

CLIENT ASSETS SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2015**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 June 2015 except for Part 1 of Annex B which comes into force on 1 May 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).

(1)	(2)
Glossary of definitions	Annex A
Client Assets sourcebook (CASS)	Annex B
Consumer Credit sourcebook (CONC)	Annex C

Citation

- E. This instrument may be cited as Client Assets Sourcebook (Amendment No 8) Instrument 2015.

By order of the Board of the Financial Conduct Authority
23 April 2015

Annex A**Amendments to the Glossary of definitions**

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

- relevant overseas
USRs* the following overseas uncertificated securities regulations:
- (a) the Jersey Companies (Uncertificated Securities) (Jersey) Order 1999;
 - (b) the Guernsey Uncertificated Securities (Guernsey) Regulations 2009;
 - (c) the Isle of Man Companies Act 2006 Uncertificated Securities Regulations 2006; and
 - (d) the Irish Companies Act 1990 (Uncertificated Securities) Regulations 1996.

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

Part 1: Comes into force on 1 May 2015

7A.2 Primary pooling events

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Pooling and distribution

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

- (1) (a) in respect of ~~either the general pool or a sub-pool, client money held in a client bank account or a client transaction account of the firm relating to that pool~~ the following is treated as a single notional pool of client money for the beneficiaries of that pool:
- (i) any client money held in a client bank account of the firm relating to that sub-pool; and
 - (ii) any client money held in a client transaction account of the firm relating to that sub-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;
- (b) in respect of the general pool, the following is treated as a single notional pool of client money for the beneficiaries of the general pool:
- (i) any client money held in any client bank account of the firm;
 - (ii) any client money held in a client transaction account of the firm, 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; and
 - (iii) any client money identifiable in any other account held by the firm into which client money has been received;

except, in each case, for *client money* relating to a *sub-pool* which falls under (1)(a)(i) or (ii).

...

11.13 Client money distribution in the event of a failure of a firm or approved bank

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Pooling and distribution after a primary pooling event

11.13.4 R If a *primary pooling event* occurs, then:

(1) all ~~client money~~ *client money*:

...

...

Distribution if client money not transferred to another firm

11.13.5 R Where a *primary pooling event* occurs and the *client money* is not transferred to another *firm* in accordance with CASS 11.13.4R, a *CASS debt management firm* must distribute ~~client money~~ *client money* comprising the notional pool so that each ~~client~~ *client* receives a sum that is rateable to their entitlement to the notional pool calculated in CASS 11.13.4R(2).

...

Part 2: Comes into force on 1 June 2015

6.2 Holding of client assets

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6.2.3 R ~~A~~ Subject to CASS 6.2.3A-1R, a *firm* must effect appropriate registration or recording of legal title to a *safe custody asset* belonging to a *client* in the name of:

...

6.2.3A-1 R A *firm* need not comply with CASS 6.2.3R for any *safe custody asset*:

(1) that it has deposited with a third party in accordance with CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties); and

(2) for which, because of the arrangements with that third party for depositing the *safe custody asset*, it is not practicable for the *firm* to

effect appropriate registration or recording of legal title itself.

...

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

...

6.3.9 R CASS 6.3.6R does not permit a *firm* to agree to a ~~right of set-off of the kind prohibited by either CASS 7.8.1R or CASS 7.8.2R in relation to client money~~ third party having any recourse or right against client money in a client bank account or standing to the credit of a client transaction account of the kind referred to in:

- (1) paragraph (d) of CASS 7 Annex 2R; or
- (2) paragraph (e) of CASS 7 Annex 3R; or
- (3) paragraph (e) of CASS 7 Annex 4R.

...

6.6 Records, accounts and reconciliations

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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:
 - (a) the third parties responsible for the registration of legal title to that *safe custody asset*; or
 - (b) a person acting as an operator for the purposes of any of the relevant overseas USRs if:
 - (i) the safe custody asset is an uncertificated unit of a security governed by any of the relevant overseas USRs; and
 - (ii) the firm has reasonable grounds to be satisfied that the records of that person take into account all instructions issued by that person which require an issuer to register on a register of securities a transfer of title to any uncertificated units.

