm may appropriate and use its own approved collateral, provided it meets the requirements in (2).

(2) The firm must hold the approved collateral in a way which ensures that, in accordance with CASS 7A.2.3AR, the approved collateral will be liquidated on the occurrence of a primary pooling event and the proceeds paid into a client bank account, and in so doing:

(a) ensure the approved collateral is clearly identifiable as separate from the firm’s own property and is recorded by the firm in its records as being held for its clients;

(b) keep a record of the actions the firm has taken under this rule which includes a description of the terms on which the firm holds the approved collateral, identifies that the approved collateral is held for the benefit of its clients and specifies the approved collateral that the firm has appropriated for the
purposes of this rule; and

(c) update the record made under (b) whenever the firm ceases to appropriate and use approved collateral under this rule.

7.16.34 G Where CASS 7.16.33R applies, the firm will be reducing the requirement arising from CASS 7.16.16R(2) and, as such, simultaneously reducing its overall client money requirement (ie, the amount of money the firm is required to segregate in client bank accounts).

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

LME bond arrangements

7.16.36 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 equity balance for transactions undertaken on the LME on behalf of those US-resident investors from the calculation of the margined transaction requirement, to the extent those transactions are provided for by an LME bond arrangement.

Reduced client money requirement option

7.16.37 R Where appropriate, a firm may:

(1) when, in respect of a client, there is a positive individual client balance and a negative client equity balance, offset the credit against the debit and, therefore, have a reduced individual client balance in CASS 7.16.21R for that client; and

(2) when, in respect of a client, there is a negative individual client balance and a positive client equity balance, offset the credit against the debit and, therefore, have a reduced client equity balance (CASS 7.16.28R) for that client.

7.16.38 G The effect of CASS 7.16.37R 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 CASS 7.16.21R and CASS 7.16.28R and, therefore, reduce its overall client money requirement.

7.17 Statutory trust

7.17.1 G Section 137B(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

7.17.2 R Subject to CASS 7.17.3R in respect of a trustee firm, a firm receives and holds client money as trustee on the following terms:

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

(2) (a) where a firm maintains only a general pool of client money, subject to (4), for the clients (other than clients which are insurance undertakings when acting as such with respect to 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;

(b) where a firm has established one or more pools of client money, subject to (4):

(i) the general pool is held for all the clients of the firm for whom the firm receives or holds client money (other than clients which are insurance undertakings when acting in regard to client money received during insurance mediation activity and that was opted in to this chapter) according to their respective interests; and

(ii) each sub-pool is for the clients of the firm who are identified as beneficiaries of the sub-pool in question, in accordance with CASS 7.19.6R(2), 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) for the payment of the costs properly attributable to the distribution of the client money in (2) if such distribution takes place following the failure of the firm; and

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

7.17.3 R A trustee firm which is subject to the client money rules by virtue of CASS 7.10.1R(2) receives and holds client money as trustee on the terms in CASS 7.17.2R, subject to its obligations to hold client money as trustee under the relevant instrument of trust.

7.17.4 G If a trustee firm holds client money, the firm should follow the provisions in CASS 7.10.33R to CASS 7.10.40G.
7.17.5 G The statutory trust under CASS 7.17.2R does not permit a firm, in its capacity as trustee, to use client money to advance credit to the firm's clients, itself, or any other person. For example, if a firm wishes to undertake a transaction for a client in advance of receiving client money from that client to fund that transaction, it should not advance credit to that client or itself using other clients' client money (i.e., it should not 'pre-fund' the transaction using other clients' client money).

7.18 Acknowledgment letters

Purpose

7.18.1 G The main purposes of an acknowledgement letter are:

(1) to put the bank, exchange, clearing house, intermediate broker, OTC counterparty or other person (as the case may be) on notice of a firm’s clients’ interests in client money that has been deposited with, or has been allowed to be held by, such person;

(2) to ensure that the client bank account or client transaction account has been opened in the correct form (e.g., whether the client bank account is being correctly opened as a general client bank account, a designated client bank account or a designated client fund account), and is distinguished from any account containing money that belongs to the firm; and

(3) to ensure that the bank, exchange, clearing house, intermediate broker, OTC counterparty or other person (as the case may be) understands and agrees that it will not have any recourse or right against money standing to the credit of the client bank account or client transaction account, in respect of any sum owed to such person, or to any other third person, on any other account.

Client bank account acknowledgment letters

7.18.2 R (1) For each client bank account, a firm must, in accordance with CASS 7.18.6R, complete and sign a client bank account acknowledgement letter clearly identifying the client bank account, and send it to the bank with whom the client bank account is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the firm.

(2) Subject to CASS 7.18.14R and CASS 7.18.15R, a firm must not hold or receive any client money in or into a client bank account unless it has received a duly countersigned client bank account acknowledgement letter from the relevant bank that has not been inappropriately redrafted (see CASS 7.18.8R) and clearly identifies the client bank account.
Client transaction account acknowledgement letters

7.18.3  R (1) This rule does not apply to a firm to which CASS 7.18.4R(1) applies.

(2) For each client transaction account, a firm must, in accordance with CASS 7.18.6R, complete and sign a client transaction account acknowledgement letter clearly identifying the client transaction account. That letter must be sent to the person with whom the client transaction account is, or will be, opened, requesting such person to acknowledge and agree to the terms of the letter by countersigning it and returning it to the firm.

(3) Subject to CASS 7.18.14R and CASS 7.18.15R, a firm must not allow the relevant person to hold any client money in a client transaction account maintained by that person for the firm, unless the firm has received a duly countersigned client transaction account acknowledgement letter from that person that has not been inappropriately redrafted (see CASS 7.18.8R) and that clearly identifies the client transaction account.

Authorised central counterparty acknowledgment letters

7.18.4  R (1) A firm which places client money at an authorised central counterparty in connection with a regulated clearing arrangement must, in accordance with CASS 7.18.6R, complete and sign an authorised central counterparty acknowledgement letter clearly identifying the relevant client transaction account. That letter must be sent to the authorised central counterparty with whom the client transaction account is, or will be, opened, requesting such authorised central counterparty to acknowledge receipt of the letter by countersigning it and returning it to the firm.

(2) A firm which has complied with CASS 7.18.4R(1) may allow the authorised central counterparty to hold client money on the relevant client transaction account, whether or not the authorised central counterparty has countersigned and returned the authorised central counterparty acknowledgement letter it received from the firm.

Acknowledgement letters in general

7.18.5  G In drafting acknowledgement letters under CASS 7.18.2R, CASS 7.18.3R or CASS 7.18.4R, a firm is required to use the relevant template in CASS 7 Annex 2R, CASS 7 Annex 3R or CASS 7 Annex 4R, respectively.

7.18.6  R When completing an acknowledgement letter under CASS 7.18.2R(1), CASS 7.18.3R(1) or CASS 7.18.4R(1), a firm:

(1) must not amend any of the acknowledgement letter fixed text;

(2) subject to (3), must ensure the acknowledgement letter variable text is removed, included or amended as appropriate; and
must not amend any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.

7.18.7 G  CASS 7 Annex 5G contains guidance on using the template acknowledgement letters, including when and how firms should amend the acknowledgement letter variable text that is in square brackets.

7.18.8 R (1) If, on countersigning and returning the acknowledgement letter to a firm, the relevant person has also:

(a) made amendments to any of the acknowledgement letter fixed text; or

(b) made amendments to any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text;

the acknowledgement letter will have been inappropriately redrafted for the purposes of CASS 7.18.2R(2) or CASS 7.18.3R(3) (as applicable).

(2) For the purposes of CASS 7.18.2R(2) or CASS 7.18.3R(3), amendments made to the acknowledgement letter variable text in the acknowledgement letter returned to a firm by the relevant person, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the acknowledgement letter fixed text, have been specifically agreed with the firm and do not cause the acknowledgement letter to be inaccurate.

7.18.9 R  A firm must use reasonable endeavours to ensure that any individual that has countersigned an acknowledgement letter that has been returned to the firm was authorised to countersign the letter on behalf of the relevant person.

7.18.10 R (1) A firm must retain each countersigned client bank account acknowledgement letter and client transaction account acknowledgement letter it receives, from the date of receipt until the expiry of five years from the date on which the last client bank account or client transaction account to which the acknowledgement letter relates is closed.

(2) A firm must retain a copy of each authorised central counterparty acknowledgement letter it sends to an authorised central counterparty under CASS 7.18.4R(1), from the date it was sent until the expiry of five years from the date the last client transaction account to which the acknowledgement letter relates is closed.

7.18.11 R  A firm must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an acknowledgement letter returned
to the firm was authorised to countersign the letter on behalf of the relevant person).

7.18.12 R (1) This rule applies to:

(a) any countersigned client bank account acknowledgement letter or client transaction account acknowledgement letter received by a firm under CASS 7.18.2R(2) or CASS 7.18.3R(3) respectively; and

(b) any authorised central counterparty acknowledgement letter sent by a firm under CASS 7.18.4R(1), whether or not it has been countersigned by the relevant authorised central counterparty and received by the firm.

(2) A firm must, periodically (at least annually, and whenever it is aware that something referred to in an acknowledgement letter has changed) review each of its acknowledgement letters to ensure that they all remain accurate.

(3) Whenever a firm finds an inaccuracy in an acknowledgement letter, it must promptly draw up a replacement acknowledgement letter under CASS 7.18.2R, CASS 7.18.3R or CASS 7.18.4R, as applicable, and, if it is an acknowledgement letter required to be sent under CASS 7.18.2R or CASS 7.18.3R, ensure that the new acknowledgement letter is duly countersigned and returned by the relevant person.

7.18.13 G Under CASS 7.18.12R, a firm should draw up and send out a replacement acknowledgement letter whenever:

(1) there has been a change in any of the parties’ names or addresses as set out in the letter; or

(2) the firm becomes aware of an error or misspelling in the drafting of the letter.

