

**CLIENT ASSETS (CLIENT MONEY AND CUSTODY ASSETS DISTRIBUTION  
AND TRANSFERS) INSTRUMENT 2017**

**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.

<i>IBSA Regulations</i>	the Investment Bank Special Administration Regulations 2011 (SI 2011/245).
<i>secondary pooling shortfall</i>	(in CASS 7A.3) the amount by which the <i>client money</i> held by a <i>firm</i> is: <ul style="list-style-type: none"> <li>(a) insufficient to satisfy the claims of the <i>firm's clients</i> in respect of that <i>money</i>, or</li> <li>(b) not immediately available to satisfy such claims,</li> </ul> in either case following the <i>failure</i> of a <i>person</i> at which <i>client money</i> of the <i>firm</i> 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.

<i>client money distribution and transfer rules</i>	CASS 7A.
<i>failure</i>	the appointment of a liquidator, receiver, <del>or</del> administrator, <u>special administrator</u> or trustee in bankruptcy, or any equivalent procedure in any relevant jurisdiction.
<i>general pool</i>	the discrete pool of <i>client money</i> held for all <i>clients</i> of the <i>firm</i> for whom the <i>firm</i> receives or holds <i>client money</i> in accordance with CASS 7.10.1R other than: <ul style="list-style-type: none"> <li>(a) <u><i>client money</i> received or held in accordance with CASS 7.10.1R in respect of a <i>sub-pool</i>; and</u></li> <li>(b) <u><i>client money</i> received by the <i>firm</i> after a <i>primary pooling event</i> that is not required by CASS 7A.2.4R(1A) to be included in the pool.</u></li> </ul>
<i>individual client</i>	as the context requires, either:

<i>account</i>	<ul style="list-style-type: none"> <li>(a) an <del>account</del> <u>account</u> maintained by a <i>firm</i> at an <i>authorised central counterparty</i> for a <i>client</i> of the <i>firm</i> in respect of which the <i>authorised central counterparty</i> has agreed with the <i>firm</i> to provide <i>individual client segregation</i>; or</li> <li>(b) an <del>account</del> <u>account</u> maintained by a <i>firm</i> for an <i>indirect client</i> at a <i>clearing member</i> of an <i>authorised central counterparty</i> in respect of which the <i>clearing member</i> has agreed with the <i>firm</i> to provide segregation arrangements that satisfy the requirements of article 4(2)(b) of the <i>EMIR L2 Regulation</i>.</li> </ul>
<i>omnibus client account</i>	<p>as the context requires, either:</p> <ul style="list-style-type: none"> <li>(a) an <del>account</del> <u>account</u> maintained by a <i>firm</i> at an <i>authorised central counterparty</i> for more than one <i>client</i> of the <i>firm</i> in respect of which the <i>authorised central counterparty</i> has agreed with the <i>firm</i> to provide <i>omnibus client segregation</i>; or</li> <li>(b) an <del>account</del> <u>account</u> maintained by a <i>firm</i> for more than one <i>indirect client</i> at a <i>clearing member</i> in respect of which that <del>clearing member</del> <u>clearing member</u> has agreed with the <i>firm</i> to provide segregation arrangements that satisfy the requirements of article 4(2)(a) of the <i>EMIR L2 Regulation</i>.</li> </ul>
<i>secondary pooling event</i>	<p>...</p> <ul style="list-style-type: none"> <li>(3) (in <i>CASS 7</i> and <i>CASS 7A</i>) an event that occurs in the circumstances described in <i>CASS 7A.3.1R</i> (Failure of a bank, intermediate broker, settlement agent, <del>or</del> OTC counterparty, <u>exchange or clearing house</u>; secondary pooling events).</li> </ul> <p>...</p>
<i>sub-pool</i>	<p>a discrete <i>pool</i> of <i>client money</i> established under <i>CASS 7.19</i>, <u>which after a <i>primary pooling event</i> includes the <i>client money</i> that is required to be included in the <i>pool</i> under <i>CASS 7A.2.4R(1A)</i>.</u></p>

## 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

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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.

...

- 6.6.56A 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**

...

7.10.19 R ...

- (2) if the *firm fails*, the ~~*client money distribution rules*~~ *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*.

...

7.10.22 R ...

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

...

**7.11 Treatment of client money**

...

## 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:

...

- (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~~ 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~~ 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**

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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~~ 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 rules~~ 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 rules~~ 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 facilitate 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 ~~*margin*~~ *margin*ed ~~*transaction requirement*~~ *margin*ed *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~~ *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 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



- (e) 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 G 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 G 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~~ *failure* of the *firm* under CASS ~~7A.2.7R~~ 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~~ ~~authorised central counterparty~~ to a ~~clearing member~~ 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~~ *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~~ *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 *margin*ed 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 *margin*ed 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 *margin*ed 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  
A (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  
B 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.3.18R~~ 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:
    - (a) 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
    - (b) 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 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

(9) 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:~~

- (1) ~~any *shortfall in client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or a *client transaction account* of the *firm* relating to the *general pool* or the particular *sub-pool* as the case may be, rateably in accordance with their entitlements;~~
- (2) ~~a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement relating to the *general pool* or the particular *sub-pool* as the case may be;~~
- (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*; and
- (4) ...

Amend the following as shown.

**TP 1 Transitional Provisions****TP 1.1**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1AZ	The changes to the <u>Glossary</u> 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 <u>firm</u> :  (i) that has <u>failed</u> ; or  (ii) in respect of which a <u>primary pooling event</u> occurred,  in either case before the changes in column (2) took effect, the changes effected by the	Indefinitely	26 July 2017

			<p><u>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.</u></p>		
...					

### Sch 1 Record keeping requirements

...

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>CASS 6.7.6R</u>	<u>Any safe custody asset disposed of in accordance with CASS 6.7.2R</u>	<p>(i) <u>The safe custody asset that was disposed of;</u></p> <p>(ii) <u>the value of the consideration received for the safe custody asset disposed of;</u></p> <p>(iii) <u>the name and contact details of the client to whom the safe custody asset was allocated, according to the firm's records at the</u></p>	<u>At the time of the disposal</u>	<u>Indefinite</u>

		<p><u>time of making the record; and</u></p> <p><u>(iv) efforts applied by the firm to determine the client's correct contact details under CASS 6.7.4E(1)(a) or, if being relied on, for the purposes of CASS 6.2.10R(4).</u></p>		
...				
<u>CASS 7A.2.6FR</u>	<p><u>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</u></p>	<p><u>(i) The amount of the balance of client money;</u></p> <p><u>(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</u></p> <p><u>(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).</u></p>	<p><u>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</u></p>	<p><u>Indefinite</u></p>

...				
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## 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

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

...