- 6.6.36 G Examples of the sorts of third parties referred to at CASS ~~6.6.35R(2)~~ 6.6.35R(2)(a) include central securities depositaries, *operators of collective investment schemes*, and administrators of offshore funds.

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7.11 Treatment of client money

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- 7.11.21 R (1) Subject to ~~(2)~~ (2)(a), *money* need not be treated as *client money*:

...

- (2) (a) 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~~ money to the *depository* 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.

- (b) Paragraph (2)(a) does not prevent a *firm* transferring *client money* segregated under (2)(a) into the *firm's* own account, provided this is done only for the purpose of making a payment on the same day from that account in accordance with CASS 7.11.34R(1) to CASS 7.11.34R(3) (Discharge of fiduciary duty).

...

7.13 Segregation of client money

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- 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 7.13.6 R to receive *client money* directly into a *client bank account*, must receive (or is permitted to receive) *client money* into its own bank account.

...

- 7.13.72 R (1) ...
- (a) receive *mixed remittances* from the *authorised central counterparty* into a single bank account and pay mixed remittances to the *authorised central counterparty* from that bank account; or

(b) ...

~~it must comply~~ then such arrangements for client money are permitted if the firm complies, as applicable, with (2) and CASS 7.13.73R.

(2) (a) In either or both of the circumstances described in (1) ~~;~~ :

(i) the firm must pay any mixed remittances to the authorised central counterparty from its own bank account; and

(ii) the firm is permitted to pay any remittances to the authorised central counterparty that consist only of client money from that same bank account.

(aa) In the circumstances described in (1)(a), the firm is permitted to receive any remittances that consist only of client money from the authorised central counterparty into the same bank account that it uses under (2)(a), if it complies with (b).

(b) Where, in the circumstances described in (1)(a), ~~a mixed remittances~~ remittance or a remittance that consists only of client money from an authorised central counterparty ~~are~~ is received into a firm's own account, ~~it~~ the firm must transfer ~~the~~ any client money element of the ~~mixed remittance~~ remittance to its client bank account promptly and, in any event, no later than the next business day after receipt.

...

TP 1 Transitional Provisions

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TP 1.1

(1)	(2) Material to which the transitional provision	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
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	applies				
...					
<u>-1A</u>	<u>CASS 1A.3.1</u>	<u>R</u>	<u>A firm which has only an interim permission may allocate responsibility for the functions described in this rule to any director or senior manager.</u>	<u>For as long as the firm has only an interim permission.</u>	
<u>-1B</u>	<u>CASS 1A.3.1C</u>	<u>R</u>	<u>A firm which has only an interim permission, and which is in the situation described in this rule:</u> <u>(1) need not comply with CASS 1A.3.1CR(1); and</u> <u>(2) need only allocate responsibility for the functions described in CASS 1A.3.1CR(2) to any director or senior manager.</u>	<u>For as long as the firm has only an interim permission.</u>	

Annex C

Amendments to the Consumer Credit sourcebook (CONC)

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

12.1 Application and purpose

...

12.1.4 R ...

Module	Disapplication or modification
...	
Client Assets (CASS)	<p>CASS does not apply <u>with respect to credit-related regulated activity to a firm with:</u></p> <p>(1) to a firm with only an <i>interim permission</i>; or</p> <p>(2) with respect to credit-related regulated activity or operating an electronic system in relation to lending for which a firm has an <i>interim permission</i> that is treated as a variation of permission;</p> <p>if the <i>firm</i> acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</p>
Supervision manual (SUP)	<p>SUP 3 (Auditors), SUP 10A (FCA Approved persons) and SUP 12 (Appointed representatives) (see Note 2) do not apply:</p> <p>(1) to a <i>firm</i> with only an <i>interim permission</i>; or</p> <p>(2) with respect to a <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> for which a <i>firm</i> has an <i>interim permission</i> that is treated as a variation of permission,</p> <p><u>except that SUP 3.10 and SUP 3.11 apply to a firm in relation to its designated investment business that comprises operating an electronic system in relation to lending.</u></p> <p>...</p>

SUP 16 (Reporting requirements) does not apply to a *firm* with only an *interim permission* except:

(1) for *SUP* 16.14; and

(2) in relation to data item CCR008.