7.18.14 R If a firm’s client bank account or client transaction account is transferred to another person, the firm must promptly draw up a new acknowledgement letter under CASS 7.18.2R, CASS 7.18.3R or CASS 7.18.4R, as applicable, and, if it is an acknowledgement letter required to be sent under CASS 7.18.2R or CASS 7.18.3R, ensure that the new acknowledgement letter is duly countersigned and returned by the relevant person within 20 business days of the firm sending it to that person.

7.18.15 R If a firm opens a client bank account after a primary pooling event, the firm must:

(1) promptly draw up and send out a new acknowledgement letter under CASS 7.18.2R;

(2) not hold or receive any client money in or into the client bank account unless it has sent the acknowledgement letter to the relevant person;
and

(3) if the firm has not received a duly countersigned acknowledgement letter that has not been inappropriately redrafted (see CASS 7.18.8R) within 20 business days of the firm sending the acknowledgement letter, 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.

Amend the following as shown.

7.19 Clearing member client money sub-pools

…

7.19.4 R Where a firm establishes one or more sub-pools, CASS 7.6 7.15 (Records, accounts and reconciliations) should be read as applying to the firm for its general pool and each sub-pool individually.

7.19.5 R A firm that establishes one or more sub-pools must establish and maintain adequate internal controls and records in accordance with CASS 7.6 7.15 (Records, accounts and reconciliations) to conduct internal and external reconciliations for each sub-pool and the general pool individually.

7.19.14 R A firm that receives client money to be credited in part to one pool and in part to a sub-pool must:

(1) …

…

7 Annex 2R Client bank account acknowledgment letter template

[letterhead of firm subject to CASS 7.8.4 7.18.2R, including full name and address of firm]

[name and address of bank]

[date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

…
7 Annex 3R Client transaction account acknowledgment letter template

[letterhead of firm subject to CASS 7.8.2 7.18.3R, including full name and address of firm]
[name and address of counterparty]  
[date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

...

7 Annex 4R Authorised central counterparty acknowledgment letter template

[letterhead of firm subject to CASS 7.8.3 7.18.4R, including full name and address of firm]
[name and address of authorised central counterparty]  
[date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

...

7 Annex 5G Guidance notes for acknowledgement letters (CASS 7.8 7.18)

...

3 Under CASS 7.8.1 7.18.2R(2) and CASS 7.8.2 7.18.3R(3), firms are required to have in place a duly signed and countersigned acknowledgment letter for a client bank account or client transaction account (respectively) before they are allowed to hold or receive client money in or into the client bank account, or allow the relevant person to hold any client money on the client transaction account (respectively).

...

13 An acknowledgment letter that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in CASS 7.8 7.19. However, where electronic signatures are used, a firm should consider whether, under CASS 7.4.7 7.13.8R and taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the letter.
20 If a firm does not, in any client bank account acknowledgement letter or client transaction account acknowledgment letter, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

(a) the law and the jurisdiction under which either the firm or the relevant counterparty are organised; or

(b) that specified in the underlying agreement/s (eg, banking, custody or clearing services agreement) with the relevant counterparty;

then the firm should consider whether it is at risk of breaching either CASS 7.8.5R(3) 7.18.6R(3) or, in the case of a client bank account acknowledgement letter, CASS 7.4.7 7.13.8R.

21 The FCA recognises that some firms and their counterparties may wish to clarify through additional words in the governing law provision (see paragraph (l) of the template in CASS 7 Annex 2R and paragraph (k) of the template in CASS 7 Annex 3R) that they are agreeing that the substantive law of the governing jurisdiction shall apply and that their intention is that a court should not decide to apply the substantive provisions of some other law instead of the parties’ chosen governing law (a ‘renvoi’). Where this is the case firms are permitted to insert additional text that seeks to provide increased legal certainty in the space provided. There is no restriction as to what additional words may be used (for example additional words such as “without regard to the principles of choice of law” may be appropriate in the circumstances), but a firm should at all times have regard to the need to comply with CASS 7.8.5-7.18.6R(3).

However, for the majority of firms the FCA does not expect additional wording for the governing law provision to be necessary. This is likely to be the case where only a court that is subject to ‘Rome I’ (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008) is likely to accept jurisdiction over a dispute arising out of or in connection with the relevant acknowledgement letter.

Authorised signatories

22 A firm is required, under CASS 7.8.8 7.18.9R, to use reasonable endeavours to ensure that any individual that has countersigned an acknowledgement letter returned to the firm was authorised to countersign the letter on behalf of the relevant counterparty.

…

35 A firm should ensure that client money placed in a money market deposit is clearly identified as client money (see CASS 7.4.11BG 7.13.15G).

…

37 A firm which operates the alternative approach to client money segregation (see CASS 7.4.18AR 7.13.62R) might not make deposits of client money in a money market deposit from another client bank account. In these circumstances, the firm need only include in the body of the letter how the firm will notify the bank that a money market deposit placed with it consists of client money. For example, the relevant space in the
template letter in CASS 7 Annex 2R may set out that:

...

7A Client money distribution

...

7A.2 Primary pooling events

...

7A.2.2 When the firm notified, or is in breach of its duty to notify, the FCA, in accordance with CASS 7.6.16 7.15.33 R (Notification requirements), that it is unable to identify and allocate in its records all valid claims arising as a result of a secondary pooling event.

...

7A.2.3A If a primary pooling event occurs in circumstances where the firm had, before the primary pooling event, reduced its margined transaction requirement by utilising approved collateral under CASS 7 Annex 1G paragraph 15 7.16.33R, it must immediately liquidate this approved collateral and place the proceeds in a client bank account.

Pooling and distribution

7A.2.4 When the firm must distribute client money comprising the notional pool in accordance with CASS 7.7.2 R 7.17.2R, so that:

...

(3) ...

(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 7.7.2 R(4) 7.17.2R(4);

...

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 or clearing member subject to CASS 7.7.2 R(4) 7.17.2R(4); and

...

7A.2.4A G
The firm's obligation to its client in respect of client money held in a sub-pool is discharged to the extent that the firm transfers that client money to facilitate porting in accordance with CASS 7.2.15R(8) 7.11.34R(8).

7A.2.5 R (-1) …

(a) …

(i) 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) 7.11.34R(6) in respect of that client;

(ii) a clearing member to another clearing member or firm (other than the firm) in connection with a transfer in accordance CASS 7.2.15R(8) 7.11.34R(8);

(b) …

(i) an authorised central counterparty directly to that client, in accordance with CASS 7.2.15R(7) 7.11.34R(7);

(ii) a clearing member directly to an indirect client in accordance CASS 7.2.15R(9) 7.11.34R(9); and

…

7A.3 Secondary Pooling events

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

7A.3.1 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) 7.13.3R(1) to CASS 7.4.1R(3) 7.13.3R(3) (Depositing client money) or CASS 7.5.2R 7.14.2R (Transfer of client money to a third party).

…

7A.3.4 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 7A.3.6R. The firm would be expected to reflect the shortfall that arises at the failed bank in the general pool (where the firm maintains only a general pool) and, where relevant, in a particular sub-pool (where the firm maintains both a general pool and one or more sub-pools) in its records of the entitlement of clients and of money held with third parties under CASS 7.6 7.15 (Records, accounts and reconciliations).

…
(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 7.15.3R (Records and accounts) for that pool, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

…

7A.3.10 R …

(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 7.15.3R (Records and accounts) in respect of the relevant pool, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

…

7A.3.11 R …

(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 7.15.3R (Records and accounts) for the relevant pool, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

…

7A.3.17 R …

(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 7.15.3R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

…

8 Mandates

…

8.2 Definition of mandate

8.2.1 R A mandate is any means that give a firm the ability to control a client’s assets or liabilities, which meet the conditions in (1) to (5) (as applicable):

…
(2) where those means are obtained in the course of, or in connection with, the firm’s insurance mediation activity, they are in written form at the time they are obtained from the client;

...

**Written** The form of a mandate

8.2.2 G A mandate can take any written form and need not state that it is a mandate. For example, it could take the form of: a standalone document containing certain information or conferring a certain authority on the firm, a specific provision within a document or agreement that also relates to other matters, or a combination of provisions within a number of documents which together meet the conditions in CASS 8.2.1R.

(1) a standalone document containing certain information conferring authority to control a client’s assets or liabilities on the firm;

(2) a specific provision within a document or agreement that also relates to other matters; or

(3) an authority provided by a client orally.

Retention by the firm

8.2.3 G (1) If a firm receives information that puts it in the position described in CASS 8.2.1R(4) in order to effect transactions immediately on receiving that information, then such information could only amount to a mandate if the firm retained it (for example by not destroying the relevant document, electronic record or telephone recording):

...

...

...

8.2.5 G A mandate in relation to the type of instructions referred to in CASS 8.2.1R(4)(a) could include a direct debit instruction over a client's bank account in favour of the firm. The fact that the instruction was given by the client in the form of a paperless direct debit would not prevent it from being a mandate.

8.2.6 G A mandate in relation to the type of instructions referred to in CASS 8.2.1R(4)(d) could include written information that sets out the client's credit card details.

...
8.3  Records and internal controls

...  

8.3.2 R  The records and internal controls required by CASS 8.3.1R must include:

(1) an up-to-date list of each mandate that the firm has obtained, including a record of any conditions placed by the client or the firm's management on the use of the mandate and, where a mandate was received in non-written form in the course of, or in connection with, its designated investment business, the details required under CASS 8.3.2CR;

...  

(3) internal controls to ensure that each transaction entered into under each mandate that the firm has is carried out in accordance with any conditions placed by the client or the firm's management on the use of the mandate;

...  

A firm’s list of mandates

8.3.2A R  (1) A firm’s up-to-date list of mandates under CASS 8.3.2R(1) must be maintained in a medium that allows the storage of information in a way accessible for future reference by the FCA or by an auditor preparing a report under SUP 3.10.4R.

(2) It must be possible for any corrections or other amendments, and the contents of the list prior to such corrections and amendments, to be easily ascertained.

