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 provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 26 July 2017.

Amendments to the Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

E. The Client Assets sourcebook (CASS) is amended in accordance with Annex B to this instrument.

F. The Supervision manual (SUP) is amended in accordance with Annex C to this instrument.

Citation

G. This instrument may be cited as the Client Assets (Client Money and Custody Assets Distribution and Transfers) Instrument 2017.

By order of the Board  
20 July 2017
Annex A

Amendments to the Glossary of definitions

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

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

*IBSA Regulations*  the Investment Bank Special Administration Regulations 2011 (SI 2011/245).

*secondary pooling*  (in CASS 7A.3) the amount by which the *client money* held by a *firm* is:

(a)  insufficient to satisfy the claims of the *firm’s clients* in respect of that *money*, or

(b)  not immediately available to satisfy such claims,

in either case following the *failure* of a *person* at which *client money* of the *firm* had been held under CASS 7.13.3R(1) to CASS 7.13.3R(3) (Depositing client money) or CASS 7.14.2R (Client money held by a third party).

Amend the following definitions as shown.

*client money*  CASS 7A.

*distribution and transfer rules*  the appointment of a liquidator, receiver, or administrator, *special administrator* or trustee in bankruptcy, or any equivalent procedure in any relevant jurisdiction.

*failure*  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 7.10.1R other than:

(a)  *client money* received or held in accordance with CASS 7.10.1R in respect of a *sub-pool*; and

(b)  *client money* received by the *firm* after a *primary pooling event* that is not required by CASS 7A.2.4R(1A) to be included in the pool.

*individual client*  as the context requires, either:
account

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

(b) an account maintained by a firm for an indirect client at a clearing member of an authorised central counterparty in respect of which the clearing member has agreed with the firm to provide segregation arrangements that satisfy the requirements of article 4(2)(b) of the EMIR L2 Regulation.

omnibus client account

as the context requires, either:

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

(b) an account maintained by a firm for more than one indirect client at a clearing member in respect of which that clearing member has agreed with the firm to provide segregation arrangements that satisfy the requirements of article 4(2)(a) of the EMIR L2 Regulation.

secondary pooling event

(3) (in CASS 7 and CASS 7A) an event that occurs in the circumstances described in CASS 7A.3.1R (Failure of a bank, intermediate broker, settlement agent, or OTC counterparty, exchange or clearing house: secondary pooling events).

sub-pool

a discrete pool of client money established under CASS 7.19, which after a primary pooling event includes the client money that is required to be included in the pool under CASS 7A.2.4R(1A).
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.1.2  R  The rules and guidance in CASS 1A.2 (CASS firm classification) do not apply to a firm following its failure.

...

6  Custody rules

...

6.2  Holding of client assets

... 

Allocated but unclaimed safe custody assets

6.2.7A  R  CASS 6.2.8G to CASS 6.2.16G do not apply to a firm following its failure.

6.2.7B  G  CASS 6.7.2R to CASS 6.7.7R (Disposal of safe custody assets) applies to a firm following its failure in respect of allocated but unclaimed safe custody assets.

...

6.6  Records, accounts and reconciliations

...

6.6.10A  R  CASS 6.6.11R does not apply to a firm following its failure.

6.6.10B  G  CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a firm following its failure.

6.6.11  R  (1)  A firm must perform an internal custody record check:

(a)  subject to paragraph (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.

...

6.6.21A  R  CASS 6.6.22R does not apply to a firm following its failure.

6.6.21B  G  CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a firm following its failure.

...

6.6.36A  R  CASS 6.6.37R does not apply to a firm following its failure.

6.6.36B  G  CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a firm following its failure.

...

Frequency of checks and reconciliations under this section

6.6.43A  R  CASS 6.6.44R to CASS 6.6.46R do not apply to a firm following its failure.

6.6.43B  G  CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a firm following its failure in respect of the frequency at which the firm undertakes 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.

...

Frequency of checks and reconciliations after failure

6.6.46A  R  (1)  This rule applies to a firm following its failure.

(2)  A firm must perform an internal custody record check and a physical asset reconciliation that relates to the time of its failure as soon as reasonably practicable after its failure.

(3)  (a)  A firm must perform an external custody reconciliation that relates to the time of its failure as soon as reasonably practicable after its failure.

(b)  If any records and accounts of the relevant third parties under CASS 6.6.35R relating to the time of the firm’s failure are unavailable, the firm must use the next available records and accounts to perform the external custody reconciliation under sub-paragraph (a).

(4)  A firm must perform further internal custody record checks and physical asset reconciliations:
(a) as regularly as is necessary to ensure that the firm remains in compliance with CASS 6.6.2R, CASS 6.6.3R and CASS 6.6.4R (Records and accounts); and

(b) as soon as reasonably practicable after the date to which the internal custody record check or physical asset reconciliation relates.

(5) A firm must perform further external custody reconciliations on a regular basis:

(a) as regularly as is necessary; and

(b) as soon as reasonably practicable after the date to which the external custody reconciliation relates.

(6) A firm must determine the frequency at which it will undertake its internal custody record checks and physical asset reconciliations under paragraph (4), and its external custody reconciliations under paragraph (5) with regard to:

(a) the frequency, number and value of transactions which the firm undertakes in respect of clients’ safe custody assets;

(b) 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; and

(c) the need to comply with CASS 6.7.

6.6.46B G (1) The reference point for the internal custody record check and physical asset reconciliation under CASS 6.6.46A(2) and the external custody reconciliation under 6.6.46A(3)(a) should be the precise point in time at which the firm’s failure occurred.

(2) The reference point for any further internal custody record checks and physical asset reconciliations under CASS 6.6.46A(4) and any further external custody reconciliations under 6.6.46A(5) can be determined by the firm.

Treatment of shortfalls

6.6.54 R (1) …

(2) Subject to paragraphs (3) and (4), until the discrepancy is resolved a firm must do one of the following:

…
(4) A firm that has failed is not required to take steps under paragraph (2) in relation to the firm’s own applicable assets or money in so far as the legal procedure for the firm’s failure prevents the firm from taking any such steps.

6.66A G CASS 6.6.54R(4) recognises that a failed firm is required to investigate and resolve discrepancies, but the extent to which it is able to address shortfalls pending the resolution of discrepancies may be limited by insolvency law, for example.

6.7 Treatment of custody assets after a failure

Application

6.7.1 R This section applies to a firm following its failure.

Disposal of safe custody assets

6.7.2 R (1) Before a firm takes any steps to dispose of a safe custody asset it must:

(a) (subject to paragraph (2)) attempt to return it to the relevant client or transfer it to another person for safekeeping on behalf of the client in accordance with CASS 6.7.8R; and

(b) (subject to paragraph (3)) take reasonable steps to notify the client of the firm’s proposed course of action for disposing of the safe custody asset.

(2) A firm is not required to attempt to return or transfer a safe custody asset under paragraph (1)(a) where the client to whom the safe custody asset belongs has confirmed to the firm that it disclaims all its interests in the safe custody asset.

(3) A firm is not required to notify a client under paragraph (1)(b) where:

(a) the firm is able to return the safe custody asset to the relevant client or transfer it to another person on behalf of the client in accordance with CASS 6.7.8R; or

(b) the client to whom the safe custody asset belongs has confirmed to the firm that it disclaims all its interests in the safe custody asset.

