

# Client Assets

## Client Assets

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# Chapter 1

## Application and general provisions



## 1.1 Application and purpose

### Application

1.1.1

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CASS applies to a *firm* as specified in the remainder of this chapter.

### Purpose

1.1.2

FCA

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The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules*, *evidential provisions* and *guidance* in CASS apply.



## 1.2 General application: who? what?

### General application: who?

1.2.1  
FCA

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The *rules* in ■ CASS 1.2 set out the maximum scope of this sourcebook. The application of CASS is modified for certain activities by ■ CASS 1.4. Also particular chapters or sections of CASS may have provisions which limit their application.

1.2.2  
FCA

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CASS applies to every *firm*, except as provided for in ■ CASS 1.2.3 R, with respect to the carrying on of:

- (1) all *regulated activities* except to the extent that a provision of CASS provides for a narrower application; and
- (2) *unregulated activities* to the extent specified in any provision of CASS.

1.2.3  
FCA

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CASS does not apply to:

- (1) an *ICVC*; or
- (2) an *incoming EEA firm* other than an *insurer*, with respect to its *passport activities*; or
- (3) a *UCITS qualifier*.

1.2.4  
FCA

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With the exception of this chapter and the *insurance client money chapter*, CASS does not apply to:

- (1) an *authorised professional firm* with respect to its *non-mainstream regulated activities*; or
- (2) the *Society*.

1.2.5

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The *insurance client money chapter* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, which are *insurance mediation activities*, if:

- (1) the *firm's designated professional body* has made rules which implement article 4 of the *Insurance Mediation Directive*;
- (2) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
- (3) the *firm* is subject to the rules in the form in which they were approved.

**General application: what?**

1.2.7

FCA

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- (1) The approach in *CASS* is to ensure that the *rules* in a chapter are applied to *firms* in respect of particular *regulated activities* or *unregulated activities*.
- (2) The scope of the *regulated activities* to which *CASS* applies is determined by the description of the activity as it is set out in the *Regulated Activities Order*. Accordingly, a *firm* will not generally be subject to *CASS* in relation to any aspect of its business activities which fall within an exclusion found in the *Regulated Activities Order*. The definition of *designated investment business* includes, however, activities within the exclusion from *dealing in investments as principal* in article 15 of the *Regulated Activities Order* (Absence of holding out etc).
- (3) The *custody chapter* and the *client money chapter* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *MiFID business* and/or *designated investment business*.
- (3A) The *collateral rules* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* (including *MiFID business*).
- (4) The *insurance client money chapter* applies in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *insurance mediation activities*.
- (5) [deleted]
- (6) The *mandate rules* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* (including *MiFID business*) and *insurance mediation activity*, except where it relates to a *reinsurance contract*.

**Application for retail clients, professional clients and eligible counterparties**

1.2.8

FCA

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- (1) *CASS* applies directly in respect of activities conducted with or for all categories of clients.
- (2) [deleted]



- (3) The *insurance client money chapter* does not generally distinguish between different categories of *client*. However, the term *consumer* is used for those to whom additional obligations are owed, rather than the term *retail client*. This is to be consistent with the *client* categories used in the Insurance: New Conduct of Business sourcebook.
- (4) Each provision in the *custody chapter* and the *client money chapter* makes it clear whether it applies to activities carried on for *retail clients*, *professional clients* or both. There is no further modification of the *rules* in these chapters in relation to activities carried on for *eligible counterparties*. Such *clients* are treated in the same way as other *professional clients* for the purposes of these *rules*.

1.2.11

FCA

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Where a *firm* is subject to the *client money chapter* and the *insurance client money chapter* , it must ensure segregation between *money* held under each chapter, including that *money* held under different chapters is held, in different, separately designated, *client bank accounts* or *client transaction accounts*.

1.2.12

FCA

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The purpose of the *rules* regarding the segregation of investments and *money* held under different regimes is to reduce the risk of confusion between assets held under different regimes either on an on-going basis or on the *failure* of a *firm* or a third party holding those assets.

1.2.13

FCA

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A *firm* may opt to hold under a single chapter *money* that would otherwise be held under different chapters (see ■ CASS 5.1.1 R (3) and ■ CASS 7.1.3 R ).