8.3.2B G  A firm may use version control to comply with CASS 8.3.2AR(2).

8.3.2C R  An entry in a firm’s list of mandates under CASS 8.3.2R(1) that relates to a mandate that was received in non-written form (eg, in a telephone call) in the course of, or in connection with, its designated investment business must, as well as the information referred to at CASS 8.3.2R(1), include the following details:

(1) the nature of the mandate (eg, debit card details);

(2) the purpose of the mandate (eg, collecting insurance premiums);

(3) how the mandate was obtained (eg, by telephone);

(4) the name of the relevant client; and

(5) the date on which the mandate was obtained.
8.3.2D G If a firm receives information through a telephone call in the course of, or in connection with, its designated investment business that amounts to a mandate as a result of the firm retaining a recording of the call (see CASS 8.2.3G), the requirements at CASS 8.3.2R(1) apply, regardless of whether or not the firm intends to use the mandate in the future. The firm will meet the requirements of CASS 8.3.2R(1) if the firm’s list of mandates is updated with the details of the mandate that the firm obtained as a result of the call.

8.3.2E G A firm should not reproduce information meeting the conditions under CASS 8.2.1R as a separate record (eg, by including such information in its list of mandates under CASS 8.3.2R(1)) unless the firm considers this necessary, as this creates additional risk of misuse. Making a record of the details concerning the mandate described in CASS 8.3.2CR would be appropriate.

8.3.2F G When keeping its list of mandates under CASS 8.3.2R(1) up to date:

1. a firm should create a new entry in the list each time the firm obtains a new mandate;

2. if, for an existing entry on its list, a firm obtains the same information meeting the conditions in CASS 8.2.1R again (eg, in a written confirmation following a paperless direct debit), the additional mandate is not a new mandate and the firm should not create another entry on the list; but

3. the firm should, for every entry on its list, identify each of the locations in which it has retained the information that meets the conditions in CASS 8.2.1R (eg, a client’s debit card details retained in a telephone recording and also the firm’s written log of the call, or two separate documents containing the same information).

Retention of records

8.3.2G R A firm must retain the records required under CASS 8.3.1R in relation to a particular mandate for the following period after it ceases to have the mandate (eg, because the firm has destroyed the relevant document, electronic record or telephone recording), as applicable:

1. subject to (2), a minimum of one year;

2. a minimum of five years, where the relevant mandate was held by the firm in the course of, or in connection with, its MiFID business.

8.3.2H G Where a firm has an obligation under CASS 8.3.2GR to retain records after it ceases to have a particular mandate, it may keep the mandate on the firm’s list under CASS 8.3.2R(1) for the relevant period, but the list should be updated to reflect the fact that it ceased to have the relevant mandate at the relevant date.

…
9 Prime brokerage information to clients

9.1 Application

9.1.1 R This chapter applies to a firm as follows:

(1) CASS 9.2 and CASS 9.3 apply to a prime brokerage firm to which CASS 6 (Custody rules) applies; and

(2) which is a prime brokerage firm subject to (3) and (4), CASS 9.4 and CASS 9.5 apply to a firm to which either or both CASS 6 (Custody rules) and CASS 7 (Client money rules) applies;

(3) CASS 9.4 and CASS 9.5 do not apply to a firm which only arranges safeguarding and administration of assets;

(4) for a firm to which CASS 7 (Client money rules) applies as well as either or both of CASS 5 (Client money: insurance mediation activity) and CASS 11 (Debt management client money chapter), this chapter does not apply to client money that a firm holds in accordance with CASS 5 or CASS 11.

... Insert the following section after CASS 9.4. The text is all new and is not underlined.

9.5 Reporting to clients on request

9.5.1 G Firms are reminded that, under COBS 16.4, they are required to send to each of their clients at least once a year a statement in a durable medium of those designated investments and/or client money they hold for that client. A firm which manages investments may provide this statement in its periodic statement, as required under COBS 16.3.

9.5.2 G Firms are reminded that the requirements in COBS 16.4 only set out the minimum frequency at which firms must report to their clients on their holdings of designated investments and/or client money. Firms may choose to report to their clients more frequently.

9.5.3 G Subject to CASS 9.5.6R, CASS 9.5.4R and CASS 9.5.5R require firms to comply with a client’s request for information on the custody assets and/or client money the firm holds for a client under CASS 6 and/or CASS 7, and such request may be made by a client at any time.

9.5.4 R When a firm receives a request, made by a client or on a client’s behalf, for a statement of the custody assets and/or client money that the firm holds for that client, the firm must provide the client with the statement requested in a durable medium.
9.5.5 R When a firm receives a request, made by a client or on a client’s behalf, for a copy of any statement of custody assets and/or client money previously provided to that client, the firm must provide the client with the copy of the statement requested in a durable medium and within five business days following the receipt of the request.

9.5.6 R Any charge agreed between the firm and the client for providing the statements in CASS 9.5.4R and CASS 9.5.5R must reasonably correspond to the firm’s actual costs.

9.5.7 G Any statement provided to a client under CASS 9.5.4R or CASS 9.5.5R may, although it is not required to, be in the same form as the statement a firm is required to provide to a client under COBS 16.4 or, if appropriate, COBS 16.3.

9.5.8 G Consistent with the fair, clear and not misleading rule, a firm should ensure that, in any statements of custody assets and/or client money it provides to its clients, it is clear from the statement which assets and/or monies the firm reports as holding for the client are, or are not, protected under CASS 6 and/or CASS 7 (eg, if the statement also includes information regarding assets and/or monies which are held by the firm for that client which are not subject to the custody rules and/or client money rules).

9.5.9 G Firms are reminded that under CASS 3.2.4G firms that enter into arrangements with retail clients covered by CASS 3 (Collateral) should, when appropriate, identify in any statement of custody assets sent to the client under COBS 16.4 (Statements of client designated investments or client money) or this section the details of the assets which form the basis of that collateral arrangement.

Amend the following as shown.

10 CASS resolution pack

10.1 Application, purpose and general provisions

... General provisions ...

10.1.9 E (1) For the purpose of CASS 10.1.7R, the following documents and records should be retrievable immediately:

... any written notification or trust acknowledgement letters
acknowledgement letters referred to in CASS 10.2.1R(5);

(d) the most recent internal reconciliations relating to safe custody assets internal custody records checks referred to in CASS 10.3.1R(3);

(e) the most recent external reconciliations relating to safe custody assets external custody reconciliations referred to in CASS 10.3.1R(5);

(f) the most recent internal reconciliations relating to client money internal client money reconciliations referred to in CASS 10.3.1R(7) and (7A); and

(g) the most recent external reconciliations relating to client money external client money reconciliations referred to in CASS 10.3.1R(9).

…

10.2 Core content requirements

10.2.1 A firm must include within its CASS resolution pack:

…

(2) a document which identifies the institutions the firm has appointed (including through an appointed representative, tied agent, field representative or other agent):

(a) in the case of client money, for the placement of money in accordance with CASS 7.4.1R 7.13.3R or to hold or control client money in accordance with CASS 7.5.2R 7.14.2R; and

…

(5) for each institution identified in CASS 10.2.1R(2), a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the firm that relates to the holding of client money or safe custody assets including any written notification or trust acknowledgement letters sent or received pursuant to CASS 7.8 7.18;
10.2.2 **G** For the purpose of *CASS 10.2.1R(4)*, examples of individuals within the firm who are critical or important to the performance of operational functions include:

(1) those necessary to carry out both internal and external *client money* and *safe custody asset* reconciliations and record checks; and

…

…

10.3 **Existing records forming part of the CASS resolution pack**

10.3.1 **R** A firm must include, as applicable, within its *CASS resolution pack* the records required under:

(1) *CASS 6.3.1R (4) 6.3.2AR* (safe custody assets: appropriateness of the firm's selection of a third party);

…

(3) *CASS 6.6.2R and CASS 6.6.3R* (safe custody assets held for each client), including internal reconciliations carried out pursuant to *CASS 6.5.2R* as explained in the guidance at *CASS 6.5.4G*;

(4) *CASS 6.5.2AR 6.6.6R* (client agreements: firm's right to use);

(4A) *CASS 6.6.8R* (internal custody record checks, physical asset reconciliations and external custody reconciliations);

(5) *CASS 6.6.9R 6.34R* (Reconciliations with external records External custody reconciliations);

(5A) *SYSC 6.1.1R* (policy and procedures for carrying out record checks and reconciliations);

(6) *CASS 7.4.10R 7.13.25R* (client money: appropriateness of the firm's selection of a third party);

(7) *CASS 7.6.1R 7.15.2R, CASS 7.15.3R and CASS 7.15.5R* (client money held for each client), including internal reconciliations carried out pursuant to *CASS 7.6.2R* as explained in the guidance at *CASS 7.6.6G*;

(7A) *CASS 7.15.7R* (internal client money reconciliations and external client money reconciliations);

(8) *CASS 7.6.6ER and CASS 7.6.8R* (method of internal reconciliation of client money balances);
(9)  *CASS* 7.6.9R (Reconciliations with external records);

...  

(11) *COBS* 8.1.4R (retail and professional client agreements);

...

**TP 1.1**

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<td>10</td>
<td><em>CASS</em> 7.4.11AR(2) 7.13.13R(2)</td>
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Insert the following new rows in the appropriate numerical position in **Schedule 1 (Record Keeping Requirements)**. The new text is not underlined.