6.7.3 G (1) The disposal of a safe custody asset referred to under CASS 6.7.2R(1) includes cases where the firm is using the procedure under regulation
12B of the *IBSA Regulations* to set a ‘hard bar date’ by giving a ‘hard bar date notice’, or is using another similar procedure in accordance with the legal procedure for the firm’s failure.

(2) In any case, a firm should consider whether its obligations under law or any agreement permit it to dispose of a safe custody asset in the way in which it proposes to do so.

6.7.4 E (1) Reasonable steps in CASS 6.7.2R(1)(b) include the following course of conduct:

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

(b) for a client for whom the firm has evidence that it was a professional client for the purposes of the custody rules at the time of the failure:

(i) writing to the client at its last known address either by post or by electronic mail:

   (A) to inform it of the firm’s intention to dispose of the safe custody asset;

   (B) to inform it of the consequences of the firm’s proposed course of action in relation to the client’s ability to assert a claim in respect of that safe custody asset; and

   (C) to invite the client to submit a claim for that safe custody asset;

(ii) where the client has not responded within 28 days of the communication under sub-paragraph (i), attempting to communicate the information in (i) to the client on at least one further occasion by any means other than that used in sub-paragraph (i) including by post, electronic mail, telephone or media advertisement; and

(c) for any other client:

(i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and

(ii) where the client has not responded within 28 days of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the client on at least one further occasion by any means other than one in respect of which the firm has obtained positive confirmation that the client is not receiving such
communications.

(2) Compliance with paragraph (1) may be relied on as tending to establish compliance with CASS 6.7.2R(1)(b).

(3) Contravention of paragraph (1) may be relied on as tending to establish contravention of CASS 6.7.2R(1)(b).

6.7.5 G For the purposes of CASS 6.7.4E(1)(a), a firm may use any available means to determine the correct contact details for the relevant client, including:

(1) telephoning the client;
(2) searching internal and/or public records;
(3) media advertising;
(4) mortality screening; and
(5) using credit reference agencies or tracing agents.

6.7.6 R If the firm undertook a tracing exercise for the purposes of CASS 6.2.10R(4) (Allocated but unclaimed safe custody assets) before its failure but had not made the charity payment under that rule by the time of its failure then the findings of that exercise may be relied on for the purposes of CASS 6.7.4E(1)(a).

6.7.7 R (1) A firm must make a record of any safe custody asset disposed of in accordance with CASS 6.7.2R at the time of the disposal.

(2) The record under paragraph (1) must state:

(a) the safe custody asset that was disposed of;
(b) the value of the consideration received for the safe custody asset disposed of;
(c) the name and contact details of the client to whom the safe custody asset was allocated, according to the firm’s records at the time of making the record under this rule; and
(d) either:
   (i) the efforts applied by the firm to determine the client’s correct contact details under CASS 6.7.4E(1)(a); or
   (ii) if being relied on under CASS 6.7.6R, the efforts applied by the firm to determine the client’s correct contact details for the purposes of CASS 6.2.10R(4) (Allocated but unclaimed safe custody assets).

(3) A firm must keep the record under paragraph (1) indefinitely.
Transfers of safe custody assets

6.7.8 R (1) This rule applies where, instead of returning a safe custody asset to a client, a firm (Firm A) is able to transfer the safe custody asset to another person (Firm B) for safekeeping on behalf of the client.

(2) Firm A may only effect such a transfer if, in advance of the transfer, it has obtained a contractual undertaking from Firm B that:

(a) where regulation 10C(3) of the IBSA Regulations does not apply, Firm B will return the safe custody asset to the client at the client’s request; and

(b) Firm B will notify the client, within 14 days of the transfer of that client’s safe custody asset having commenced:

(i) of the applicable regulatory regime under which the safe custody asset will be held by Firm B;

(ii) either:

(A) of any relevant compensation scheme limits that may apply in respect of Firm B’s handling of the safe custody asset; or

(B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and

(iii) where regulation 10C(3) of the IBSA Regulations does not apply, that the client has the option of having its safe custody asset returned to it by Firm B.

6.7.9 G Where regulation 10C(3) of the IBSA Regulations does apply, Firm A should, in advance of the transfer under CASS 6.7.8R, obtain a contractual undertaking from Firm B that:

(1) Firm B will comply with the client’s request for a ‘reverse transfer’ as defined in regulation 10C of the IBSA Regulations; and

(2) Firm B will notify the client, within 14 days of the transfer of that client’s safe custody asset having commenced, that the client can demand a ‘reverse transfer’ as defined in regulation 10C of the IBSA Regulations.

…

7 Client money rules

…
7.10 Application and purpose

...(7)

7.10.19 R ...(2) if the firm fails, the client money distribution and transfer 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 client money distribution and transfer rules.

...(7)

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

...

7.11 Treatment of client money

...(7)

Discharge of fiduciary duty

7.11.33A R (1) CASS 7.11.34R(2)(c), CASS 7.11.34R(2)(d) and CASS 7.11.34R(10) do not apply to a firm following a primary pooling event.

(2) CASS 7.11.34R(2)(e) only applies to a firm following a primary pooling event.

7.11.34 R Money ceases to be client money (having regard to CASS 7.11.40R where applicable) if:

...(7)

(2) ...

(e) transferred in accordance with CASS 7A.2.4R(4); or

...

Transfer of business

7.11.40A R CASS 7.11.41G to CASS 7.11.47R do not apply to a firm following a primary pooling event.

7.11.40B G CASS 7A.2.4R(4) (Pooling and distribution or transfer) applies to a firm in
respect of transfers of client money to another person following a primary pooling event.

Allocated but unclaimed client money

### 7.11.47A R
CASS 7.11.48G to CASS 7.11.58G do not apply to a firm following a primary pooling event.

### 7.11.47B G
CASS 7A.2.6AR (Closing a client money pool) applies to a firm following a primary pooling event in respect of allocated but unclaimed client money.

7.13 Segregation of client money

Money due to a client from a firm

### 7.13.38A R
CASS 7.13.39R and CASS 7.13.40G do not apply to a firm following a primary pooling event.

### 7.13.38B G
CASS 7A.2.10AR and CASS 7A.2.10BG (Money due to a client from a firm after a primary pooling event) apply to a firm following a primary pooling event in respect of 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 becomes liable to pay money to a client should must promptly, and in any event no later than one business day after the money is due and payable, pay the money:

...  

### Prudent segregation

### 7.13.40A R
(1) Subject to paragraph (2), CASS 7.13.41R to CASS 7.13.49R do not apply to a firm following a primary pooling event.

(2) If, at the time of a primary pooling event, a firm has retained money in a client bank account for the purposes of CASS 7.13.41R, that money remains client money for the purposes of the client money rules and the client money distribution and transfer rules.

### 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 client money distribution and transfer rules.

... 7.13.45 R The firm's written policy must not conflict with the client money rules or the client money distribution rules client money distribution and transfer rules. If there is a conflict, the client money rules and the client money distribution rules client money distribution and transfer rules will prevail.

... Prudent segregation record

7.13.49A R (1) Subject to paragraph (2), CASS 7.13.50R to CASS 7.13.52G do not apply to a firm following a primary pooling event.

(2) Where a firm holds a prudent segregation record under CASS 7.13.53R following a primary pooling event, the prudent segregation record must continue to satisfy the requirements set out in CASS 7.13.51R.

... The alternative approach to client money segregation

7.13.53A R (1) Subject to paragraphs (2) and (3), CASS 7.13.59R, CASS 7.13.62R(3), CASS 7.13.62R(4) and CASS 7.13.63R to CASS 7.13.67R do not apply to a firm following its failure.