### 1.3 General application: where?

1.3.1  
FCA

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The *rules* in ■ CASS 1.3 set out the maximum territorial scope of this sourcebook. Particular rules may have express territorial limitations.

#### UK establishments: general

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1.3.2  
FCA

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Except as provided for in ■ CASS 1.2.3 R (2), CASS applies to every *firm*, in relation to *regulated activities* carried on by it from an *establishment* in the *United Kingdom*.

#### UK firms: passported activities from EEA branches

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1.3.3  
FCA

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CASS applies to every *UK firm*, other than an *insurer*, in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

1.3.4  
FCA

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CASS does not apply to an *incoming ECA provider* acting as such.



## 1.4 Application: particular activities

### Occupational pension scheme firms (OPS firms)

1.4.1

FCA

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In the case of *OPS activity* undertaken by an *OPS firm*, CASS applies with the following general modifications:

- (1) references to *customer* are to the *OPS* or *welfare trust*, whichever fits the case, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on; and
- (2) if an *OPS firm* is required by any *rule* in CASS to provide information to, or obtain consent from, a *customer*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *OPS* or *welfare trust* in respect of which that *firm* is acting, unless the context requires otherwise.

### Stock lending activity with or for clients

1.4.2

FCA

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- (1) The *custody chapter* and the *client money chapter* apply in respect of any *stock lending activity* that is undertaken with or for a *client* by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *stock lending activity*.

### Corporate finance business

1.4.3

FCA

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- (1) The *custody chapter* and the *client money chapter* apply in respect of *corporate finance business* that is undertaken by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *corporate finance business*.

### Oil market activity and energy market activity

1.4.4

FCA

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- (1) The *custody chapter* and the *client money chapter* apply in respect of *oil market activity* and other *energy market activity* that is undertaken by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *energy market activity*.

**Appointed representatives and tied agents**

1.4.5  
FCA

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- (1) Although CASS does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the Act). In determining whether a *firm* has complied with any provision of CASS, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the Act). Equally, CASS does not apply directly to *tied agents*. A *MiFID investment firm* will be fully and unconditionally responsible for the acts and omission of the *tied agents* that it appoints.
- (2) *Firms* should also refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives* and *tied agents*.

**Depositaries**

1.4.6  
FCA

R

The *client money chapter* does not apply to a *depositary* when acting as such.

1.4.6A  
FCA

G

*Firms acting as trustee or depositary of an AIF* are reminded of the obligations in ■ FUND 3.11 (Depositaries) and Chapter IV (Depositary) of the *AIFMD level 2 regulation* which apply in addition to those in CASS.

1.4.7  
FCA

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Subject to ■ CASS 1.4.6 R, CASS applies to a *depositary*, when acting as such, with the following general modification: '*client*' means '*trustee*', '*trust*', '*AIF*', '*AIFM acting on behalf of the AIF*', or '*collective investment scheme*', as appropriate.

1.4.8  
FCA

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- (1) Other than the *mandate rules*, CASS does not apply to a *trustee firm* which is not a *depositary*, or the trustee of a *personal pension scheme* or *stakeholder pension scheme*, unless *MiFID* applies to it, in which case the *custody chapter* and the *client money chapter* do apply.
- (2) In the *custody chapter*, the *client money chapter* and the *mandate rules*, '*client*' means '*trustee*', '*trust*', '*trust instrument*' or '*beneficiary*', as appropriate.

**Auction regulation bidding**

1.4.9  
FCA

R

Where a *firm* carries on *auction regulation bidding* it may elect to comply with CASS (but not ■ CASS 5) in respect of this activity, subject to the general modifications in ■ CASS 1.4.10 R.

