

CLIENT ASSETS (TERM DEPOSITS) INSTRUMENT 2018

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 22 January 2018.

Amendments to the Handbook

- D. The Client Assets sourcebook (CASS) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Client Assets (Term Deposits) Instrument 2018.

By order of the Board
18 January 2018

Annex A

Amendments to the Client Assets sourcebook (CASS)

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

7 Client money rules

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7.13 Segregation of client money

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7.13.13 R (1) An account which the *firm* uses to deposit *client money* under CASS 7.13.3R(1) to CASS 7.13.3R(3) must be a *client bank account*.

(2) ~~Each~~ In respect of each *client bank account* used by a *firm* must be held on terms under which to satisfy its obligation under CASS 7.13.3R(1) to (3):

(a) the relevant bank's contractual counterparty is must be the *firm* itself ~~that is subject to the requirement under CASS 7.13.3R;~~ and

(b) ~~unless the *firm* has agreed terms that comply with CASS 7.13.13R(3)~~ subject to paragraph (3A), the *firm* is must be able to make withdrawals of *client money* promptly and, in any event, within one *business day* of a request for withdrawal.

Transitional provision CASS TP 1.1.10AR applies to (2).

(3) ~~*Firms* may use *client bank accounts* held on terms under which withdrawals are, without exception, prohibited until the expiry of a fixed term or a notice period of a maximum of 30 days. [deleted]~~

(3A) Where the requirement under sub-paragraph (2)(b) is not satisfied and provided that the *client bank account* is not included in a *sub-pool*, a *firm* may use a *client bank account* from which it will be unable to make a withdrawal of *client money* until the expiry of a period lasting:

(a) up to 30 days; or

(b) provided the *firm* complies with CASS 7.13.14AR, from 31 to 95 days.

(4) Paragraphs (2)(b) and ~~(3)~~ (3A) do not apply in respect of *client money* received by a *firm* in its capacity as a *trustee firm*.

7.13.14 G CASS 7.13.13R(2)(b) and CASS 7.13.13R~~(3)~~(3A) do not prevent a *firm* from depositing *client money* on terms under which a withdrawal may be made before the expiry of a fixed term or a notice period (whatever the duration), including where such withdrawal would incur a penalty charge to the *firm*.

7.13.14 R A *firm* may only use one or more *client bank accounts* under CASS
A 7.13.13R(3A)(b) if:

(1) prior to using any such *client bank accounts*, it:

(a) produces a written policy that sets out:

(i) for each of its business lines, the maximum proportion of the *client money* held by the *firm* that the *firm* considers would be appropriate to hold in such *client bank accounts* having regard to the need to manage the risk of the *firm* being unable to access *client money* when required;

(ii) the *firm's* rationale for reaching its conclusion(s) under (i); and

(iii) the measures that it will put into place to comply with sub-paragraph (2)(a) of this *rule*, having regard to CASS 7.13.14CE; and

(b) provides each of its *clients* with a written explanation of the risks that arise as a result of the longer notice period for withdrawals that:

(i) is clear, fair and not misleading; and

(ii) in respect of the medium of the explanation, satisfies whichever of COBS 6.1.13R (Medium of disclosure) or COBS 6.1ZA.19EU (Medium of disclosure) applies to the *firm* in respect of its obligations to provide information to the *client*; and

(2) while the *firm* uses any such *client bank accounts*, it:

(a) takes appropriate measures to manage the risk of the *firm* being unable to access *client money* when required;

(b) keeps its written policy under sub-paragraph (1)(a) under review, amending it where necessary; and

(c) provides any of its *clients* to whom it has not previously provided the explanation under sub-paragraph (1)(b) with

such a written explanation before it starts to hold or receive client money for them.

- 7.13.14 R (1) A firm must make and retain a written record of:
- B
- (a) the written policy it produces under CASS 7.13.14AR(1)(a); and
- (b) each subsequent version of the written policy it produces as a result of CASS 7.13.14AR(2)(b).
- (2) The firm must make the record:
- (a) under sub-paragraph (1)(a) on the date it produces the written policy; and
- (b) under sub-paragraph (1)(b) on the date it produces the new version of the written policy.
- (3) The firm must keep each record under this rule for a period of five years after the earlier of:
- (a) the date on which the version of the policy to which the record relates was superseded; and
- (b) the date on which the firm ceased to use client bank accounts under CASS 7.13.13R(3A)(b).
- 7.13.14 E (1) Appropriate measures under CASS 7.13.14AR(2)(a) include the firm considering the need to make, and making where appropriate, quarterly or more frequent adjustments to the amount of client money held in client bank accounts under CASS 7.13.13R(3A)(b), taking into consideration the following factors:
- C
- (a) historic and expected future client money receipts and payments;
- (b) the firm's own analysis of its exposure to the risk of being unable to meet instructions from its clients in relation to client money that it holds, applying an appropriate set of time horizons and stress scenarios; and
- (c) the content of the firm's written policy under CASS 7.13.14AR(1)(a)(i) and (ii).
- (2) Compliance with (1) may be relied on as tending to establish compliance with CASS 7.13.14AR(2)(a).
- (3) Contravention of (1) may be relied on as tending to establish contravention of CASS 7.13.14AR(2)(a).