(2) If, at the time of a primary pooling event, a firm has retained money in a client bank account for the purposes of alternative approach mandatory prudent segregation under CASS 7.13.65R, that money remains client money for the purposes of the client money rules and the client money distribution and transfer rules.

(3) Where a firm holds an alternative approach mandatory prudent segregation record under CASS 7.13.68R following a primary pooling event, the alternative approach mandatory prudent segregation record must continue to satisfy the requirements set out in CASS 7.13.67R.

... 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 client money distribution and transfer rules.

...

Use of the normal approach in relation to certain regulated clearing arrangements

7.13.72A R (1) Subject to paragraphs (2) and (3), CASS 7.13.73R to CASS 7.13.75R do not apply to a firm following a primary pooling event.

(2) If, at the time of a primary pooling event, a firm has retained money in a client bank account for the purposes of clearing arrangement mandatory prudent segregation under CASS 7.13.73R, that money remains client money for the purposes of the client money rules and the client money distribution and transfer rules.

(3) Where a firm holds a clearing arrangement mandatory prudent segregation record under CASS 7.13.76R following a primary pooling event, the clearing arrangement mandatory prudent segregation record must continue to satisfy the requirements set out in CASS 7.13.75R.

7.13.73 R (1) Where the circumstances described in CASS 7.13.72R(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 client money distribution and transfer rules.

...

7.15 Records, accounts and reconciliations

...

7.15.15 R (1) Subject to paragraph (4), 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.

... 

(4) Following a primary pooling event, and in addition to any obligations of a special administrator under regulation 10H of the IBSA Regulations:

(a) a firm must perform an internal client money reconciliation that relates to the time of the primary pooling event as soon as reasonably practicable after the primary pooling event; and

(b) the firm must perform further internal client money reconciliations as regularly as required under paragraph (5), based on the records of the firm as at the close of business on the business day before the day on which the reconciliation takes place.

(5) A firm must determine when and how often to perform an internal client money reconciliation under paragraph (4)(b) so as to ensure that:

(a) the firm remains in compliance with CASS 7.15.2R, CASS 7.15.3R and CASS 7.15.5R(1) and (2) (Record keeping); and

(b) the correct amounts of client money are returned to clients or transferred on behalf of clients under the client money distribution and transfer rules.

7.15.15A G  (1) The reference point for the internal client money reconciliation under CASS 7.15.15R(4)(a) should be the precise point in time at which the primary pooling event occurred.

(2) When a firm decides whether it is necessary at any particular point in time to perform an internal client money reconciliation under CASS 7.15.15R(4)(b), it should have particular regard to the need to maintain its books and accounts in order to ensure that:

(a) each notional pool of client money formed under CASS 7A.2.4R(1) and (1A) (Pooling and distribution or transfer) is correctly composed and maintained, and is treated separately;

(b) client money that is required under CASS 7A.2.4R(3) (Pooling and distribution or transfer) and CASS 7A.2.7-AR (Client money received after a primary pooling event) to be treated as outside of any notional pool is treated accordingly; and

(c) where applicable, clients’ entitlements to their client money are calculated in accordance with CASS 7A.2.5R(-2)(b) (Client money entitlements).
(4) Depending on the circumstances of the firm and the scale, frequency and nature of activity after a primary pooling event that affects client money, a firm may conclude that it is necessary to continue performing internal client money reconciliations each business day for a period of time after the primary pooling event.

... Frequency of external reconciliations

7.15.21A R CASS 7.15.22R to 7.15.26R do not apply to a firm following a primary pooling event.

7.15.21B G CASS 7.15.26AR applies to a firm following a primary pooling event.

... Frequency of external reconciliations after a primary pooling event

7.15.26A R Following a primary pooling event, and in addition to any obligations of a special administrator under regulation 10H of the IBSA Regulations:

(1) a firm must perform an external client money reconciliation that relates to the time of the primary pooling event as soon as reasonably practicable after the primary pooling event, based on the next available statements or other form of confirmation after the primary pooling event from:

(a) the banks with which the firm holds a client bank account; and

(b) the persons with which the firm holds a client transaction account; and

(2) the firm must perform further external client money reconciliations on a regular basis:

(a) with a suitable frequency to ensure that the correct amounts of client money are returned to clients or transferred on behalf of clients under the client money distribution and transfer rules; and

(b) as soon as reasonably practicable after the date to which the external client money reconciliation relates.

7.15.26B G The reference point for the external client money reconciliation under CASS 7.15.26AR(1) should be the precise point in time at which the primary pooling event occurred.

7.15.26C R When determining the frequency with which it will undertake external client money reconciliations under CASS 7.15.26AR(2) after a primary pooling
event, a firm must have regard to:

(1) the frequency, number and value of transactions which the firm undertakes in respect of client money;

(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; and

(3) the need to be able to verify that:

(a) client money within each notional pool formed under CASS 7A.2.4R(1) and (1A) (Pooling and distribution or transfer), and client money that is required under CASS 7A.2.4R(3) (Pooling and distribution or transfer) and CASS 7A.2.7-AR (Client money received after a primary pooling event) to be treated as outside of any notional pool, has not been incorrectly distributed, transferred or dissipated; and

(b) the proceeds of any payments and transactions that settle after the primary pooling event and which involve client money, including interest payments and other amounts included in the client money resource, have been received correctly.

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, subject to CASS 7.15.29AR, ensure that:

...

7.15.29A R A firm that has failed is not required to make a payment or withdrawal under CASS 7.15.29R(1) or CASS 7.15.29R(2) respectively in so far as the legal procedure for the firm’s failure restricts the firm from doing so.

...

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, subject to CASS 7.15.32AR, pay its own money into a relevant account.

7.15.32A R A firm that has failed is not required to pay its own money into a relevant account under CASS 7.15.32R in so far as the legal procedure for the firm’s
failure restricts the firm from doing so.

7.15.32B G (1) CASS 7.15.29AR and CASS 7.15.32AR recognise that a failed firm is required to investigate discrepancies, but the extent to which it is able to resolve discrepancies may be limited by insolvency law, for example.

(2) CASS 7.15.29AR and CASS 7.15.32AR would not prevent a failed firm from making any transfers required under regulation 10H(3) or (4) of the IBSA Regulations.

7.16 The standard methods of internal client money reconciliation

7.16.1 G (1) Firms are required to carry out an internal client money reconciliation each business day (CASS 7.15.12R and CASS 7.15.15R(1)) or as required by CASS 7.15.15R(4) after a primary pooling event. This section sets out methods of reconciliation that are appropriate for these purposes (the standard methods of internal client money reconciliation).

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 paragraph (2).

7.17 Statutory trust

7.17.2 R …

(1) for the purposes of, and on the terms of, the client money rules and the client money distribution and transfer rules:

7A Client money distribution and transfer

7A.1 Application and purpose

Application

7A.1.1 R Subject to CASS 7A.1.1AR, this chapter (the client money distribution and transfer rules) applies to a firm that holds client
money which is subject to the client money rules when a pooling event occurs.

7A.1.1A R The client money distribution rules client money distribution and transfer rules do not apply to any client money held by a trustee firm under CASS 7.10.34R to CASS 7.10.40G.

7A.1.1B G As a result of CASS 7A.1.1AR, the client money distribution rules client money distribution and transfer 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 client money distribution and transfer 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.