1.4.10  
FCA

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Where a *firm* has made an election in accordance with ■ CASS 1.4.9 R, CASS is modified so that in relation to that *firm*:

- (1) each reference to:
  - (a) *designated investments*;

- (b) *safe custody assets*; and
  - (c) *contingent liability investments*;
- includes a reference to a *two-day emissions spot*;
- (2) each reference to *designated investment business* includes *auction regulation bidding*;
  - (3) each reference to *safeguarding and administering investments, including safeguarding and administration of assets (without arranging) and arranging safeguarding and administration of assets*, includes those activities where they are carried on in relation to a *two-day emissions spot*; and
  - (4) the reference in ■ CASS 6.2.3A R to an '*emissions auction product*' includes a *two-day emissions spot*;

1.4.11

FCA

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The effect of ■ CASS 1.4.10 R is that when a *firm* makes an election in accordance with ■ CASS 1.4.9 R:

- (1) a *two-day emissions spot* falls within the scope of each chapter in CASS (save for ■ CASS 5), for example:
  - (a) the reference in ■ CASS 6.1.1 R (1)(b) to *safeguarding and administering investments* is modified to include the activity of safeguarding and administering a *two-day emissions spot*; and
  - (b) any *money* that the *firm* receives or holds for or on behalf of a *client* in the course of or in connection with its *auction regulation bidding* activities will be treated as *client money* and so will need to be dealt with in accordance with the *client money rules*; and
- (2) that election also has effect in relation to *rules* and *guidance* elsewhere in the *Handbook*, including:
  - (a) ■ COBS 3 (Client categorisation);
  - (b) ■ COBS 6.1.7 R (Information concerning safeguarding of designated investments belonging to clients and client money);
  - (c) ■ COBS 6.1.11 R (Timing of disclosure);
  - (d) ■ COBS 16.4 (Statements of client designated investments or client money);
  - (e) ■ SUP 3 (Auditors);
  - (f) ■ SUP 10A.4.4 R (the *table of controlled functions*) and ■ SUP 10A.7.9 R (CASS operational oversight function (CF10a)); and
  - (g) ■ SUP 16.14 (Client money and asset return).

1.4.12

FCA

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The option to elect to comply with CASS set out in ■ CASS 1.4.9 R only applies to the extent the *firm* is carrying on *auction regulation bidding*. Where a *firm* is carrying on *MiFID business bidding*, CASS applies to it in accordance with the general application *rules* in CASS for a *firm* that is carrying on *MiFID business*.

1.4.13

FCA

**R**

Where a *firm* makes an election in accordance with ■ CASS 1.4.9 R it must:

- (1) make a written record of the election, including the date from which the election is to be effective, on the date it makes the election;
- (2) keep that record from the date that it is made for a period of five years after ceasing to use the opt in.

1.4.14

FCA

**R**

Where a *firm* that has opted in to CASS under ■ CASS 1.4.9 R subsequently decides to cease its use of that opt in it must:

- (1) make a written record of this decision, including the date from which the decision is to be effective, on the date it takes the decision;
- (2) keep that record from the date that it is made for a period of five years after the date it is to be effective; and
- (3) discharge any outstanding fiduciary obligations that had arisen because the *firm* had elected to comply with CASS.



## 1.5 Application: electronic media and E-Commerce

### Application to electronic media

1.5.1  
FCA

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■ GEN 2.2.14 R (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be "in writing" unless a contrary intention appears.

1.5.2  
FCA

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For any electronic communication with a *customer*, a *firm* should:

- (1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication; the arrangements should be proportionate and take into account the different levels of risk in a *firm's* business;
- (2) be able to demonstrate that the *customer* wishes to communicate using this form of media; and
- (3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.

1.5.3  
FCA

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*Firms* should note that ■ GEN 2.2.14 R does not affect any other legal requirement that may apply in relation to the form or manner of executing a *document* or agreement.





## Chapter 1A

# CASS firm classification and operational oversight

1A.1 Application

1A.1.1

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- (1) Subject to (2) , (3) and (4) , this chapter applies to a *firm* to which either or both of ■ CASS 6 (Custody rules) and ■ CASS 7 (Client money rules) applies.
- (2) In relation to a *firm* to which ■ CASS 5 (Client money: insurance mediation activity) and ■ CASS 7 (Client money rules) apply, this chapter does not apply in relation to *client money* that a *firm* holds in accordance with ■ CASS 5 .
- (3) The *rules* and *guidance* in ■ CASS 1A.2 apply to a *firm* even if at the date of the determination or, as the case may be, the notification, either or both of ■ CASS 6 and ■ CASS 7 do not apply to it, provided that:
  - (a) either or both of those chapters applied to it during part or all of the previous calendar year; or
  - (b) it projects that either or both will apply to it in the current calendar year.
- (4) This chapter does not apply to a *firm* to which only ■ CASS 6 applies, applied or is projected to apply, merely because it is, was, or is projected to be a *firm* which *arranges safeguarding and administration of assets*.