**Sch 1.3G**

<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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<td><em>CASS</em> 6.1.8AR(2)</td>
<td>Client’s communication to <em>firm</em> of wish to terminate TTCA</td>
<td>Client’s communication of wish to terminate TTCA</td>
<td>When communication made</td>
<td>Five years (from date of communication)</td>
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<td><em>CASS</em> 6.1.8AR(4)</td>
<td><em>Firm’s</em> response to <em>client’s</em> wish to terminate TTCA</td>
<td><em>Firm’s</em> response to <em>client’s</em> wish to terminate TTCA</td>
<td>When notification given</td>
<td>Five years (from date of notification)</td>
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<tr>
<td>CASS 6.3.2AR(2)</td>
<td>A firm’s periodic review into the selection and appointment of a third party under CASS 6.3.1R</td>
<td>Date of review, actions taken by the firm in reviewing the selection and appointment of a third party under CASS 6.3.1R, and grounds upon which the firm continues to be satisfied of appropriateness of its selection of that third party to hold safe custody assets belonging to clients</td>
<td>On the date of the review</td>
<td>Five years (from the date the firm ceases to use the third party to hold safe custody assets belonging to clients)</td>
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<td>CASS 6.6.4R</td>
<td>Client specific safe custody asset record</td>
<td>Client specific safe custody asset record</td>
<td>Maintain up to date</td>
<td>Five years (from the date the record was made)</td>
</tr>
<tr>
<td>CASS 6.6.8R</td>
<td>Internal custody record checks, physical asset reconciliations and external custody reconciliations conducted carried out by the firm.</td>
<td>Date and actions the firm took when carrying out the relevant process; a list of the discrepancies the firm identified and the actions the firm took to resolve those discrepancies</td>
<td>Immediate</td>
<td>Not specified (see default provision CASS 6.6.7R)</td>
</tr>
<tr>
<td>CASS 6.6.16R</td>
<td>Aggregate safe custody asset record</td>
<td>All the safe custody assets the firm holds for its clients, including those deposited with third parties under CASS 6.3 and any</td>
<td>Maintain up to date if the firm wishes to use the internal custody reconciliation method</td>
<td>Not specified (see default provision CASS 6.6.7R)</td>
</tr>
<tr>
<td>Rule</td>
<td>Description</td>
<td>Details</td>
<td></td>
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</tr>
<tr>
<td><strong>CASS 6.6.30R</strong></td>
<td>Rolling stock method for physical asset reconciliations</td>
<td>Firm’s reasons for concluding that this method is adequately designed to mitigate risk of records being manipulated or falsified. Before using this method: Five years (from the date the firm ceases to use this method).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CASS 6.6.45R</strong></td>
<td>Frequency of the firm’s internal record custody checks, physical asset reconciliations and external custody reconciliations</td>
<td>Sufficient to show and explain decision taken under CASS 6.6.44R when determining frequency. Immediate: (1) Subject to (2), indefinitely. (2) For any decision which is superseded by a subsequent decision, five years from the subsequent decision (with (1) applying to the subsequent decision).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CASS 6.6.46R(2)</strong></td>
<td>Review of frequency if the firm’s internal record custody checks, physical asset reconciliations and external custody reconciliations</td>
<td>Date of each review and the actions the firm took in reviewing the frequency at which it conducts the relevant process. Immediate: Not specified (see default provision CASS 6.6.7R).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CASS 6.6.54R(2)(a)</strong></td>
<td>Actions taken by the firm to resolve shortfall under this rule</td>
<td>Actions taken, description of shortfall, identity of affected client(s), applicable assets appropriated to cover the shortfall. Update when discrepancy resolved. Maintain up to date: Not specified (see default provision CASS 6.6.7R).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 6.6.54R(2)(b)</td>
<td>Actions taken by the <strong>firm</strong> to resolve <strong>shortfall</strong> under this rule</td>
<td>Actions taken, description of <strong>shortfall</strong>, identity of affected <strong>client(s)</strong>, amount of <strong>money</strong> appropriated to cover the <strong>shortfall</strong>. Update when discrepancy resolved.</td>
<td>Maintain up to date</td>
<td>Not specified (see default provision CASS 6.6.7R)</td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>----------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>CASS 7.11.9R(2)</td>
<td><strong>Client’s</strong> communication to <strong>firm</strong> of wish to terminate TTCA</td>
<td><strong>Client’s</strong> communication of wish to terminate TTCA</td>
<td>When communication made</td>
<td>Five years (from date of communication)</td>
</tr>
<tr>
<td>CASS 7.11.9R(4)</td>
<td><strong>Firm’s</strong> response to <strong>client’s</strong> wish to terminate TTCA</td>
<td><strong>Firm’s</strong> response to <strong>client’s</strong> wish to terminate TTCA</td>
<td>When notification given</td>
<td>Five years (from date of notification)</td>
</tr>
<tr>
<td>CASS 7.11.20R</td>
<td><strong>Client’s</strong> agreement to <strong>firm’s</strong> use of the delivery versus payment exemption under CASS 7.11.14R</td>
<td>Written evidence of <strong>client’s</strong> agreement</td>
<td>Immediate</td>
<td>Until the <strong>firm</strong> ceases to use this exemption</td>
</tr>
<tr>
<td>CASS 7.11.24R</td>
<td><strong>Client’s</strong> agreement to <strong>firm’s</strong> use of the delivery versus payment exemption under CASS 7.11.21R</td>
<td>Written evidence of <strong>client’s</strong> agreement</td>
<td>Immediate</td>
<td>Until the <strong>firm</strong> ceases to use this exemption</td>
</tr>
<tr>
<td>CASS 7.13.25R(2)</td>
<td><strong>Firm’s</strong> periodic review into Date of each review, actions the <strong>firm</strong> took in</td>
<td>Date of review</td>
<td>Five years (from date of review)</td>
<td></td>
</tr>
<tr>
<td>selection and appointment of third party under <em>CASS 7.13.8R.</em></td>
<td>reviewing the selection and appoint of a third party under <em>CASS 7.13.8R,</em> and the grounds upon which the firm continues to be satisfied of appropriateness of its selection of that third party to hold <em>client money</em></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><em>CASS 7.13.25R(3)</em></th>
<th><em>Firm’s periodic review under CASS 7.13.22R.</em></th>
<th>Fact of review, its considerations and conclusions</th>
<th>Date of review</th>
<th>Five years (from date of review)</th>
</tr>
</thead>
</table>

| *CASS 7.13.36R* | Unallocated *client money* | Fact that the balance treated as unallocated *client money* | When firm is unable to immediately identify *money* as *client money* or its own *money* and it treats the balance as *client money* | Pending firm’s allocation of the *client money* concerned to an individual *client* |

| *CASS 7.13.50R; CASS 7.13.51R* | Prudent segregation record | Details of *money* segregated under *CASS 7.13.41R* required by these rules | Maintain up to date | Five years (after the firm ceases to retain *money* as *client money* under *CASS 7.13.41R*) |

<p>| <em>CASS 7.13.66R; CASS 7.13.67R</em> | Alternative approach <em>mandatory prudent segregation record</em> | Details of <em>money</em> segregated under <em>CASS 7.13.65R</em> required by these rules | Maintain up to date | Five years (after the firm ceases to retain <em>money</em> as <em>client money</em> under <em>CASS 7.13.65R</em>) |</p>
<table>
<thead>
<tr>
<th><strong>CASS 7.13.74R; CASS 7.13.75R</strong></th>
<th><strong>Clearing arrangement mandatory prudent segregation record</strong></th>
<th><strong>Details of money segregated under CASS 7.13.73R(3)(a) required by these rules</strong></th>
<th><strong>Maintain up to date</strong></th>
<th><strong>Five years (after the firm ceases to retain money as client money under CASS 7.13.73R(3)(a))</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CASS 7.15.5R(1)</strong></td>
<td>Total amount of <em>client money</em> the <em>firm</em> should be holding for each <em>client</em></td>
<td>Total amount of <em>client money</em> the <em>firm</em> should be holding for each <em>client</em></td>
<td>Maintain up to date</td>
<td>Not specified (see default provision <em>CASS 7.15.5R(3)</em>)</td>
</tr>
<tr>
<td><strong>CASS 7.15.5R(2)</strong></td>
<td>Transactions and commitments for <em>client money</em></td>
<td>Sufficient to show and explain transactions and commitments</td>
<td>Maintain up to date</td>
<td>Not specified (see default provision <em>CASS 7.15.5R(3)</em>)</td>
</tr>
<tr>
<td><strong>CASS 7.15.7R</strong></td>
<td><em>Internal client money reconciliations and external client money reconciliations</em> conducted carried out by the <em>firm</em></td>
<td>Date, actions the <em>firm</em> took in carrying out the relevant process, and the outcome of its calculation of its <em>client money requirement</em> and <em>client money resource</em>. Fact of each reconciliation and review of the <em>firm’s</em> arrangements for complying with <em>CASS 7.15.5R</em> to <em>CASS 7.15.8R</em>.</td>
<td>Immediate</td>
<td>Not specified (see default provision <em>CASS 7.15.5R(3)</em>)</td>
</tr>
<tr>
<td><strong>CASS 7.15.9R</strong></td>
<td>Receipts of <em>client money</em></td>
<td>Appropriate to account for all receipts of <em>client money</em> in the form of cash, cheque or</td>
<td>Maintain up to date</td>
<td>Not specified (see default provision <em>CASS 7.15.5R(3)</em>)</td>
</tr>
</tbody>
</table>
**CASS 7.15.24R**  
Frequency of the firm's external client money reconciliations  
Sufficient to show and explain decision taken under CASS 7.15.232R when determining frequency  
Immediate  
(1) Subject to (2), indefinitely.  
(2) For any decision which is superseded by a subsequent decision, five years from the subsequent decision (with (1) applying to the subsequent decision).