Purpose

7A.1.2 G The client money distribution rules client money distribution and transfer rules seek to set out the timely return required treatment of client money to a client in the event of the failure of a firm or third party at which the firm holds client money on the occurrence of a pooling event so that where:

(1) for example, a firm fails (but also in other situations where a primary pooling event occurs), the rules in CASS 7A.2 (Primary pooling events) facilitate the return or transfer of client money; and

(2) a person at which the firm holds client money fails, the rules in CASS 7A.3 (Secondary pooling events) allocate any loss of client money among certain of the firm’s clients.

7A.2 Primary pooling events

Failure of the authorised firm: primary pooling event

7A.2.1 G (1) A firm can hold client money in a general client bank account, a designated client bank account or a designated client fund account.

(2) A firm holds all client money in general client bank accounts for its clients as part of a common pool of money so those particular clients do not have a claim against a specific sum in a specific account; they only have a claim to the client money in general.

(3) A firm holds client money in designated client bank accounts or designated client fund accounts for those clients that requested their client money be part of a specific pool of money, so those particular clients do have a claim against a specific sum in a specific account; they do not have a claim to the client money in general unless a primary pooling event occurs. A primary pooling event triggers a
notional pooling of all the client money, in every type of client money account, and the obligation to distribute it.

(4) If the firm becomes insolvent, and there is (for whatever reason) a shortfall in money held for a client compared with that client’s entitlements, the available funds will be distributed in accordance with the client money distribution rules. [deleted]

7A.2.2 R A primary pooling event occurs:

(1) on the failure of the firm;

(2) on the vesting of assets in a trustee in accordance with an ‘assets requirement’ imposed under section 55P(1)(b) or (c) (as the case may be) of the Act;

(3) on the coming into force of a requirement for all client money held by the firm or requirements which, either separately or in combination:

   (a) is or are for all client money held by the firm; and

   (b) require the firm to take steps to cease holding all client money; or

(4) when the firm notifies, or is in breach of its duty to notify, the FCA, in accordance with CASS 7.15.33R (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a secondary pooling event.

7A.2.3 R CASS 7A.2.2R(4) does not apply so long as:

(1) the firm is taking steps, in consultation with the FCA, to establish those records; and

(2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

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 7.16.33R, it must immediately liquidate this approved collateral and place the proceeds in a client bank account that relates to the relevant notional pool under CASS 7A.2.4R(1) (Pooling and distribution or transfer).

7A.2.3B R CASS 7A.2.7R 7A.2.7-AR (Client money received after a primary pooling event) 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 relevant notional pool of client money (see CASS 7A.2.4R(1A)(a)(i)) (Pooling and distribution or transfer); and
(2) must be distributed or transferred on behalf of clients in accordance with this chapter.

Client money reconciliations after a primary pooling event

7A.2.3D  G  (1) If a special administrator has been appointed to the firm under the IBSA Regulations then they will be required to carry out a reconciliation under regulation 10H of the IBSA Regulations.

(2) Notwithstanding regulation 10H of the IBSA Regulations, CASS 7.15 has application to a firm after a primary pooling event, meaning, for example, that ongoing compliant record-keeping is required (see CASS 7.15.15R(4) (Internal client money reconciliations) and CASS 7.15.26AR (Frequency of external reconciliations after a primary pooling event)).

Pooling and distribution or transfer

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

(1) (a) in respect of a sub-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 sub-paragraphs (1)(a)(i) or (ii); and

(1A) (a) a notional pool under paragraph (1) shall also include any client money that is:

(i) transferred by the firm under regulation 10H(3) of the IBSA Regulations to a client bank account that is included in that pool under paragraph (1);

(ii) paid under CASS 7A.2.3AR into a client bank account that is included in that pool under paragraph (1);

(iii) paid under CASS 7A.2.4R(3)(b) or CASS 7A.2.4R(3)(d) into a client bank account or client transaction account that is included in that pool under paragraph (1);

(iv) (subject to sub-paragraph (b)) otherwise received after the primary pooling event into a client transaction account that is included in that pool under paragraph (1) where the receipt is in relation to a margined transaction that the firm had entered into through the use of that client transaction account and which had not closed out before primary pooling event; and

(v) paid under CASS 7.15.29R(1) (Reconciliation discrepancies) after the primary pooling event into a client bank account that is included in that pool under paragraph (1); and

(b) the firm must not transfer any client money in a notional pool under sub-paragraphs (1)(a) or (b) to a client transaction account except where necessary to comply with sub-paragraph (2)(b);

(c) a notional pool under paragraph (1) shall cease to include client money from the point at which it is:

(i) transferred by the firm under regulation 10H(4) of the IBSA Regulations from a client bank account that is included in that pool under paragraph (1); or

(ii) paid out after the primary pooling event from a client transaction account that is included in that pool under paragraph (1) where the payment is in relation to a margined transaction that the firm had entered into through the use of that client transaction account and which had not closed out before primary pooling event.

(2) the firm must, as soon as reasonably practicable:

(a) (subject to paragraph (4)) distribute client money comprising a notional pool in accordance with CASS 7.17.2R, 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 (Client money entitlements); 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 as part of that person’s default management procedures, then, as soon as reasonably practicable:

(a) any such remittance in respect of a client transaction account that is an individual client account does not form a part of any notional pool under CASS 7A.2.4R(1) and must be distributed to the relevant client subject to CASS 7.17.2R(4);

(b) subject to sub-paragraphs (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)(b) and be subject to distribution in accordance with CASS 7A.2.4R(2)(a);

(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:

(i) no client money in excess of the amount recorded in that omnibus client account is held by the firm as margin in relation to the positions recorded in that omnibus client account; and

(ii) the amount of such remittance attributable to each client of the omnibus client account is readily apparent from information provided to the firm by the authorised central counterparty or, in the case of indirect clients, the clearing member;

in which case the amount of such remittance does not form a part of any notional pool under CASS 7A.2.4R(1) and must be distributed to each such client in accordance with the information provided by the authorised central counterparty or clearing member subject to CASS 7.17.2.R(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 under CASS 7A.2.4R(1)(a) to be distributed in accordance with CASS 7A.2.4R(2)(a); and

(4) as an alternative to distributing a client’s client money in a notional pool to the relevant client under CASS 7A.2.4R(2)(a) and in respect of client money that is not required to be transferred under CASS 7A.2.4R(2)(b), a firm (Firm A) may on its own initiative transfer some or all of that client’s client money in the relevant notional pool to any other person (Firm B) for safekeeping on behalf of the client provided that:

(a) as a consequence of any such transfer, Firm A does not distribute to any other client whose client money is in that notional pool, or transfer on behalf of any such other client to another person, an amount of money that would be less than that which such other client was entitled to have distributed or transferred under this rule;

(b) unless Firm A is able to rely on regulation 10B(3)(b) of the IBSA Regulations for the transfer to Firm B to have effect without the consent of the client, either:

(i) Firm A has the specific consent of the client to the transfer to Firm B; or

(ii) (A) there is a written agreement between Firm A and the client which provides that Firm A may transfer the client’s client money to another person; and

(B) Firm A can lawfully rely on that provision to achieve the transfer under this rule;

(c) Firm A has, in advance of the transfer under this rule, either:

(i) obtained a contractual undertaking from Firm B that the money transferred will be held by Firm B as client money in accordance with the client money rules; or

(ii) where the client money rules do not apply to Firm B, or where they do apply but Firm B is able to hold the money transferred other than as client money, satisfied itself, having exercised all due skill care and diligence in its assessment, that Firm B will apply adequate measures to protect the money transferred;

(d) where regulation 10C(3) of the IBSA Regulations does not apply, Firm A has, in advance of the transfer under this rule, obtained a contractual undertaking from Firm B that Firm B will return the money to the client at the client’s request; and
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(c) Firm A has, in advance of the transfer under this rule, obtained a contractual undertaking from Firm B that Firm B will notify the client, within 14 days of the transfer of that client’s balance having commenced:

(i) of the applicable regulatory regime under which the money will be held by Firm B;

(ii) either:

(A) of any relevant compensation scheme limits that may apply in respect of Firm B’s handling of the transferred money; or

(B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and

(iii) where regulation 10C(3) of the IBSA Regulations does not apply, that the client has the option of having its money returned to it by Firm B.

