

**CLIENT ASSETS (INDIRECT CLEARING) 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); and
  - (4) 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 3 January 2018.

**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 Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expression “EMIR L2 Regulation”.

**Citation**

- G. This instrument may be cited as the Client Assets (Indirect Clearing) Instrument 2017.

By order of the Board  
7 December 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 position. The text is not underlined.

*EMIR indirect clearing RTS* Commission Delegated Regulation (EU) No 2017/2155 of 22 September 2017 amending Commission Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements.

*EMIR indirect clearing default management obligations* article 4 of the *EMIR L2 Regulation*.

*MiFIR indirect clearing RTS* Commission Delegated Regulation (EU) No 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements.

*MiFIR indirect clearing default management obligations* article 4 of the *MiFIR indirect clearing RTS*.

Amend the following definitions as shown.

*indirect client* as the context requires, either:

- (a) as defined in article 4(1)(a) of the *EMIR L2 Regulation*; or
- (b) as defined in article 1(b) of the *MiFIR indirect clearing RTS*.

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

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

request of a firm and in respect of an indirect client of the firm, in respect of which the clearing member has agreed with the firm to provide segregation arrangements that satisfy the requirements of article 4(2)(b) of the EMIR L2 Regulation under which the assets and positions held for the account of that indirect client can be distinguished from those held for the account of other indirect clients of the firm, as referred to as an 'individually segregated indirect account' in:

- (i) recital 7 to the EMIR indirect clearing RTS; or
- (ii) recital 7 to the MiFIR indirect clearing RTS.

*omnibus client  
account*

as the context requires, either:

- (a) ~~an account~~ account maintained by a firm at an authorised central counterparty for more than one client of the firm in respect of which the authorised central counterparty has agreed with the firm to provide omnibus client segregation; or
- (b) ~~an account~~ account maintained by a firm for more than one indirect client at a clearing member in respect of which that clearing member has agreed with the firm to provide segregation arrangements that satisfy the requirements of article 4(2)(a) of the EMIR L2 Regulation at the request of a firm and in respect of more than one indirect client of the firm, as described in:
  - (i) article 4(2)(a) or 4(2)(b) of the EMIR L2 Regulation; or
  - (ii) article 4(2)(a) or 4(2)(b) of the MiFIR indirect clearing RTS.

## Annex B

## Amendments to the Client Assets sourcebook (CASS)

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

**7 Client money rules**

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**7.11 Treatment of client money**

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- 7.11.37 R *Client money* received or held by the *firm* and transferred to a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement* ceases to be *client money* for that *firm* and, if applicable, the *clearing member*, if the *clearing member* in accordance with the *EMIR indirect clearing default management obligations* or the *MiFIR indirect clearing default management obligations* (as applicable):
- (1) ~~remits payment to another *firm* or to another *clearing member* in accordance with default management procedures adopted by the *clearing member* which comply with the requirements of article 4(4) of the *EMIR L2 Regulation*; or~~
  - (2) ~~remits payment to the *indirect clients* of the *firm* in accordance with default management procedures adopted by the *clearing member* which comply with the requirements of articles 4(4) and 4(5) of the *EMIR L2 Regulation*.~~

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**7 Annex 3R Client transaction account acknowledgment letter template**

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

...

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

- (d) all money standing to the credit of the Client Transaction Account is payable to us in our capacity as trustee under the laws applicable to us[, except where, in accordance with your default management procedures in respect of a default by us, you transfer money credited to the Client Transaction Account to anyone other than us in accordance with ~~articles 4(4) or 4(5) of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012~~ the “EMIR Indirect Clearing Default Management Obligations” (as defined at the time of such default in the Financial Conduct Authority’s Handbook of Rules and Guidance)] [and/or] [ the “MiFIR Indirect Clearing Default Management Obligations” (as defined at the time of such default in the Financial Conduct Authority’s Handbook of Rules and Guidance)]];

...

**7 Annex 5G Guidance notes for acknowledgement letters (CASS 7.18)**

...

Indirect clearing arrangements

- 30 For use with *client transaction accounts* maintained with a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement*, the square-bracketed text in paragraph (d) of the template letter in CASS 7 Annex 3 should remain in the letter, and, depending on the instruments being indirectly cleared using those *client transaction accounts*, should include the reference to either or both the *EMIR indirect clearing default management obligations* and the *MiFIR indirect clearing default management obligations*.

...

**7A Client money distribution and transfer**

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**7A.2 Primary pooling events**

...

**7A.2.4A G ...**

- (1A) Under the *EMIR L2 Regulation* or the *MiFIR indirect clearing RTS*, 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* *EMIR indirect clearing default management obligations* or *MiFIR indirect clearing default management obligations*:

...

## TP 1.1 Transitional Provisions

(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
...					
10F	<u>CASS 7.18.3(3)</u>	<u>R</u>	<p><u>A firm will not be in breach of the requirement under this rule to not allow the relevant person to hold any client money in a client transaction account maintained by that person for the firm unless the firm has received a duly countersigned client transaction account acknowledgement letter from that person, provided that:</u></p> <p><u>(i) the breach is only in respect of a failure to use the template in CASS 7 Annex 3R, where such failure results only from amendments to the template made under the Client Assets (Indirect Clearing) Instrument 2017; and</u></p> <p><u>(ii) the relevant client transaction account is identified in a letter that was countersigned and returned to the firm before 3 January 2018, and which met the requirements of CASS 7.18.3R(3) immediately before the Client Assets (Indirect Clearing) Instrument 2017 came into force.</u></p>	<u>3 January 2018 to 3 March 2018</u>	<u>1 June 2015</u>