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); and
(4) 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 on 1 April 2015.

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).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
</tr>
<tr>
<td>Client Assets sourcebook (CASS)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex C</td>
</tr>
</tbody>
</table>

Citation

E. This instrument may be cited as the Client Assets Sourcebook (Amendment No 7) Instrument 2014.

By order of the Board of the Financial Conduct Authority
11 December 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.

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

**excluded custody activities**

any activities of a *firm* which:

(a) are carried on in connection with, or for the purposes of, managing a *UCITS* or an *AIF* (as the case may be); and

(b) would amount to *safeguarding and administering investments* but for the exclusion in article 72AA of the *RAO*.

Amend the following definition as shown.

**safe custody asset**

…

(b) in relation to *safeguarding and administering investments* that is not *MiFID business* and/or *acting as trustee or depositary of a UCITS*, a *safe custody investment*; or

(c) when *acting as trustee or depositary of an AIF*, an *AIF custodial asset*; or

(d) in relation to *excluded custody activities* carried on by a *small AIFM*, a *safe custody investment*. 
Annex B

Amendments to the Client Assets sourcebook (CASS)

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

1A  CASS firm classification and operational oversight

1A.1  Application

1A.1.1  R  …

(4)  This chapter does not apply to a firm to which only CASS 6 applies, applied or is projected to apply, merely because:

(a)  it is, was or is projected to be a firm which arranges safeguarding and administration of assets; or

(b)  when acting as a small AIFM and in relation to excluded custody activities, it would be, would have been or would be projected to be a firm which arranges safeguarding and administration of assets but for the exclusion in article 72AA of the RAO.

…

6  Custody rules

6.1  Application

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

…

(1E)  in respect of any arrangement for a client to transfer full ownership of a safe custody asset to the firm which is:

…

but the application of the custody rules to a firm under this paragraph is limited to the rules and guidance in CASS 6.1.6R to CASS 6.1.9G and

(1F)  when it is a small AIFM carrying on excluded custody activities.

6.1.1-A  R  In applying the custody rules to a small AIFM’s excluded custody activities, any reference to a firm carrying on the regulated activities of safeguarding and administering investments, safeguarding and administering assets (without arranging) or arranging safeguarding and administration of assets
includes those excluded custody activities that would, but for the exclusion in article 72AA of the RAO, amount to whichever of those regulated activities is referred to.

6.1.1B R (1) Firms to which the custody rules apply by virtue of CASS 6.1.1R(1B), (1C) or (1D) or (1E) must also apply the custody rules to those custody assets which are not safe custody investments in a manner appropriate to the nature and value of those custody assets.

(2) Firms to which the custody rules apply by virtue of CASS 6.1.1R(1C) must also apply the custody rules:

(a) to those custody assets which are not AIF custodial assets but are safe custody investments; and

(b) in a manner appropriate to the nature and value of those custody assets, to those custody assets which are neither AIF custodial assets nor safe custody investments.

6.1.16BA G (1) The custody rules do not apply to a firm that is managing an AIF or managing a UCITS in relation to activities which are carried on by that firm in connection with, or for the purposes of, managing the AIF or UCITS excluded custody activities, except where the firm is a small AIFM.

(2) The custody rules can apply to a firm that is managing an AIF or managing a UCITS in relation to activities that are not excluded custody activities. For example, where the firm:

(a) holds financial instruments belonging to a client in the course of its MiFID business (see CASS 6.1.1R(1A)); or

(b) is safeguarding and administering investments, in the course of business that is not MiFID business (see CASS 6.1.1R(1B)).

6.1.16IA R ...