7A.2.4A -2

Where regulation 10C(3) of the IBSA Regulations does apply, Firm A should, in advance of the transfer under CASS 7A.2.4R(4), obtain a contractual undertaking from Firm B that:

(1) Firm B will comply with the client’s request for a ‘reverse transfer’ as defined in regulation 10C of the IBSA Regulations; and

(2) Firm B will notify the client, within 14 days of the transfer of that client’s safe custody asset having commenced, that the client can demand a ‘reverse transfer’ as defined in regulation 10C of the IBSA Regulations.

7A.2.4A -1

Under CASS 7A.2.4R(1)(b)(i) a firm should include the balances of client money referred to at CASS 7.13.40AR(2), CASS 7.13.53AR(2) and CASS 7.13.72AR(2) in the relevant pool.

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

(a) port client positions where possible; and

(b) after the completion of the default management process:

(i) return any balance due directly to those clients for whom the positions are held, if they are known to the authorised central counterparty; or

(ii) remit any balance to the firm for the account of its
clients if the clients are not known to the authorised central counterparty.

(1A) Under the EMIR L2 Regulation, where a firm acting in connection with a regulated clearing arrangement for a client (who is also an indirect client) defaults, the clearing member with whom the firm has placed client money of the indirect client, may, in accordance with the EMIR L2 Regulation:

(a) transfer the positions and assets either to another clearing member of the relevant authorised central counterparty or to another firm willing to act for the indirect client; or

(b) liquidate the assets and positions of the indirect clients and remit all monies due to the indirect clients.

(1B) For the avoidance of doubt, ‘relevant clients’ in the case of CASS 7A.2.4R(3)(a) and CASS 7A.2.4R(3)(c) includes a client who is also an indirect client.

(2) Where any balance remitted from an authorised central counterparty, or, in the case of indirect clients, a clearing member, to a firm is client money, CASS 7A.2.4R(3) provides for the distribution of remittances from either an individual client account or an omnibus client account.

(3) Remittances received by the firm falling within CASS 7A.2.4R(3)(a) and CASS 7A.2.4R(3)(c) should not be pooled with client money held in any client bank account operated by the firm at the time of the primary pooling event. Those remittances should be segregated and promptly distributed to each client on whose behalf the remittance was received.

(4) For the avoidance of doubt, in respect of a regulated clearing arrangement, any client money remitted by the authorised central counterparty, or, in the case of indirect clients, the clearing member, to the firm pursuant to CASS 7A.2.4R(3) should not be treated as client money received after the failure of the firm under CASS 7A.2.7-AR (Client money received after a primary pooling event).

(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 7.11.34R(8).

7A.2.4B G (1) The restrictions on transfers of client money at CASS 7A.2.4R(4) are each of the type referred to at regulation 10B(4) of the IBSA Regulations as “a restriction in client money rules”.

(2) Where Firm A has complied with the restrictions at CASS 7A.2.4R(4) for any transfers to Firm B, any money transferred to Firm B ceases to be client money held by Firm A (see CASS 7.11.34R(2)(e) (Discharge
of fiduciary duty)).

(3) But any money returned by Firm B to Firm A in the event of a 'reverse transfer' will be subject to the client money rules and client money distribution and transfer rules as applied to Firm A, and should be treated by Firm A in accordance with CASS 7A.2.7-AR (Client money received after the failure of the firm).

Client money entitlements

7A.2.5 R (-2) (a) Subject to paragraph (-2)(b), each client’s entitlement to client money in a notional pool is calculated with reference to the client money requirement as shown by an internal client money reconciliation carried out in accordance with CASS 7.15.15R(4)(a) (Internal client money reconciliations) as at the primary pooling event.

(b) If, as at the primary pooling event, the firm had entered in to one or more cleared margined transactions through the use of a client transaction account at a clearing house that had not closed out as at the primary pooling event, the client money requirement under (-2)(a) must be calculated as follows:

(i) CASS 7.16.28R does not apply in respect of those cleared margined transactions; and

(ii) subject to CASS 7.16.30R, in respect of those cleared margined transactions a client’s equity balance is instead the amount which the firm is liable to pay to the client (or the client to the firm) under the client money rules for margined transactions following the close out of those margined transactions. This balance should include any cash margin the firm has received from the client in connection with those transactions.

(-1) Each client’s client equity balance following any adjustments under paragraph (-2) must be reduced by:

(a) any amount paid by:

(i) an authorised central counterparty to a clearing member other than the firm in connection with a porting arrangement in accordance with CASS 7.11.34R(6) in respect of that client; and

(ii) a clearing member to another clearing member or firm (other than the firm) in connection with a transfer in accordance with CASS 7.11.34R(8);

(b) any amount paid by:
(i) an authorised central counterparty directly to that client, in accordance with CASS 7.11.34R(7); and

(ii) a clearing member directly to an indirect client in accordance with CASS 7.11.34R(9); and

(c) any amount that must be distributed to that client by the firm in accordance with CASS 7A.2.4R(3)(a) or (c).

(1) When, in respect of a client who is a beneficiary of a pool and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a positive individual client balance and a negative client equity balance in relation to that pool, the credit for that pool must be offset against the debit for that pool reducing the individual client balance for that client.

(2) When, in respect of a client who is a beneficiary of a pool and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a negative individual client 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.

7A.2.5A G (1) (a) The effect of CASS 7A.2.5R(-2)(b) is that the client equity balance for the relevant cleared margined transaction is with reference to the eventual close out or ‘hindsight’ value of the transaction, instead of being a notional balance as at the primary pooling event under CASS 7.16.28R.

(b) CASS 7A.2.5R(-2)(b) applies in respect of cleared margined transactions that a firm had entered into for any client, including for indirect clients where the firm is itself a client of a clearing member.

(2) In cases where CASS 7A.2.5R(-2)(b) does not apply, the client equity balance for a margined transaction will be the notional balance as at the primary pooling event under CASS 7.16.28R.

…

Closing a client money pool

7A.2.6A R (1) Before a firm ceases to treat a balance of client money in a notional pool as client money by transferring it to itself under CASS 7.17.2R(5) it must:

(a) (subject to paragraph (2)) attempt to distribute the balance to the relevant client or transfer it to another person for safekeeping on behalf of the client in accordance with CASS 7A.2.4R (Pooling and distribution or transfer);
(b) (subject to paragraph (3)) take reasonable steps to notify any client in respect of whom the firm has evidence that the money may belong, of the firm’s proposed course of action;

c) where the firm has failed, apply any of the following types of balances of client money in the notional pool towards any costs incurred in accordance with CASS 7.17.2R(4), including any costs incurred under paragraph (1)(d):

(i) client money allocated to a client for which, following the steps taken by the firm to satisfy paragraph (1)(b), the client to whom the client money belongs has not provided the firm with instructions that would enable the firm to make a distribution or transfer under paragraph (1)(a); or

(ii) client money belonging to a client who, in response to a notification made under paragraph (1)(b), has confirmed to the firm that it disclaims the benefit of the statutory trust under CASS 7.17.2R in relation to the client money; or

(iii) client money that, following the steps taken by the firm to satisfy paragraph (1)(b), is unallocated to any client in the firm’s records and accounts; and

(d) immediately before transferring the balances of client money under paragraph (1)(c) to the firm itself, apply them towards making good any outstanding shortfall in the notional pool, and subsequently distribute or transfer them in accordance with CASS 7A.2.4R to or on behalf of clients for whom the firm is able to make such distributions or transfers.