**1A.2 CASS firm classification**

1A.2.1

FCA

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The application of certain *rules* in this chapter depends upon the 'CASS firm type' within which a *firm* falls. The 'CASS firm types' are defined in accordance with ■ CASS 1A.2.7 R . The 'CASS firm type' within which a *firm* falls is also used to determine whether it is required to have the *CASS operational oversight function* described in ■ CASS 1A.3.1A R and whether the reporting obligations in ■ SUP 16.14 (Client money and asset return) apply to it .

1A.2.2

FCA

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- (1) A *firm* must once every year, and by the time it is required to make a notification in accordance with ■ CASS 1A.2.9R (4), determine whether it is a *CASS large firm*, *CASS medium firm* or a *CASS small firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in ■ CASS 1A.2.7 R.
- (2) For the purpose of determining its 'CASS firm type' in accordance with ■ CASS 1A.2.7 R, a *firm* must:
  - (a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year ending on 31 December and use that figure to determine its 'CASS firm type';
  - (b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year and use that figure to determine its 'CASS firm type'; but
  - (c) in either case, exclude from its calculation any *client money* held in accordance with ■ CASS 5 (Client money: insurance mediation activity).

1A.2.3

FCA

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For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given *day* during a calendar year a *firm* must:

- (1) in complying with ■ CASS 1A.2.2R (2)(a) , base its calculation upon internal reconciliations performed during the previous year;
- (2) in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or that *safe custody assets* into sterling at the previous *day's* closing spot exchange rate; and
- (3) in relation to *safe custody assets* only, calculate their total value using the previous *day's* closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

1A.2.4

FCA

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One of the consequences of ■ CASS 1A.2.2 R is that a *firm* that determines itself to be a *CASS small firm* or a *CASS medium firm* will, at least if it exceeds during the course of a calendar year either of the limits in ■ CASS 1A.2.7 R that applies to it, become in the next calendar year:

- (1) in the case of a *CASS small firm*, a *CASS medium firm* or a *CASS large firm*; and
- (2) in the case of a *CASS medium firm*, a *CASS large firm*.

1A.2.5

FCA

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(1) Notwithstanding ■ CASS 1A.2.2 R, provided that the conditions in (2) are satisfied a *firm* may elect to be treated:

- (a) as a *CASS medium firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS small firm*; and
- (b) as a *CASS large firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS medium firm*.

(2) The conditions to which (1) refers are that in either case:

- (a) the election is notified to the *FCA* in writing ;
- (b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and
- (c) the *FCA* has not objected.

1A.2.6

FCA

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■ CASS 1A.2.5 R provides a *firm* with the ability to opt in to a higher category of 'CASS firm type'. This may be useful for a *firm* whose holding of *client money* and *safe*

*custody assets* is near the upper categorisation limit for a *CASS small firm* or a *CASS medium firm*.

1A.2.7

FCA

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CASS firm types

CASS firm type	Highest total amount of <i>client money</i> held during the <i>firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year	Highest total value of <i>safe custody assets</i> held by the <i>firm</i> during the <i>firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year
<i>CASS large firm</i>	more than £1 billion	more than £100 billion
<i>CASS medium firm</i>	an amount equal to or greater than £1 million and less than or equal to £1 billion	an amount equal to or greater than £10 million and less than or equal to £100 billion
<i>CASS small firm</i>	less than £1 million	less than £10 million

1A.2.8A

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[deleted]

1A.2.9

FCA

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Once every calendar year a *firm* must notify to the *FCA* in writing the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the *day* specified in (1) to (4):

- (1) if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
- (2) if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
- (3) in any other case, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money* or *safe custody assets* ; and

(4) in every case, of its 'CASS firm type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3) .