- 7.13.14 **D** **G** (1) Under CASS 7.13.14AR(2)(b) a *firm* should consider whether amendments to its written policy under CASS 7.13.14AR(1)(a) are needed for any reason, including in light of the *firm*'s analysis in the course of its measures under CASS 7.13.14AR(2)(a).
- (2) Each time a *firm* amends its written policy under CASS 7.13.14AR(1)(a), it should also update the rationale for the amended policy under CASS 7.13.14AR(1)(a)(ii).
- (3) The stress scenarios under CASS 7.13.14CE(1)(b) should include a variety of severe yet plausible institution-specific and market-wide liquidity shocks.
- 7.13.14E **G** (1) If a fixed term or notice period for a withdrawal from a *client bank account* is scheduled to expire on a *day* on which a *firm* would expect to be unable to make the withdrawal, and the result is that the total period for which the withdrawal is prevented is longer than that permitted under CASS 7.13.13R(3A)(a) or (b), then the *firm* would be in breach of that *rule*.
- (2) Such a situation could arise because the fixed term or notice period expires on a *day* which is not a *business day* for the relevant bank.
- (3) *Firms* should therefore schedule their withdrawals from *client bank accounts* under CASS 7.13.13R(3A)(a) and (b) to avoid such breaches.
- 7.13.14F **G** *Firms* that hold *client money* using a *client bank account* under CASS 7.13.13R(3A)(b) and to which SUP 16.14 (Client money and asset return) applies may need to fill in their *CMARs* in the way set out at SUP 16.14.7R (Reporting of 'unbreakable' client money deposits).

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10 CASS resolution pack

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10.3 Existing records forming part of the CASS resolution pack

- 10.3.1 **R** A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:

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- (5B) CASS 7.13.14BR (policy for use of *client bank accounts* under CASS 7.13.13R(3A)(b));

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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
...					
<u>10E</u> <u>A</u>	<u>The changes to CASS in Annex A of the Client Assets (Term Deposits) Instrument 2018</u>	<u>R</u>	<u>The changes effected by the provisions in the Annex listed in column (2) do not apply to any <i>firm</i> in respect of which:</u> <u>(1) prior to 22 January 2018 the <i>FCA</i> has directed under s.138A of the <i>Act</i> that CASS 7.13.13R(3) be applied with modifications; and</u> <u>(2) such a direction is in effect on 22 January 2018.</u>	<u>From 22 January 2018 to the date on which the relevant direction referred to in column (4) ceases to have effect.</u>	<u>22 January 2018</u>

Insert the following new row in the appropriate numerical position in Schedule 1 (Record keeping requirements). The text is not underlined.

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS 7.13.14BR	The <i>firm's</i> written policy produced under CASS 7.13.14AR(1)(a) in respect of the <i>firm's</i> use of <i>client bank accounts</i> under CASS 7.13.13R(3A)(b),	(i) For each of the <i>firm's</i> business lines, the maximum proportion of the <i>client money</i> held by the <i>firm</i> under CASS 7.13.3R(1) to (3) in respect of the business line that	On the date it creates the version of the policy	Five years after the earlier of: (1) the date on which the version of the policy was superseded; and (2) the date on which the <i>firm</i> ceased to use <i>client bank accounts</i> under

	and subsequent versions of it	<p>the <i>firm</i> considers would be appropriate to hold in such accounts;</p> <p>(ii) the <i>firm's</i> rationale for reaching its conclusion(s) under (i); and</p> <p>(iii) the means by which the <i>firm</i> will comply with CASS 7.13.14AR(2)(a), having regard to CASS 7.13.14CE.</p>		CASS 7.13.13R(3A)(b).
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Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

16 Reporting requirements

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16.14 Client money and asset return

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Reporting of ‘unbreakable’ client money deposits

- 16.14.7 R (1) This rule applies to a firm in respect of a CMAR required under SUP 16.14.3R where, at the end of the reporting period for the CMAR:
- (a) the firm holds client money using a client bank account under CASS 7.13.13R(3A)(b) (Segregation of client money); and
 - (b) the firm is unable to make a withdrawal from that client bank account until the expiry of a period lasting between 31 and 95 days.
- (2) A firm must use a separate row in data field 13 of its CMAR to report on any aggregate positive balance of client money held with a particular bank which, as at the end of the reporting period for the CMAR:
- (a) the firm is able to withdraw within a period of up to 30 days;
 - (b) the firm is unable to withdraw for a period of 31 to 60 days; and
 - (c) the firm is unable to withdraw for a period of 61 to 95 days.
- (3) (a) A firm must denote a balance falling under (2)(b) by using the words “unbreakable 31-60” in data field 13B of the CMAR.
- (b) A firm must denote a balance falling under (2)(c) by using the words “unbreakable 61-95” in data field 13B of the CMAR.
- 16.14.8 G (1) Because of SUP 16.14.7R(1)(b), SUP 16.14.7R would not apply to a firm where, for example:
- (a) it was using a client bank account under CASS 7.13.13R(3A)(b) that had a fixed term of over 30 days, but by the end of the reporting period for the CMAR there were fewer than 31 days remaining before the firm could withdraw