(2) A firm is not required to attempt to return or transfer the balance of client money under paragraph (1)(a) where the client to whom the balance belongs has confirmed to the firm that it disclaims the benefit of the statutory trust under CASS 7.17.2R in relation to the balance client money.

(3) A firm is not required to notify a client under paragraph (1)(b) where:

(a) the firm is able to distribute the client money to the relevant client or transfer it to another person on behalf of the client in accordance with CASS 7A.2.4R (Pooling and distribution or transfer);

(b) the client to whom the balance of client money belongs has confirmed to the firm that it disclaims the benefit of the statutory trust under CASS 7.17.2R in relation to the balance client money;
(c) in respect of a client for whom the firm has evidence that they were a retail client for the purposes of the client money rules at the time of the primary pooling event, the entitlement of that client in the notional pool is £25 or less when calculated under CASS 7A.2.5R (Client money entitlements); or

(d) in respect of a client for whom the firm has evidence that they were a professional client for the purposes of the client money rules at the time of the primary pooling event, the entitlement of that client is £100 or less when calculated under CASS 7A.2.5R (Client money entitlements).

7A.2.6B G (1) A firm may propose to cease to treat a balance of money as client money under CASS 7A.2.6AR(1) where the firm is using the procedure under regulation 12C of the IBSA Regulations to set a ‘hard bar date’ by giving a ‘hard bar date notice’, or another similar procedure in accordance with the legal procedure for the firm’s failure.

(2) In any case, a firm should consider the whether its obligations under law (including trust law) or any agreement permit it to cease to treat a balance of money as client money in the way in which it proposes to do so.

(3) Balances of client money under CASS 7A.2.6AR(1)(c)(iii) include any remaining amount of those that the firm is holding to comply with:

(a) CASS 7.13.41R (Prudent segregation);

(b) CASS 7.13.65R(1) (The alternative approach to client money segregation); and

(c) CASS 7.13.73R(1) (Use of the normal approach in relation to certain regulated clearing arrangements).

7A.2.6C E (1) Reasonable steps in CASS 7A.2.6AR(1)(b) include the following course of conduct:

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

(b) for a client for whom the firm has evidence that it was a professional client for the purposes of the client money rules at the time of the primary pooling event:

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

(A) to inform it of the firm’s intention to no longer treat the balance as client money;
(B) to inform it of the consequences of the firm’s proposed course of action in relation to the client’s ability to assert an ownership right to that money; and

(C) to invite the client to submit a claim for the money; and

(ii) where the client has not responded within 28 days of the communication under sub-paragraph (i), attempting to communicate the information in sub-paragraph (i) to the client on at least one further occasion by any means other than that used in (i) including by post, electronic mail, telephone or media advertisement; and

(c) for any other client:

(i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and

(ii) where the client has not responded within 28 days of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the client on at least one further occasion by any means other than one in respect of which the firm has obtained positive confirmation that the client is not receiving such communications.

(2) Compliance with paragraph (1) may be relied on as tending to establish compliance with CASS 7A.2.6AR(1)(b).

(3) Contravention of paragraph (1) may be relied on as tending to establish contravention of CASS 7A.2.6AR(1)(b).

7A.2.6D G For the purpose of CASS 7A.2.6CE(1)(a), a firm may use any available means to determine the correct contact details for the relevant client, including:

(1) telephoning the client;

(2) searching internal and/or public records;

(3) media advertising;

(4) mortality screening; and

(5) using credit reference agencies or tracing agents.

7A.2.6E R If the firm undertook a tracing exercise for the purposes of CASS 7.11.50R(3) (Allocated but unclaimed client money) before the primary pooling event but had not made the charity payment under that rule by the time of the primary
pooling event then the findings of that exercise may be relied on for the purposes of CASS 7A.2.6CE(1)(a).

7A.2.6F R (1) A firm must make a record of any balance under CASS 7A.2.6AR(1)(c)(i) or (ii) which is to be applied towards any costs or towards any shortfall in the relevant notional pool in accordance with CASS 7A.2.6AR(1)(c) or (d) respectively, immediately before taking such steps.

(2) The record under paragraph (1) must state:

(a) the amount of the balance of client money;

(b) the name and contact details of any client to whom that balance was allocated according to the firm’s records at the time of making the record under this rule; and

(c) either:

(i) the efforts applied by the firm to determine the client’s correct contact details under CASS 7A.2.6CE(1)(a); or

(ii) if being relied on under CASS 7A.2.6ER, the efforts applied by the firm to determine the client’s correct contact details for the purposes of CASS 7.11.50R(3) (Allocated but unclaimed client money).

(3) A firm must keep the record under (1) indefinitely.

Client money received after the failure of the firm a primary pooling event

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:

(1) it is client money relating to a transaction that has not settled at the time of the primary pooling event; or

(2) it is client money relating to a client, for whom the client money entitlement, calculated in accordance with CASS 7A.2.5R, shows that money is due from the client to the firm at the time of the primary pooling event. [deleted]

7A.2.7-A R (1) This rule applies in respect of client money received by a firm after a primary pooling event that does not form part of a notional pool.

(2) Where the firm is using the normal approach under CASS 7.13.6R (The normal approach), client money to which this rule applies must
be received into a client bank account that does not contain any client money forming part of a notional pool under CASS 7A.2.4R(1) (Pooling and distribution or transfer).

(3) (a) This paragraph applies in respect of client money that is received by a firm into an account other than a client bank account as required under CASS 7.13.62R (The alternative approach to client money segregation) or as permitted under CASS 7.13.72R (Use of the normal approach in relation to certain regulated clearing arrangements).

(b) To the extent the firm makes any transfers from its own account to a client bank account under CASS 7.13.62R(3) (The alternative approach to client money segregation) or CASS 7.13.72R(2)(b) (Use of the normal approach in relation to certain regulated clearing arrangements), such transfers must be made into a client bank account that does not contain any client money forming part of a notional pool under CASS 7A.2.4R(1) (Pooling and distribution or transfer).

(4) Subject to paragraphs (5) and (6), a firm must promptly return to each relevant client all client money to which this rule applies.

(5) To the extent that client money relates to a transaction for a client that was concluded before the primary pooling event but had not yet settled at the time of the primary pooling event, the firm may use that client money to settle that transaction.

(6) (a) This paragraph applies where client money which is not received by the firm into a client transaction account relates to one or more cleared margined transactions entered into by the firm through the use of a client transaction account at a clearing house.

(b) Where such transactions have not closed out as at the primary pooling event, then provided that the firm has not failed, it may transfer that client money to a client transaction account with the relevant clearing house in accordance with CASS 7.14 (Client money held by a third party) for the purpose of collateralising those margined transactions.

7A.2.7A G If a firm opens may open a client bank account after a primary pooling event for the purposes of complying with CASS 7A.2.7-AR(2) and CASS 7A.2.10AR(2). If it does so it must comply with CASS 7.18.15R regarding acknowledgement letters.