(2) 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 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 6.1.1BR(2)</td>
<td></td>
</tr>
</tbody>
</table>

...
8 Mandates

8.1 Application

8.1.2A R The mandate rules do not apply to a firm:

(2) in relation to safe custody assets custody assets that the firm is holding, or in respect of which the firm is carrying on safeguarding and administration of assets (without arranging), acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS in accordance with CASS 6; or

(2A) in relation to custody assets for which a small AIFM is:

(a) carrying on those excluded custody activities that would amount to safeguarding and administration of assets (without arranging) but for the exclusion in article 72AA of the RAO; and

(b) is doing so in accordance with CASS 6; or

10 CASS resolution pack

10.1 Application, purpose and general provisions

10.1.1 R (1) Subject to (2) this chapter applies to a firm when it:

(a) holds financial instruments, is safeguarding and administering investments, is acting as trustee or depositary of an AIF or is acting as trustee or depositary of a UCITS, in accordance with CASS 6; and/or

(aa) is acting as a small AIFM and carries on excluded custody activities in accordance with CASS 6; and/or

(b) …

(2) This chapter does not apply to a firm to which CASS 6 applies merely
because it is:

(a) a firm which *arranges safeguarding and administration of assets*; or

(b) a small AIFM carrying on those *excluded custody activities* that would amount to *arranging safeguarding and administration of assets* but for the exclusion in article 72AA of the RAO.
16 Reporting requirements

... 

16.14 Client money and asset return

... 

16.14.4 R For the purposes of the CMAR:

... 

(2) safe custody assets are those to which the custody rules in CASS 6 apply but only in relation to the holding of financial instruments (in the course of MiFID business), the safeguarding and administration of assets (without arranging) (in the course of business that is not MiFID business), acting as trustee or depositary of an AIF and acting as trustee or depositary of a UCITS:

(a) the holding of financial instruments (in the course of MiFID business);

(b) the safeguarding and administration of assets (without arranging) (in the course of business that is not MiFID business);

(c) acting as trustee or depositary of an AIF, and in this case also include any safe custody investments to which the firm, when acting for an authorised AIF, is required by CASS 6.1.16IAR(2) to apply the custody rules under CASS 6.1.1BR(2):

(d) acting as trustee or depositary of a UCITS; and

(e) those excluded custody activities carried on by a firm acting as a small AIFM, that would amount to the safeguarding and administration of assets (without arranging) but for the exclusion in article 72AA of the RAO.

16.14.5 G For the avoidance of doubt, the effect of SUP 16.14.4R is that the following are to be excluded from any calculations which the CMAR requires:

...
(2) any safe custody assets in respect of which the firm is merely arranging safeguarding and administration of assets in accordance with CASS 6; and

(2A) any safe custody assets for which a small AIFM is:

(a) carrying on those excluded custody activities that would merely amount to arranging safeguarding and administration of assets but for the exclusion in article 72AA of the RAO; and

(b) is doing so in accordance with CASS 6; and

16 Annex 29AG

Guidance notes for the data item in SUP 16 Annex 29R

Client Money and Asset Return (CMAR)

This annex contains guidance on the CMAR and is therefore addressed only to a firm which is subject to SUP 16.14.

General

Terms used in the CMAR bear the meaning ascribed to those terms in the Glossary, even though they do not appear in italicised form on the face of the data item, unless a contrary indication is given in this guidance.

In applying the CMAR and this guidance to a small AIFM’s excluded custody activities falling under SUP 16.14.4R(2)(e), any reference to a firm carrying on the regulated activity of safeguarding and administering investments includes excluded custody activities.

A firm is reminded that the effect of SUP 16.14.4R is that in relation to a firm to which CASS 5 (Client money: insurance mediation activity) and CASS 7 (Client money rules) apply, that firm should not report in the data item shown in SUP 16 Annex 29R any client money that it holds in accordance with CASS 5.

SUP 16.14.4R also has the effect that the data reported by a firm on the CMAR should only relate to client money and/or safe custody assets held by the firm, and should not relate to client money and/or safe custody assets in respect of which the firm merely has a mandate or any safe custody assets in respect of which the firm merely arranges safeguarding and administration of assets. The meaning of safe custody assets for the purposes of the CMAR and this guidance is set out in SUP 16.14.4R(2).