**1A.2.10** **R** For the purpose of the annual notification to which **■** CASS 1A.2.9 R refers, a *firm* must apply the calculation rule in **■** CASS 1A.2.3 R .  
**FCA**

**1A.2.11** **G** For the purpose of **■** CASS 1A.2.9R (1), the *FCA* will treat that obligation as satisfied if a *firm* submitted a *CMAR* for each period within the previous calendar year in compliance with **■** SUP 16.14.3 R.  
**FCA**

**1A.2.12** **R** A *firm's* 'CASS firm type' and any change to it takes effect:  
**FCA**

- (1) if the *firm* notifies the *FCA* in accordance with **■** CASS 1A.2.9 R (1) or **■** CASS 1A.2.9 R (2) , on 1 February following the notification; or
- (2) if the *firm* notifies the *FCA* in accordance with **■** CASS 1A.2.9 R (3), on the *day* it begins to hold *client money* or *safe custody assets*; or
- (3) if the *firm* makes an election under **■** CASS 1A.2.5 R (1), and provided the conditions in **■** CASS 1A.2.5 R (2) are satisfied, on the *day* the notification made under **■** CASS 1A.2.5 R (2)(a) states that the election is intended to take effect.

**1A.2.13** **G** Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Client Assets Firm Classification".  
**FCA**



**1A.3 Responsibility for CASS operational oversight**

1A.3.1  
FCA

**R**

A CASS *small firm* must allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS; and
- (2) reporting to the *firm's governing body* in respect of that oversight

**CF10a: the CASS operational oversight function**

1A.3.1A  
FCA

**R**

A CASS *medium firm* and a CASS *large firm* must allocate to a *director* or *senior manager* the function of:

- (1) oversight of the operational effectiveness of that *firm's* systems and controls that are designed to achieve compliance with CASS;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a *CMAR* to the *FCA* in accordance with ■ SUP 16.14.

1A.3.1B  
FCA

**G**

■ CASS 1A.3.1A R describes the *controlled function* known as the *CASS operational oversight function*. The *table of controlled functions* in ■ SUP 10.4.5 R together with SUP 10.7.9 R specify the *CASS operational oversight function* as a *required function* for a *firm* to which ■ CASS 1A.3.1A R applies.

1A.3.1C  
FCA

**R**

If, at the time a *firm* becomes a CASS *medium firm* or a CASS *large firm* in accordance with ■ CASS 1A.2.12 R (1) or ■ CASS 1A.2.12 R (2), the *firm* is not able to comply with ■ CASS 1A.3.1A R because it has no *director* or *senior manager* who is an *approved person* in respect of the CASS *operational oversight function*, the *firm* must:

- (1) take the necessary steps to ensure that it complies with ■ CASS 1A.3.1A R as soon as practicable, which must at least include submitting an application for a *candidate* in respect of the CASS

*operational oversight function* within 30 *business days* of the *firm* becoming a *CASS medium firm* or a *CASS large firm*; and

- (2) until such time as it is able to comply with ■ CASS 1A.3.1A R, allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:
  - (a) oversight of the *firm's* operational compliance with CASS;
  - (b) reporting to the *firm's governing body* in respect of that oversight; and
  - (c) completing and submitting the *CMAR* to the *FCA* in accordance with ■ SUP 16.14.

1A.3.3  
FCA

R

- (1) Subject to (2), a *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with ■ CASS 1A.3.1 R , ■ CASS 1A.3.1A R or ■ CASS 1A.3.1C R (2) .
- (2) A *CASS small firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
- (3) A *firm* must ensure that the record made under this *rule* is retained for a period of five years after it is made.



# Chapter 3

# Collateral

## 3.1 Application and Purpose

### Application

3.1.1  
FCA

R

This chapter applies to a *firm* when it receives or holds assets in connection with an arrangement to secure the obligation of a *client* in the course of, or in connection with, its *designated investment business*, including *MiFID business*.

3.1.2  
FCA

G

*Firms* are reminded that this chapter does not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of this chapter is also dependent on the location from which the activity is undertaken (see ■ CASS 1.3.2 R and ■ CASS 1.3.3 R ).

3.1.3  
FCA

R

This chapter does not apply to a *firm* that has only a bare security interest (without rights to hypothecate) in the *client's* asset. In such circumstances, the *firm* must comply with the *custody rules* or *client money rules* as appropriate.

3.1.4  
FCA

G

For the purpose of this chapter only, a bare security interest in the *client's* asset gives a *firm* the right to realise the assets only on a *client's* default and without the right to use other than in default.