**CASS 7.15.26R(2)**  
Review of frequency of the firm's external client money reconciliations  
Date of each review and the actions the firm took in reviewing the frequency at which it carries out the external client money reconciliations  
Not specified  
Not specified (see default provision CASS 7.15.5R(3))

Amend the following as shown:

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<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 6.3.1R(4)</td>
<td>…</td>
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<td>6.3.2AR(1)</td>
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<td>CASS 6.5.1R</td>
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<td></td>
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<tr>
<td>6.6.2R</td>
<td></td>
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<tr>
<td>CASS 6.5.2R</td>
<td>…</td>
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<tr>
<td>6.6.3R</td>
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<td>CASS 7.1.3R(2)</td>
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<tr>
<td>7.11.3R(3)</td>
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<td>7.10.31R</td>
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<td>CASS 7.1.15G 7.10.35R</td>
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<td>CASS 7.1.15JR 7.10.38R</td>
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<td>CASS 7.2.22R 7.11.55R</td>
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<td></td>
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<td>CASS 7.2.25R(4) 7.11.57R(4)</td>
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<tr>
<td>CASS 7.4.10R 7.13.25R(1)</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 7.6.1R 7.15.2R</td>
<td>…</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>CASS 7.6.2R 7.15.3R</td>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 7.6.6AR (1)(a) 7.15.18R(1)(a)</td>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 8.3.1R</td>
<td>Adequate records and internal controls in respect of the firm’s use of mandates (see CASS 8.3.2R (1) to CASS 8.3.2R (5) to CASS 8.3.2CR</td>
<td>Up-to-date list of firm’s mandates, and any conditions regarding the use of mandates, all transactions entered into, details of procedures and internal controls for giving and receiving of instructions under mandates, important client documents held by the firm, and, in relation to non-written …</td>
<td>Not specified One year after the firm ceases to have the mandate or, if the mandate was held in the course of or in connection with the firm’s MiFID business, five years after the same date</td>
<td></td>
</tr>
</tbody>
</table>
mandates, the further details required by CASS 8.3.2CR

...
<p>| CASS 7.15.33R(1) | Inability to comply with CASS 7.15.2R, CASS 7.15.3R or CASS 7.15.5R(1), due to materially out of date, inaccurate or invalid internal records and accounts | The fact that the <em>firm</em> is unable to comply and the reasons for that | Without delay |
| CASS 7.15.33R(2) | Inability to comply with CASS 7.15.29R after having carried out an <em>internal client money reconciliation</em> | The fact that the <em>firm</em> is unable to comply and the reasons for that | Without delay |
| CASS 7.15.33R(3) | Inability or material failure to identify and correct any discrepancies under CASS 7.15.31R to CASS 7.15.32R after having carried out an <em>external client money reconciliation</em> | The fact that the <em>firm</em> is unable to comply and the reasons for that | Without delay |
| CASS 7.15.33R(4) | Inability or material failure to conduct an <em>internal client money reconciliation</em> under CASS 7.15.12R and | The fact that the <em>firm</em> is unable to comply and the reasons for that | Without delay |</p>
<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>
</table>
| **CASS 6.5.13R**  
| *(1) CASS 6.5.13R(1)  
| **6.57R (1)** | Non-compliance or inability, in any material respect, **Inability to comply with the requirements in CASS 6.5.1R to CASS 6.6.2R (Records, and accounts and reconciliations), CASS 6.5.2R (Records and accounts, including internal reconciliations) or CASS 6.5.6R (Reconciliations with external** | The fact that the *firm* has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that | Non-compliance or inability, in any material respect, to comply with the requirements | Without delay |
| **CASS 7.15.33R**  
| *(5) CASS 7.15.33R(5) | Inability or material failure to conduct an external client money reconciliation under CASS 7.15.20R to CASS 7.15.28R | The fact that the *firm* is unable to comply and the reasons for that | Inability or material failure to comply | Without delay |
| **CASS 7.15.33R**  
<p>| *(6) CASS 7.15.33R(6) | Amount of client money segregated in client bank accounts materially differing from client money segregation requirements during preceding 12 months | The fact of the material difference and the reasons for that | Without delay |</p>
<table>
<thead>
<tr>
<th><strong>CASS 6.5.13R (1A) 6.57R (2)</strong></th>
<th>Non-compliance or material inability to comply with the requirements in CASS 6.5.1R 6.6.2R (Records, and accounts and reconciliations) and/or articles 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation</th>
<th>The fact that the <em>firm</em> has not complied or is materially unable to comply with the requirements and the reasons for that</th>
<th>Non-compliance or material inability to comply with the requirement</th>
<th>Without delay</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CASS 6.5.13R (2)</strong></td>
<td>Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.10R (Reconciliation discrepancies)</td>
<td>The fact that the <em>firm</em> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</td>
<td>Non-compliance or inability, in any material respect, to comply with the requirements</td>
<td>Without delay</td>
</tr>
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<td>...</td>
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<td>...</td>
</tr>
<tr>
<td><strong>CASS 7.2.17G 7.12.42R</strong></td>
<td>...</td>
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</tr>
<tr>
<td><strong>CASS 7.4.17DR 7.13.57R</strong></td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>CASS 7.6.6AR(1)(b) 7.15.18R(1)(b)</strong></td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>CASS 7.6.16R(1)</strong></td>
<td>Non-compliance or inability, in any material</td>
<td>The fact that the <em>firm</em> has not complied or inability, in any material</td>
<td>Non-compliance or inability, in any material</td>
<td>Without delay</td>
</tr>
</tbody>
</table>
respect, to comply with the requirements in 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) or is unable, in any material respect, to comply with the requirements and the reasons for that in any material respect, to comply with the requirements
Annex D

Amendments to the Supervision manual (SUP)

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

This section comes into force on 1 June 2015

3 Auditors

3.10 Duties of auditors: notification and report on client assets

Application

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 client money chapter or the debt management client money rules if:

(2) that firm is subject to the rules of its designated professional body as specified in CASS 7.1.15R(2) 7.10.28R(2) or CASS 11.1.6R(2) with respect to its regulated activities.

6 Applications to vary and cancel Part A permission and to impose, vary or cancel requirements

6.4 Applications for cancellation of permission

6.4.22 G In deciding whether to cancel a firm's Part 4A permission, the relevant regulator will take into account all relevant factors in relation to business carried on under that permission, including whether:

(2) the firm has complied with, CASS 5.5.80R and CASS 7.2.15R.
7.11.34R (Client money: discharge of fiduciary duty) and CASS 7.2.19R 7.11.50R (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;

... 6 Annex 4.2AG

| 1 | A firm must comply with CASS 5.5.80R and CASS 7.2.15R 7.11.34R (Client money: discharge of fiduciary duty) and CASS 7.2.19R 7.11.50R (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 and COBS 6.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money). These rules apply to both repayment and transfer to a third party. |

12 Appointed representatives

... 12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

... 12.6.5A When complying with the MiFID client money segregation requirements, firms' attention is drawn to the guidance in CASS 7.4.24G to CASS 7.4.27G 7.13.34R and CASS 7.13.35R.

... 16 Annex 29R
Client Money and Asset Return

Section 1 - Firm Information

This section should be completed by all firms

1. Name of CASS audit firm
2. Name of CASS audit firm (if other was selected above)
3. Did the firm hold client money during the reporting period?
4. Did the firm hold safeguard and administer safe custody assets during the reporting period?
5. Was the firm subject to the CFTC Part 30 Exemption Order during the reporting period?

Alternative Approach to client money segregation

6. Did the firm operate the alternative approach during the reporting period? (CASS 7.4.14G - 7.4.16G)
7. Has the firm received the auditor assurances required for its use of the alternative approach and provided these to the FCA been signed off by the firm's auditors (as detailed in CASS 7.4.14G - 7.4.16G)?

Overview of firm's activities subject to CASS
Please complete the table below with all business types undertaken for segregated clients

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of business activity</td>
<td>Number of clients</td>
<td>Balance of client money as at reporting period end date</td>
<td>Value of safe custody assets as at reporting period end date</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

FCA 2014/36
Section 2 - Balances

This section should be completed by all firms

9 Highest client money balance held during the reporting period
10 Lowest client money balance held during the reporting period
11 Highest value of safe custody assets held during the reporting period
12 Lowest value of safe custody assets held during the reporting period

Section 3 - Segregation of client money

This section should only be completed if the answer to question 3A is "Yes"

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type</td>
<td>Institution where client money held</td>
<td>Client money balances</td>
<td>Country of incorporation of the institution</td>
<td>Is this a group entity</td>
</tr>
<tr>
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<td></td>
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</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
Section 4 - Client money requirement and resources

This section should only be completed if the answer to question 3A is “Yes”

14 Client money requirement

of which:

15 Unallocated to individual clients but identified as client money

16 Unidentified receipts of client money in client money bank accounts treated as client money

17 Uncleared payments e.g. unpresented cheques sent to clients

18 Excess cash in segregated accounts Prudent segregation of client money

19 Client money resource

20 Surplus Excess (+) deficit shortfall (-) of client money resource against client money requirement

21 Adjustments made to withdraw an excess or rectify a deficit shortfall identified as a result of an internal client money reconciliation

Section 5 - Client money reconciliations

This section should only be completed if the answer to question 3A is “Yes”

22 Client money Internal client money reconciliation

23 Client money External client money reconciliation

24 Client money unreconciled unresolved items
Section 6 - Segregation of safe custody assets

*This section should only be completed if the answer to question 4A is “Yes”*

<table>
<thead>
<tr>
<th>A</th>
<th>How registered?</th>
<th>B</th>
<th>Name of institution where safe custody assets held/registered</th>
<th>C</th>
<th>Number of lines of stock</th>
<th>D</th>
<th>Value of safe custody assets as at reporting period end date</th>
<th>E</th>
<th>Country of incorporation of the institution</th>
<th>F</th>
<th>Is this a group entity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

Total

Section 7 - Safe custody assets record checks and reconciliations

*This section should only be completed if the answer to question 4A is “Yes”*

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 days</td>
<td>60 days</td>
<td>90 days</td>
</tr>
</tbody>
</table>

26 Safe custody assets unresolved items

<table>
<thead>
<tr>
<th>A</th>
<th>Method Record check/reconciliation</th>
<th>B</th>
<th>Frequency</th>
<th>C</th>
<th>Type of safe custody asset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>“Internal reconciliation”</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“Internal system evaluation”</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>“Physical reconciliation - total count”</td>
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<tr>
<td></td>
<td>“Physical reconciliation - rolling stock”</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“External reconciliation”</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“External reconciliation to CREST”</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Section 8 - Record Keeping and Breaches

### Record Keeping

This section should only be completed if the answer to question 3A is “Yes”

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of accounts held at beginning of the reporting period</td>
<td>Number of new accounts opened during the reporting period</td>
<td>Number of accounts closed during the reporting period</td>
<td>Total number of accounts at the end of the reporting period</td>
<td>Number of trust status letters and/or acknowledgement letters in place that cover these accounts at the end of the reporting period covered by an acknowledgement letter</td>
<td>Explanation of difference, discrepancies</td>
</tr>
<tr>
<td>28</td>
<td>Client bank accounts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Client transaction accounts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Notifiable CASS Breaches

This section should be completed by all firms

31 Did any of the circumstances referred to in CASS 6.6.57R arise which the firm failed to comply with requirements set out in CASS 6.5.1R, CASS 6.5.2R, CASS 6.5.6R and CASS 6.5.10R?