7A.2.7B G Following a failure, CASS 7.17.2R(4) applies in respect of costs properly attributable to the return of a client’s client money under CASS 7A.2.7-AR(4).

7A.2.8 G Client money received after the primary pooling event relating to an unsettled transaction should be used to settle that transaction. Examples of such
transactions include:

(1) an equity transaction with a trade date before the date of the primary pooling event and a settlement date after the date of the primary pooling event; or

(2) a contingent liability investment that is ‘open’ at the time of the primary pooling event and is due to settle after the primary pooling event. [deleted]

7A.2.9 R If a firm receives a mixed remittance after a primary pooling event other than where using the alternative approach under CASS 7.13.62R or under a regulated clearing arrangement to which CASS 7.13.72R applies, it must:

(1) pay the full sum into the separate a client bank account opened in accordance with that meets the requirements of CASS 7A.2.7R 7A.2.7-AR(2); and

(2) pay the money that is not client money out of that client bank account into a firm’s own bank account within one business day of the day on which the firm would normally expect the remittance to be cleared.

7A.2.10 G Whenever possible the firm should seek to split a mixed remittance before the relevant accounts are credited.

Money due to a client from a firm after a primary pooling event

7A.2.10 R A firm that is operating the normal approach to segregation under CASS 7.13 (Segregation of client money) which becomes liable to pay money to a client after a primary pooling event must 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 that does not contain any client money forming part of a notional pool under CASS 7A.2.4R(1).

7A.2.10 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.

Secondary pooling events

7A.2.11 R If both a primary pooling event and a secondary pooling event occur, the provisions of this section relating to a primary pooling event apply.

7A.3 Secondary pooling events

Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events
7A.3.1 R A *secondary pooling event* occurs on the *failure* of a third party *person* to which *client money* held by the *firm* has been transferred under CASS 7.13.3R(1) to CASS 7.13.3R(3) (Depositing client money) or CASS 7.14.2R (Transfer of client money to a third party). Client money held by a third party.

7A.3.2 R CASS 7A.3.6R to CASS 7A.3.14R CASS 7A.3.12AR do not apply if, on the *failure* of the third party relevant *person*, the *firm* repays to its clients or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party:

1. there is no *secondary pooling shortfall*; or
2. where there is a *secondary pooling shortfall*, the *firm* pays an amount equal to the amount of *client money* which would have been held at that *person* if a *secondary pooling shortfall* had not occurred either:
   
   1. to its *clients* in the appropriate amounts such that they are compensated by the amount of the *secondary pooling shortfall* that they would otherwise be required to bear under this section; or
   
   2. into a *client bank account* at an unaffected bank with the effect that any *shortfall* that would otherwise arise for the purposes of CASS 7.15 (Records, accounts and reconciliations) is avoided.

7A.3.3 G When *client money* is transferred to a third party, a *firm* continues to owe fiduciary duties to the *client*. Whether a *firm* is liable for a *shortfall* in *client money* caused by a third party failure will depend on whether it has complied with its duty of care as agent or trustee. [deleted]

Failure of a bank

7A.3.4 G When a *bank* *person* to which *client money* held by the *firm* has been transferred under CASS 7.13.3R(1) to CASS 7.13.3R(3) (Depositing client money) or CASS 7.14.2R (Client money held by a third party) fails, and the *firm* decides not to make good the *shortfall* any *secondary pooling shortfall* in the amount of *client money* held at that *bank* *person* (see CASS 7A.3.2R(2)), a *secondary pooling event* will occur in accordance with CASS 7A.3.6R. The *firm* would be expected to *should reflect the shortfall* secondary *pooling 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 7.15 (Records, accounts and reconciliations).

7A.3.5 G The *client money distribution rules* *client money distribution and transfer rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore
requested that their client money be placed in a designated client bank account at a different bank, should not suffer the loss of the bank that has failed.

Failure of a bank: pooling

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, and/or where one or more designated client bank accounts or designated client fund 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.3.6A G Depending on the person at which the secondary pooling event occurs, the types of client bank accounts and client transaction accounts that are affected by the secondary pooling shortfall, and the nature of a firm’s business with a particular client, it is possible that the client’s overall entitlement to client money held by the firm may be affected by a combination of CASS 7A.3.8R, CASS 7A.3.8AR, CASS 7A.3.10R and CASS 7A.3.11R.

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. [deleted]
Failure of an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty: pooling

7A.3.7A R If a secondary pooling event occurs as a result of the failure of an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, then, in relation to every general client bank account and client transaction account of the firm, CASS 7A.3.8R and CASS 7A.3.13R will apply, and CASS 7A.3.8AR will additionally apply in the case of the failure of an authorised central counterparty.

Failure of a bank, intermediate broker, settlement agent, OTC counterparty, exchange or clearing house: treatment of general client bank accounts and client transaction accounts

7A.3.8 R Subject to CASS 7A.3.8AR, if a secondary pooling event occurs as a result of the failure of a bank, intermediate broker, settlement agent, OTC counterparty, exchange or clearing house, 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 secondary pooling shortfall in client money held, or which should have been held, in general client bank accounts and client transaction accounts for the relevant pool, that has arisen as a result of the failure of the bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, must be borne by all the clients of that pool whose client money is held in 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 paragraph (1), and the firm's records must be amended to reflect the reduced client money entitlement;

(3) the firm must make and retain a record of each client’s share of the client money shortfall at the failed bank secondary pooling shortfall until the client is repaid; and

(4) the firm must use the new client money entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to CASS 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.3.8A R If a secondary pooling event occurs as a result of the failure of an authorised central counterparty:

(1) any money held in a client transaction account that is an individual client account at the failed authorised central counterparty is not pooled by the firm with any of its other client money;
(2) any money held in a client transaction account that is an omnibus client account at the failed authorised central counterparty is not pooled by the firm with any of its other client money provided that:

(a) no client money in excess of the amount recorded in that omnibus client account is held by the firm as margin in relation to the positions recorded in that omnibus client account; and

(b) the client or clients of the firm to whom the amount recorded in that omnibus client account relates is or are readily apparent from information provided to the firm by the authorised central counterparty or, in the case of indirect clients, the clearing member;

(3) any money held in a client transaction account that is a net margined omnibus client account at the failed authorised central counterparty in respect of which the firm maintains a sub-pool is not pooled by the firm with any of its other client money;

(4) the proportion of any secondary pooling shortfall that arises as a result of client money held, or which should have been held, in an individual client account to which paragraph (1) applies must be borne by the client whose client money was held in that individual client account;

(5) the proportion of any secondary pooling shortfall that arises as a result of client money held, or which should have been held, in an omnibus client account to which paragraph (2) applies must either:

(a) be borne by all the clients whose client money is held in that account, rateably in accordance with their entitlements; or

(b) if the firm is required under applicable law to allocate the secondary pooling shortfall other than as under (a), be allocated as required by applicable law;

(6) the proportion of any secondary pooling shortfall that arises as a result of client money held, or which should have been held, in a net margined omnibus client account to which paragraph (3) applies must be borne by all the clients whose client money is held in the relevant sub-pool, rateably in accordance with their entitlements;

(7) a new client money entitlement must be calculated for each relevant client of the relevant pool, to reflect the requirements in paragraphs (1), (2) and (3), and the firm’s records must be amended to reflect the reduced client money entitlement;

(8) the firm must make and retain a record of each client’s share of the secondary pooling shortfall until the client is repaid; and
the firm must use the new client money entitlements calculated under paragraph (7) for the purposes of reconciliations pursuant to CASS 7.15.3R (Records and accounts) for the relevant pool.