all the money in that account; or

(b) it was using a client bank account under CASS 7.13.13R(3A)(b) that had a notice period of over 30 days for withdrawals, but by the end of the reporting period for the CMAR the firm had already served notice for withdrawal for all the money in that account and there were fewer than 31 days remaining before the end of the notice period.

(2) Further guidance is available in SUP 16 Annex 29AG on completing data field 13 of the CMAR in cases where SUP 16.14.7R applies.

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

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Section 3 **Segregation of client money**

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13C *Client money* balances

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The balance shown in that row may also include any balance that is included in data field 17.

If SUP 16.14.7R applies to a firm:

it should use a separate row to report:

- the total balance of client money held at that institution which the firm is able to withdraw within a period of up to 30 days;
- the total balance of client money held at that institution which the firm is unable to withdraw for a period of 31 to 60 days (using the marker “[Bank Name] unbreakable 31-60” in data field 13B); and
- the total balance of client money held at that institution which the firm is unable to withdraw for a period of 61 to 95 days (using the marker “[Bank Name] unbreakable 61-95” in data field 13B);

the firm does not need to report a nil balance row if there is no client money held at that institution that falls within a particular category above; and

if the firm has given notice for a withdrawal from a client bank account under CASS 7.13.13R(3A), it should take account of the amount and date of that withdrawal when completing this data field.

Table 13C shows an example of how a firm that was using client bank accounts under CASS 7.13.13R(3A)(b) at the end of the reporting period should complete data field 13. In this example:

- the first row shows the firm to hold £230,000 of client money at Bank A Ltd that, at the end of the reporting period, the firm is able to withdraw within a period of up to 30 days;
- the second row shows the firm to hold £60,000 of client money at Bank A Ltd that, at the end of the reporting period, the firm is unable to withdraw for a period of 31 to 60 days;
- the third row shows the firm to hold £11,000 of client money at Bank A Ltd that, at the end of the reporting period, the firm is unable to withdraw for a period of 61 to 95 days; and
- the fourth row shows the firm to hold £50,000 of client money at Bank B Ltd that, at the end of the reporting period, the firm is unable to withdraw for a period of 61 to 95 days.

Depending on circumstances at the end of the reporting period, the total client money balance reported in each row could reflect the individual balances held in a range of client bank accounts and the periods for withdrawal for all or part of those individual balances. For example, the reported £230,000 in the first row of Table 13C could be made up of £200,000 in an instant access account, £20,000 in a fixed term deposit of 95 days (for which 10 days remain before client money can be withdrawn) and £10,000 in a notice account (for which 20 days remain before client money can be withdrawn). There may also be additional amounts in the notice account for which mandatory notice of over 30 days has not yet been given; these would be included in the balance reported in the second or third row, depending on the mandatory period of notice.

Table 13C

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
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<u>Type</u>	<u>Institution</u>	<u>Client money balances (£k)</u>	<u>Country of incorporation of the institution</u>	<u>Is this a group entity?</u>
<u>CRD Credit Institution</u>	<u>Bank A Ltd</u>	<u>230</u>	<u>GB</u>	<u>No</u>
<u>CRD Credit Institution</u>	<u>Bank A Ltd unbreakable 31-60</u>	<u>60</u>	<u>GB</u>	<u>No</u>
<u>CRD Credit Institution</u>	<u>Bank A Ltd unbreakable 61-95</u>	<u>11</u>	<u>GB</u>	<u>No</u>
<u>CRD Credit Institution</u>	<u>Bank B Ltd unbreakable 61-95</u>	<u>50</u>	<u>GB</u>	<u>No</u>

...

TP 1.2 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
...					
<u>12Z A</u>	<u>The changes to SUP in Annex B of the Client Assets (Term Deposits) Instrument 2018</u>	<u>G</u>	<u>As a result of CASS TP 1.1.10AAR the changes effected by the provisions in the Annex listed in column (2) would not apply to any firm in respect of which: (1) prior to 22 January 2018 the FCA has directed under s.138A of the Act that CASS 7.13.13R(3) be applied with</u>	<u>From 22 January 2018 to the date on which the relevant direction referred to in column (4) ceases to have effect</u>	<u>22 January 2018</u>

			<u>modifications; and</u> <u>(2) such a direction is in effect on 22 January 2018.</u>		
...					