32 If yes, was a notification made to the FCA did the firm comply with the notification requirements?

33 Did any of the circumstances referred to in CASS 7.15.33R arise which the firm failed to comply with requirements in any of CASS 7.6.1R, 7.6.2R, 7.6.9R, 7.6.13R to 7.6.15?

34 If yes, was a notification made to the FCA did the firm comply with the notification requirements?
This section should only be completed by firms who outsource and/or offshore

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>Who do you outsource and/or offshore your client money and/or custody asset operations to? (name of entity)</td>
<td>What function of your CASS operations do you outsource and/or offshore?</td>
<td>Location of service provider</td>
<td>Significant changes being made or planned to existing arrangements</td>
</tr>
<tr>
<td></td>
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</tbody>
</table>

Page 236 of 252
This annex contains guidance on the CMAR and is therefore addressed only to a firm which is subject to SUP 16.14.

General

... A firm should include in any amount of client money that it reports any client money which it has allowed another person to hold or control in accordance with CASS 7.5.2R 7.14.2R (for example, an exchange, clearing house or intermediate broker or OTC counterparty).

Reporting Period period

The reporting period for the CMAR is the calendar month for which a CMAR is required to be completed in accordance with SUP 16.14.3R, including the first day and the last day of that month. For example, the January reporting period will be 1 January to 31 January, regardless of whether or not any day in January is a business day.

... Reporting Client Money Balances client money balances using internal client money reconciliations

The guidance in this annex assumes that a firm uses one of the standard methods of internal client money reconciliation. Firms that use a different method of internal reconciliation non-standard method of internal client money reconciliation in accordance with CASS 7.6.7R 7.15.17R should read the guidance in this annex in so far as it is consistent with that different non-standard method.

Where this data item requires a firm to report any client money balances, unless otherwise specified the firm should report on the basis of balances used for its internal reconciliation internal client money reconciliation carried out on the first business day following the reporting period in question. This means using the values contained in the firm’s internal accounting records and ledgers, for example its cash book or other internal accounting records, rather than the values contained in statements the records it has obtained received from its banks and other third parties with whom it has placed client money (for example, bank statements).

Currency

...

Section 1 Firm information

...

2 Name of CASS audit firm (if ‘Other’ was selected above)

If a firm selects ‘Other’ in (1), it should enter the name of its auditor that provides its client assets report (see SUP 3.10).
4 Did the firm hold safeguard and administer safe custody assets during the reporting period?

A firm should state “Yes” or “No”.

A firm should state “Yes” if, during the reporting period:

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

(b) it was safeguarding and administering investments in the course of its business that is not MiFID business.

A firm should not take into account safe custody assets in respect of which it was merely arranging safeguarding and administration of assets in accordance with CASS 6 during the reporting period.

5 Was the firm subject to the CFTC’s Part 30 exemption order during the reporting period?

A firm should state “Yes” or “No”. Handbook provisions dealing with the CFTC’s Part 30 exemption order are set out in CASS 7.4.32G to CASS 7.4.35R.

6 Did the firm operate the alternative approach during the reporting period (see CASS 7.4.14G to CASS 7.4.19G) (see CASS 7.13.54G to CASS 7.13.69G)?

A firm should state “Yes” or “No”. Handbook provisions dealing with the alternative approach to client money segregation are set out in CASS 7.4.14G to CASS 7.4.19G.

7 Has the firm received the auditor assurances required for its use of the alternative approach and provided these to the FCA?

A firm should state “Yes” or “No”.

CASS 7.4.15R provides that a firm that does not operate the normal approach must first send a written confirmation to the FCA 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.

Pursuant to CASS 7.13.58R before adopting the alternative approach, a firm must first send a written report to the FCA prepared by an independent auditor of the firm in line with a reasonable assurance engagement, stating the matters set out in CASS 7.13.58R(2).

8 Balance of client money

In relation to each of the investment activities or services identified, a firm should report in this data field the total amount of client money that it held belonging to clients in respect of the activity or service in question.

A firm should report client money balances on the basis of balances used in the internal reconciliation internal client money reconciliation that the firm carried out on the first business day following the reporting period in question.
Section 2  Balances

...  

In relation to data fields 9 to 12, a firm should determine the lowest and highest figures by reference to the data that it has recorded from internal reconciliations in the internal records and accounts the firm holds that relate to the reporting period in question.

Section 3  Segregation of client money

13A  Type

A firm should identify the types of institution with which it has placed client money. CASS 7.4.1R 7.13.3R identifies the type of institution with which a firm must promptly place into one or more accounts client money that it receives. CASS 7.5.2R 7.14.2R identifies a limited number of the circumstances in which a firm may allow another person, such as an exchange, a clearing house or an intermediate broker or an OTC counterparty, to hold or control client money.

For each institution with which it has placed client money, the firm should identify in this data field whether the client money was:

(a) __ deposited with a CRD credit institution;
(b) __ placed with a clearing house;
(c) __ placed with an exchange;
(d) __ placed with an intermediate broker;
(e) __ placed in a qualifying money market fund;
(f) __ deposited with a bank authorised in a third country; and
(g) __ deposited with a central bank.

In relation to any client money a firm has placed with an OTC counterparty and/or any other person, the firm should selection option (d).

...  

13C  Client money balances

A firm should report the total amount of client money which it has placed with each institution identified in 13B.

A firm should report client money balances on the basis of balances used in the internal reconciliation internal client money reconciliation that the firm carried out on the first business day following the reporting period in question.

A firm should include in the client money balance the aggregate balance of any allocated but unclaimed client money which a the firm continues to treat as client money such. For example, client money balances held in respect of clients whom the firm is no longer able to contact.
The balance shown in that row may also include any balance that is included in data field 17.

...  

13E Group entity  
A firm should indicate in this data field whether each institution with which it has placed client money is or is not a relevant group entity within the meaning of CASS 7.4.9R 7.13.21R. A firm should note that the definition in CASS 7.4.9R 7.13.21R is specific to CASS and the entities which comprise it may not be the same as those which comprise the firm’s group.

Section 4 Client money requirement and resource  

14 Client money requirement  
In relation to a firm that follows one of the standard methods of internal client money reconciliation, that firm should report its client money requirement, calculated in accordance with CASS 7.16.10R 7.16 Annex 1G paragraph 6.  

A firm should report its client money requirement on the basis of the internal reconciliation internal client money reconciliation that the firm carried out on the first business day following the reporting period in question.  

A firm should include in the client money requirement the aggregate balance of any allocated but unclaimed client money which the firm continues to treat as such client money. For example, client money balances held in respect of clients whom the firm is no longer able to contact.

...  

15 Unallocated to individual clients but identified as client money  
A firm should report the amount of unallocated client money that it holds that it has recorded in its internal records and accounts as “unallocated client money” in accordance with CASS 7.13.36R(2). A firm should not include balances for this data field that it is reporting in data field 16.

16 Unidentified receipts segregated as client money in client bank accounts  
A firm should report the amount of client money that it has recorded in its internal records and accounts as “unallocated client money” in accordance with CASS 7.13.36R(2). A firm should not include balances for this data field that it is reporting in data field 15, which is held in that firm’s client bank accounts and client transaction accounts which is the subject of enquiry by that firm to determine whether that money is client money.

17 Uncleared payments e.g. unpresented cheques sent to clients  
...
18 Excess cash in segregated accounts: Prudent segregation of client money and the alternative approach mandatory prudent segregation

A firm should report: (i) the amount of client money that it holds in client bank accounts and client transaction accounts which the firm included in its client money requirement as a result of the firm's application of CASS 7.4.18BR (Alternative approach buffer) and CASS 7.4.21R 7.13.41R (Prudent segregation), and (ii) if applicable, the amount of client money that it holds in client bank accounts as a result of the requirement set out in CASS 7.13.65R (mandatory prudent segregation). A firm should not include balances for this data field that it is reporting in data fields 15-17.

19 Client money resource

A firm should report its client money resource on the basis of the client money resource used in the internal reconciliation internal client money reconciliation that the firm carried out on the first business day following the reporting period in question (which should be the same internal reconciliation internal client money reconciliation used by the firm to report its client money requirement in data field 14).

A firm should include in the client money resource resource the aggregate balance of any allocated but unclaimed money which a firm continues to treat as client money. For example, client money balances held in respect of clients whom the firm is no longer able to contact.

20 Surplus Excess (+)/ deficit shortfall (-) of client money resource resource against client money requirement

A firm should report in this data field the amount by which its client money resource resource exceeds is greater than its client money requirement requirement (to be reported in the data item as a positive amount), or as the case may be, the amount by which its client money requirement requirement exceeds is greater than its client money resource resource (to be reported in the data item as a negative amount).

Where a surplus excess or deficit shortfall does not exist following a firm's internal internal client money reconciliation reconciliation, the firm should report '0' for this data field.

21 Adjustments made to withdraw an excess or rectify a deficit shortfall identified as a result of an internal reconciliation internal client money reconciliation.

A firm should report the amount of money that it added to correct a deficit shortfall or, as the case may be, that it withdrew reflecting an excess a surplus.