7A.3.9 G The term “which should have been held” is a reference to the relevant failed bank’s person’s failure to hold the client money at the time of the pooling event its failure.

7A.3.9A G (1) CASS 7A.3.8AR(5)(b) enables a firm to allocate the relevant part of a secondary pooling shortfall that arises in an omnibus client account under CASS 7A.3.8AR(2) other than on a “pro rata” basis, where this is required by applicable law.

(2) This would include, for example, where applicable law requires the firm to attribute a secondary pooling shortfall only to a particular client or clients.

Failure of a bank: treatment of designated client bank accounts and designated client fund accounts

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 secondary pooling 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;

(3) the firm must make and retain a record of each client’s share of the client money shortfall secondary pooling shortfall at the failed bank until the client is repaid; and

(4) the firm must use the new client money entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to CASS 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 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 which contain part of the same designated fund and:
(1) any **shortfall secondary pooling 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 paragraph (1), and the **firm’s** records must be amended to reflect the reduced **client money** entitlement;

(3) the **firm** must make and retain a record of each **client’s** share of the **client money shortfall secondary pooling shortfall** at the **failed bank** until the **client** is repaid; and

(4) the **firm** must use the new **client money** entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to CASS 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.3.12 R A **client** whose **money** was held, or which should have been held, in a **designated client bank account** with a bank that has **failed** is not entitled to claim in respect of that **money** against any other **client bank account** or **client transaction account** of the **firm**.

7A.3.12 R A **client** whose **money** was held, or which should have been held, in a **designated client fund account** with a bank that has **failed** is not entitled to claim in respect of that **money** against any other **client bank account** of the **firm** that is not part of the same designated fund or against any **client transaction account** of the **firm**.

**Client money received after the failure of a bank secondary pooling event**

7A.3.13 R **Client money** received by the **firm** after the failure of a bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, that would otherwise have been paid into a **client bank account** or **client transaction account** at that bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, as the case may be, for either the **general pool** or a particular **sub-pool**:

(1) must not be transferred to the **failed bank person** unless specifically instructed by the **client** in order to settle an obligation of that **client** to the **failed bank person**; and

(2) must be, subject to paragraph (1), placed in a separate **client bank account** or **client transaction 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 other than an account at the **failed person**.
(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.

7A.3.14 R If a firm receives a mixed remittance after the secondary pooling event which consists of client money that would have been paid into a general client bank account, a designated client bank account or a designated client fund account maintained at the bank that has failed, it must:

(1) pay the full sum into a client bank account other than one operated at the bank that has failed; and

(2) pay the money that is not client money out of that client bank account within one business day of the day on which the firm would normally expect the remittance to be cleared.

7A.3.15 G Whenever possible the firm should seek to split a mixed remittance before the relevant accounts are credited.

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: [deleted]

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:

(4) 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;

(3) the firm must make and retain a record of each client’s share of the client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty until the client is repaid; and

(4) the firm must use the new client money entitlements, calculated in
accordance with (2), for the purposes of reconciliations pursuant to CASS 7.15.3R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance). [deleted]

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:

(1) must not be transferred to the failed third party unless specifically instructed by the client in order to settle an obligation of that client to the failed intermediate broker, settlement agent or OTC counterparty; and

(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 third party other than the one that has failed; or

(b) returned to the client as soon as possible. [deleted]

Notification to the FCA: failure of a bank, intermediate broker, settlement agent or OTC counterparty of secondary pooling event

7A.3.19 R On the failure of a third party with which money is held, a firm must notify the FCA as soon as reasonably practical after it becomes aware of the failure of any bank, exchange, clearing house, intermediate broker, settlement agent, OTC counterparty or other entity with which it has placed, or whom it has allowed to hold, client money:

(1) as soon as it becomes aware of the failure of any bank, intermediate broker, settlement agent, OTC counterparty or other entity with which it has placed, or to which it has passed, client money; and [deleted]

(2) as soon as reasonably practical, whether it intends to make good any shortfall that has arisen or may arise and of the amounts involved. [deleted]

(3) whether it intends to make good any secondary pooling shortfall that has arisen or may arise; and

(4) the amount of that secondary pooling shortfall, or the expected amount if the actual amount is not known.
9 Information to clients

9.1 Application

9.1.1 R This chapter applies as follows:

(1) …

(2) subject to paragraphs (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) …

Amend the following as shown.

TP 1 Transitional Provisions

TP 1.1

|-----|--------------------------------------------------------|-----|----------------------------|------------------------------------------|------------------------------------------|
| 1AZ | The changes to the Glossary in Annex A and to CASS in Annex B of the Client Assets (Client Money and Custody Assets Distribution and Transfers) Instrument 2017 | R   | In relation to a firm:  
(i) that has <i>failed</i>; or 
(ii) in respect of which a <i>primary pooling event</i> occurred,  
in either case before the changes in column (2) took effect, the changes effected by the | Indefinitely | 26 July 2017 |
provisions in the Annex listed in column (2) do not apply to the firm, and therefore the provisions in CASS amended by that Annex will continue to apply as they were in force as at 25 July 2017.

Sch 1 Record keeping requirements

... 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>CASS 6.7.6R</td>
<td>Any safe custody asset disposed of in accordance with CASS 6.7.2R</td>
<td>(i) The safe custody asset that was disposed of; (ii) the value of the consideration received for the safe custody asset disposed of; (iii) the name and contact details of the client to whom the safe custody asset was allocated, according to the firm's records at the time of the disposal</td>
<td>At the time of the disposal</td>
<td>Indefinite</td>
</tr>
<tr>
<td>CASS 7A.2.6FR</td>
<td>Any balance under CASS 7A.2.6AR(1)(b)(i) or (ii) which has been applied towards any costs incurred in accordance with CASS 7.17.2R or towards any shortfall in the relevant notional pool in accordance with CASS 7A.2.6AR(1)(b) or (c) respectively</td>
<td>(i) The amount of the balance of client money; (ii) the name and contact details of any client to whom that balance was allocated according to the firm’s records at the time of making the record; and (iii) efforts applied by the firm to determine the client’s correct contact details under CASS 7A.2.6CE(1)(a) or, if being relied on, for the purposes of CASS 7.11.50R(3).</td>
<td>Immediately before taking steps to apply the balance towards costs or a shortfall in accordance with CASS 7A.2.6AR(1)(b) or (c) respectively</td>
<td>Indefinite</td>
</tr>
</tbody>
</table>
Annex C

Amendments to the Supervision sourcebook (SUP)

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

3 Auditors

…

3.10 Duties of auditors: notification and report on client assets

…

3.10.5 R Client assets report

<table>
<thead>
<tr>
<th>Whether in the auditor’s opinion</th>
</tr>
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<tbody>
<tr>
<td>(1) the firm has maintained systems adequate to enable it to comply with the custody rules (except CASS 6.7), the collateral rules, the client money rules (except CASS 5.2), the debt management client money rules and the mandate rules throughout the period;</td>
</tr>
<tr>
<td>(2) the firm was in compliance with the custody rules (except CASS 6.7), the collateral rules, the client money rules (except CASS 5.2), the debt management client money rules and the mandate rules, at the date as at which the report has been made;</td>
</tr>
<tr>
<td>…</td>
</tr>
</tbody>
</table>

…