In relation to data fields 14 to 20 21, a firm should report by reference to the results of its internal reconciliation internal client money reconciliation carried out on the first business day following the reporting period in question.
Data fields 15-18 relate to client money balances identified in a firm’s internal accounting records and ledgers, for example its cash book or other internal accounting records, that form part of the client money requirement reported in data field 14. Data fields 15-18 will not equal the client money requirement reported in data field 14 unless the balances reported for data fields 15-18 include all balances that are allocated to individual clients.

Section 5  Client money reconciliations

22  **Internal client money reconciliation**

A firm should identify in this data field the frequency with which it performs internal reconciliations.

23  **External client money reconciliation**

A firm should identify in this data field the frequency with which it performs external reconciliations.

24  **Client money unresolved items**

A firm should identify in this data field the number of unresolved client money items and allocate each item to one of the specified time bands according to the length of time for which it has remained unresolved.

For the purposes of this data field, the number of unresolved client money items includes: (a) the number of individual discrepancies identified as part of a firm’s internal client money reconciliations (see CASS 7.15.12R); and (b) the number of individual discrepancies identified as part of a firm’s external client money reconciliations (see CASS 7.15.29R), but not those unresolved discrepancies that have arisen solely as a result of timing differences between the accounting systems of third party providing the statement or confirmation and that of the firm. In both cases, only include those items which have remained unresolved for period of six calendar days or more.

For the purposes of this data field, the number of unresolved items should also include any individual items recorded in a firm’s internal records and accounts as “unallocated client money” in accordance with CASS 7.13.36R(2) which have remained unresolved for period of six calendar days or more.

...
Section 6 Segregation of safe custody assets

In order to complete this section a firm will need to group the safe custody assets it held at the reporting period end date by the method of registration used (25A), the means by which the assets were held (25G) and the name of the institution with which the assets were deposited or registered (25B). Each group of safe custody assets so identified should be reported as a separate row.

When reporting dematerialised safe custody assets a firm holds in a collective investment scheme, a firm has the option to report the holdings in either one of the following ways:

1. per fund manager (ie, for every fund manager with whom the firm has holdings registered) it should use a new row to report the relevant holdings; or

2. on an aggregate basis by reference to each variance of data fields 25A, 25E and 25F (where relevant, ie, for each variance, such as holdings based in different countries and/or different methods of legal title registration), the firm should use a new row.

For example, an asset held in one county in the name of a nominee company should be in a different row from an asset held in the same country in the name of a client, and also from an asset held in another country in the name of the same nominee company.

Annex 1 to this guidance sets out an example of reporting under either of these options.

25A How registered?
...

25B Name of institution where safe custody assets held/registered
...

In relation to any dematerialised safe custody assets which a firm held as the sole custodian the firm should report the name of the central securities depositary where the safe custody assets were deposited registered, for example CREST, Euroclear UK & Ireland, etc, and should select “deposited with any other third party” when completing data field 25G.

In relation to any dematerialised safe custody assets a firm holds in a collective investment scheme, a firm should report, either:

(a) the name of the fund manager who retains the regulatory responsibility for maintaining the legal register for those safe custody assets, if the firm is reporting by fund manager (for example, in respect of a UK OEIC, the ACD); or

(b) the term “collective investment scheme” if the firm is reporting on an aggregate basis.

25C Number of lines of stock

Annex 1 to this guidance sets out an example of reporting under either of these options.
For the purpose of this data field, a firm should treat each stock which bears its own CUSIP or ISIN number, or any individual collective investment scheme as a separate line of stock.

25D Value of safe custody assets as at reporting period end date
As at the reporting period end date, a firm should calculate the total value of the safe custody assets reported on each row and enter that value in the data field.

25E Country of incorporation of the institution
In relation to each institution identified in 25B, a firm should report the name of the country in which that institution is incorporated using the appropriate two letter ISO code.

In relation to dematerialised safe custody assets a firm holds in a collective investment scheme, the firm should report the country of incorporation of the relevant fund manager who has retained regulatory responsibility for registering units in the collective investment scheme. This means that a firm will need to have at least one row per country of incorporation of relevant fund managers regardless of whether the firm is reporting per fund manager or on an aggregate basis.

25F Group entity?
A firm should indicate in this data field whether each institution with which it placed safe custody assets is or is not a member of that firm’s group. In relation to any dematerialised safe custody assets a firm holds in a collective investment scheme, the firm should treat the fund manager of that scheme as the relevant institution.

25G Where How held?
For each group of safe custody assets that a firm (in carrying on the regulated activity of safeguarding and administering investments) held at the reporting period end date, the firm should identify in this data field how whether the safe custody assets were held:

(a) held in the firm’s physical possession (for example any non-dematerialised assets such as bearer notes);
(b) deposited with a third party custodian (this may include any third party that has responsibility to the firm for the safe custody assets, such as a sub-custodian or a fund manager);
(c) deposited with a third party exchange;
(d) deposited with a third party clearing house;
(e) deposited with a third party intermediary; or
(f) deposited with any other third party (where none of the above options adequately describe how the safe custody assets are held).
<table>
<thead>
<tr>
<th>If the <strong>safe custody assets</strong> were:</th>
<th>Choose the following option from the drop down box in the form:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) held in the <em>firm's</em> physical possession (for example, any non-dematerialised assets such as bearer notes);</td>
<td>Firm physical;</td>
</tr>
<tr>
<td>(b) deposited with a third party <em>custodian</em> (this may include any third party that has responsibility to the <em>firm</em> for the <strong>safe custody assets</strong>, such as a sub-custodian;</td>
<td>3rd party custodian</td>
</tr>
<tr>
<td>(c) deposited with a third party exchange and/or <em>clearing house</em>;</td>
<td>Exchange/Clearing House</td>
</tr>
<tr>
<td>(d) deposited with a third party intermediary; or</td>
<td>Intermediary</td>
</tr>
<tr>
<td>(e) deposited/registered with any other third party (where none of the above options adequately describes how the <strong>safe custody assets</strong> are held).</td>
<td>Other</td>
</tr>
</tbody>
</table>

In relation to any dematerialised **safe custody assets** which a *firm* held as the sole *custodian* the *firm* should select “Other” option (f) and report the name of the central securities depositary where the **safe custody assets** were deposited registered, for example CREST, Euroclear UK & Ireland, etc. when completing data field 25B.

In relation to any dematerialised **safe custody assets** a *firm* holds in a collective investment scheme, the *firm* should select “Other”.

**Section 7 Safe Custody Assets Reconciliations custody assets records checks and reconciliations**

26 **Safe custody assets unreconciled unresolved items**

A *firm* should identify in this data field the number of unreconciled unresolved **safe custody assets** items and allocate each item to one of the specified time bands according to the length of time for which it has remained unreconciled unresolved.
For the purposes of this data field, the number of unreconciled unresolved safe custody assets refers to the number of individual discrepancies (e.g., custody record breaks) identified as part of a firm’s external reconciliation external custody reconciliation which have remained unresolved for a specific period of time.

CASS 6.6.48G provides that a discrepancy should not be considered to be resolved until is fully investigated and any associated shortfall is made good.

In relation to the 30-day field, a firm should report items which have remained unreconciled unresolved for at least 30 days but no more than 59 days.

In relation to the 60-day field, a firm should report items which have remained unreconciled unresolved for at least 60 days, but no more than 89 days.

In relation to the 90-day field, a firm should report items which have remained unreconciled unresolved for at least 90 days.

27A Method of custody record check/reconciliation

In relation to each type of safe custody asset identified in 27C, a firm should report the method of internal reconciliation that it applied to that type of asset. CASS 6.5.2R to CASS 6.5.5R set out rules and guidance in relation to internal reconciliation methods.

In relation to each type of safe custody asset identified in 27C, a firm should report:

(a) the method of internal custody records checks that it utilised in respect of that type of asset during the reporting period, by selecting either:
   (i) “internal reconciliation” where it performed its internal custody record checks using the internal custody reconciliation method; or
   (ii) “internal system evaluation” where it performed its internal custody record checks using the internal system evaluation method.

CASS 6.6.10G to 6.6.20G sets out rules and guidance in relation to internal custody records checks, and the available methods;

(b) (if applicable) the method of physical asset reconciliation that it utilised in respect of all physical safe custody assets it held during the reporting period, by selecting either:
   (i) “physical reconciliation - total count” where it performed its physical asset reconciliations using the total count method; or
   (ii) “physical reconciliation - rolling stock” where it performed its physical asset reconciliations under the rolling stock method.

CASS 6.6.21G to 6.6.32G set out rules and guidance in relation to physical asset reconciliations, and the available methods; and

(c) (if applicable) the method of external custody reconciliation that it utilised in respect of that type of asset during the reporting period, by selecting either:
   (i) “External reconciliation to CREST” where it performed an external custody reconciliation with Euroclear UK & Ireland for safe custody assets held in the CREST system; or
(ii) “external reconciliation”, where it performed an external custody reconciliation with any other third party.

CASS 6.6.33G to 6.6.43G set out rules and guidance in relation to external custody checks, and the available methods.

27B Frequency

In relation to each custody record check/reconciliation type method identified in 27A, a firm should report the frequency with which it conducted internal reconciliations the custody record check/reconciliation for its safe custody assets during the reporting period using that record check/reconciliation method.

27C Type of safe custody asset

A firm should report the different types of safe custody asset (e.g. shares) that it held and may do so using its own description of an asset type.

Section 8 Record keeping and branches notification requirements

...

28F Explanation of discrepancies difference

A firm should provide a brief explanation for any difference between the number of client bank accounts reported for 28D and the number of trust/acknowledgement letters client bank accounts reported in 28E which were covered by a client bank account acknowledgement letter to cover these accounts reported for 28E in accordance with (see CASS 7.8.1R 7.18.2R).

...

29F Explanation of discrepancies difference

A firm should provide a brief explanation where there is a difference between the number of client transaction accounts reported for 29D and the number of trust/acknowledgement letters client transaction accounts reported in 29E which were covered by a client transaction account acknowledgement letter and/or authorised central counterparty acknowledgment letter to cover these accounts reported for 29E (see in accordance with CASS 7.8.2R 7.18.3R and/or CASS 7.8.3R 7.18.4R).

31 Did any of the circumstances referred to in CASS 6.6.57R arise? the firm fail to comply with the requirements set out in CASS 6.5.1R, CASS 6.5.2R, CASS 6.5.6R and CASS 6.5.10R?

A firm should indicate whether, at any point during the reporting period, it failed to comply with any of the requirements set out in CASS 6.5.1R, CASS 6.5.2R and CASS 6.5.6R.
If a firm, having carried out a reconciliation during the reporting period, failed to comply with CASS 6.5.10R, it should also record that fact in this data field.

CASS 6.5.10R provides that a firm must promptly correct any discrepancies which are revealed in the reconciliations envisaged by CASS 6.5 and make good, or provide the equivalent of, any unreconciled shortfall for which there are reasonable grounds for concluding that the firm is responsible.

A firm should indicate whether at any point during the reporting period one of the situations referred to in CASS 6.6.57R arose, in which the firm was obligated to notify the FCA.

Some of the notification requirements in CASS 6.6.57R only apply where a firm materially fails to comply with a rule (ie, a breach of the rule having occurred), while others apply where the firm was unable to comply with a rule (ie, a firm had not yet breached the relevant rule but became aware that it would, in the future, either continuously or for a specified period, be unable to comply with the specified rule). Therefore, a firm should base its response only on those breaches that would be notifiable.

32 If yes, was a notification made to the FCA did the firm comply with the notification requirements?

If in data field 31 the firm has answered “Yes”, acknowledged a failure to comply with any of the specified rules, it should confirm in this data field whether a notification all notifications were made to the FCA in accordance with CASS 6.5.13R 6.6.57R.

Where the firm’s response to data field 31 relates to multiple instances of non-compliance, it should only answer “Yes” in this data field if all instances were notified.

33 Did any of the circumstances referred to in CASS 7.15.33R arise? Did the firm fail to comply with any of the requirements set out in CASS 7.6.1R, CASS 7.6.2R, CASS 7.6.9R and CASS 7.6.13R to CASS 7.6.15R?

A firm should indicate whether, at any point during the reporting period it failed to comply with any of the requirements set out in CASS 7.6.1R, CASS 7.6.2R and CASS 7.6.9R.

If a firm, having carried out a reconciliation during the reporting period, failed to comply with one or more of the obligations found in CASS 7.6.13R to CASS 7.6.15R, it should also record that fact in this data field.

CASS 7.6.13R to CASS 7.6.15R set out requirements which apply to a firm in relation to internal and external reconciliation discrepancies.

A firm should indicate whether at any point during the reporting period one of the situations referred to in CASS 7.15.33R arose, in which the firm was required to notify the FCA.

Some of the notification requirements in CASS 7.15.33R only apply where a firm materially fails to comply with a rule (ie, a breach of the rule having occurred), while others apply where the firm was unable to comply with a rule (ie, a firm had not yet
breached the relevant rule but became aware that it would, in the future, either continuously or for a specified period, be unable to comply with the specified rule. Therefore, a firm should base its response only on those breaches that would be notifiable.

34 If yes, was a notification made to the FCA did the firm comply with the notification requirements?

If in data field 33 the firm has answered “Yes”, acknowledged a failure to comply with any of the specified rules, it should confirm in this data field whether a notification all notifications was were made to the FCA in accordance with CASS 7.6.16R 7.15.33R.

Where the firm’s response to data field 33 covers multiple instances of non-compliance, it should only answer “Yes” in this data field if all instances were notified.

In relation to data fields 31 and 33, a firm should answer “Yes” if it failed to comply with any of the rules specified in those data fields at any point during the reporting period in question, whether or not it is in compliance at the end of the reporting period.

A firm’s responses to data fields 31 and 33 should only include relate to unresolved breaches that occurred within the particular a previous CMAR reporting period if those breaches would have required further notification under CASS 6.6.57R in question and not to any breach that may have occurred in a previous reporting period, even if the breach remains unresolved.

A firm should answer “N/A” as appropriate to data fields 31 and 33 if it did not hold client money or safe custody assets during the reporting period.

In relation to data fields 32 and 34, a firm should only answer “Yes” if the firm has acknowledged any breaches in data fields 31 or 33, and all such breaches were notified as required within the reporting period in question.

CASS 6.5.13R and CASS 7.6.16R require that the FCA be informed without delay of any of the matters in respect of which notification is required by those rules. Submission of the CMAR within the time limit specified in SUP 16.14.3R does not discharge the obligations in those rules and a firm remains obliged to notify the FCA as soon as it becomes aware that any of the circumstances described in those rules has arisen.

A firm should answer “N/A” as appropriate to data fields 32 and 34 if the firm has answered either “No” or “N/A” for data fields 31 and 33 respectively.

CASS 6.6.57R and CASS 7.15.33R require that the FCA be informed without delay of any of the matters in respect of which notification is required by those rules. Submission of the CMAR within the time limit specified in SUP 16.14.3R does not discharge the obligations in those rules and a firm remains obliged to notify the FCA as soon as it becomes aware that any of the circumstances described in those rules has arisen.
Annex 1

Options for reporting dematerialised safe custody assets a firm holds in a collective investment scheme in fields 25A-G

Option 1 – reporting holdings per fund manager

Table 1 shows an example of some of the possible permutations of reporting this way. In Table 1:

- With respect to Fund Manager X, for the purposes of completing fields 25A-G of the CMAR, the reporting firm needs to complete one line. This is because in relation to its holdings in all 3 collective investment schemes (reported in 25C) the units are registered in the name of a nominee company controlled by the firm. Fund Manager X is incorporated in Guernsey and it is a member of the firm’s group. The same applies with respect to Fund Manager Y.

- With respect to Fund Manager Z, for the purposes of completing fields 25A-G of the CMAR, the reporting firm needs to complete two separate lines. This is because in relation to the firm’s holdings in 1 collective investment scheme (reported in 25C) the units are registered in the name of a nominee company which is controlled by the firm and in relation to the firm’s holdings in the other 3 collective investment schemes the units are registered in the name of a nominee company which is controlled by an affiliated company. Fund Manager Z is incorporated in the Cayman Islands and it is a member of the firm’s group.

Table 1

<table>
<thead>
<tr>
<th>A</th>
<th>G</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>How registered?</strong></td>
<td><strong>How held/registered</strong></td>
<td><strong>Institution where safe custody assets held/registered</strong></td>
<td><strong>Number of lines of stock</strong></td>
<td><strong>Value of safe custody assets as at reporting period end date</strong></td>
<td><strong>Country of incorporation of the institution</strong></td>
<td><strong>Is this a group entity</strong></td>
</tr>
<tr>
<td>Nominee company which is controlled by the firm</td>
<td>Other</td>
<td>Fund Manager X</td>
<td>3</td>
<td>£600m</td>
<td>Guernsey</td>
<td>Yes</td>
</tr>
<tr>
<td>Nominee company which is controlled by the firm</td>
<td>Other</td>
<td>Fund Manager Y</td>
<td>5</td>
<td>£350m</td>
<td>Guernsey</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### Option 2 – reporting on an aggregate basis

Table 2 shows an example of some of the possible permutations of reporting this way. In Table 2:

- Line (i) reports all the firm’s holdings in collective investment schemes in relation to which the units are registered in the name of a nominee company which is controlled by the firm and the relevant fund manager is incorporated in Guernsey and is a group entity.

- Line (ii) reports all the firm’s holdings in collective investment schemes in relation to which the units are registered in the name of a nominee company which is controlled by the firm and the relevant fund manager is incorporated in the Cayman Islands and is a group entity.

- Line (iii) reports all the firm’s holdings in collective investment schemes in relation to which the units are registered in the name of a nominee company which is controlled by an affiliated company and the relevant fund manager is incorporated in the Cayman Islands and is a group entity.

<table>
<thead>
<tr>
<th>Nominee company which is controlled by the firm</th>
<th>Other</th>
<th>Fund Manager</th>
<th>Lines</th>
<th>Value of safe custody</th>
<th>Country of incorporation of the</th>
<th>Is this a group?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominee company which is controlled by an affiliated company</td>
<td>Other</td>
<td>Fund Manager Z</td>
<td>1</td>
<td>£90m</td>
<td>Cayman Islands</td>
<td>Yes</td>
</tr>
<tr>
<td>Nominee company which is controlled by an affiliated company</td>
<td>Other</td>
<td>Fund Manager Z</td>
<td>3</td>
<td>£400m</td>
<td>Cayman Islands</td>
<td>Yes</td>
</tr>
<tr>
<td>Nominee company which is controlled by an affiliated company</td>
<td>Other</td>
<td>Fund Manager XX</td>
<td>5</td>
<td>£250m</td>
<td>Cayman Islands</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>A</th>
<th>G</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>How registered?</td>
<td>How held / registered</td>
<td>Institution where safe custody assets</td>
<td>Number of lines of stock</td>
<td>Value of safe custody</td>
<td>Country of incorporation of the</td>
<td>Is this a group?</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th></th>
<th>held/registered</th>
<th>assets as at reporting period end date</th>
<th>institution</th>
<th>entity</th>
</tr>
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<tbody>
<tr>
<td>(i)</td>
<td>Nominee company which is controlled by the firm</td>
<td>Other</td>
<td>8</td>
<td>£950m</td>
</tr>
<tr>
<td>(ii)</td>
<td>Nominee company which is controlled by the firm</td>
<td>Other</td>
<td>1</td>
<td>£90m</td>
</tr>
<tr>
<td>(iii)</td>
<td>Nominee company which is controlled by an affiliated company</td>
<td>Other</td>
<td>8</td>
<td>£650m</td>
</tr>
</tbody>
</table>