### Purpose

3.1.5  
FCA

G

The purpose of this chapter is to ensure that an appropriate level of protection is provided for those assets over which a *client* gives a *firm* certain rights. The arrangements covered by this chapter are those under which the *firm* is given a right to use the asset, and the *firm* treats the asset as if legal title and associated rights to that asset had been transferred to the *firm* subject only to an obligation to return equivalent assets to the *client* upon satisfaction of the *client's* obligation to the *firm*. The rights covered in this chapter do not include those arrangements by which the *firm* has only a bare security interest in the *client's* asset (in which case the *custody rules* or *client money rules* apply).

3.1.6  
FCA

G

Examples of the arrangements covered by this chapter include the taking of collateral by a *firm*, under the ISDA English Law (transfer of title) and the New York Law Credit Support Annexes (assuming the right to rehypothecate has not been disappplied).

3.1.7

FCA

G

This chapter recognises the need to apply a differing level of regulatory protection to the assets which form the basis of the two different types of arrangement described in

■ CASS 3.1.5 G. Under the bare security interest arrangement, the asset continues to belong to the *client* until the *firm's* right to realise that asset crystallises (that is, on the *client's* default). But under a "right to use arrangement", the *client* has transferred to the *firm* the legal title and associated rights to the asset, so that when the *firm* exercises its right to treat the asset as its own, the asset ceases to belong to the *client* and in effect becomes the *firm's* asset and is no longer in need of the full range of *client* asset protection. The *firm* may exercise its right to treat the asset as its own by, for example, clearly so identifying the asset in its own books and records.

3.1.8

FCA

G

A *prime brokerage firm* is reminded of the additional obligations in CASS 9.3.1R which apply to *prime brokerage agreements*.

## 3.2 Requirements

3.2.2

FCA

R

A *firm* that receives or holds a *client's* assets under an arrangement to which this chapter applies and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the *client*.

3.2.3

FCA

G

If the *firm* has the right to use the *client's* asset under a "right to use arrangement" but has not yet exercised its right to treat the asset as its own, the *client money rules* or the *custody rules* will continue to apply as appropriate until such time as the *firm* exercises its right, at which time ■ CASS 3.2.2 R will apply.

3.2.4

FCA

G

When appropriate, *firms* that enter into the arrangements with *retail clients* covered in this chapter will be expected to identify in the statement of *custody assets* sent to the *client* in accordance with ■ COBS 16.4 (Statements of client designated investments or client money) details of the assets which form the basis of the arrangements. Where the *firm* utilises global netting arrangements, a statement of the assets held on this basis will suffice.

## Chapter 5

# Client money: insurance mediation activity

5.1.1

FCA

R

## 5.1 Application

- (1) ■ CASS 5.1 to ■ CASS 5.6 apply, subject to (2), (3) and ■ CASS 5.1.3 R to ■ CASS 5.1.6 R, to a *firm* that receives or holds *money* in the course of or in connection with its *insurance mediation activity*.
- (2) ■ CASS 5.1 to ■ CASS 5.6 do not, subject to (3), apply:
  - (a) to a *firm* to the extent that it acts in accordance with the *client money chapter*; or
  - (b) to a *firm* in carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or
  - (c) to an *insurance undertaking* in respect of its *permitted activities*; or
  - (d) to a *managing agent* when acting as such; or
  - (e) with respect to *money* held by a *firm* which:
    - (i) is an *approved bank*; and
    - (ii) has requisite capital under article 4(4)(b) of the *Insurance Mediation Directive*;  
but only when held by the *firm* in an account with itself, in which case the *firm* must notify the *client* (whether through a *client agreement*, *terms of business*, or otherwise in writing) that:
      - (iii) *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
      - (iv) as a result, the *money* will not be held in accordance with ■ CASS 5.1 to ■ CASS 5.6.
- (3) A *firm* may elect to comply with:

- (a) ■ CASS 5.1 to ■ CASS 5.6 in respect of *client money* which it receives in the course of carrying on *insurance mediation activity* in respect of *reinsurance contracts*; and
- (b) ■ CASS 5.1, ■ CASS 5.2 and ■ CASS 5.4 to ■ CASS 5.6 in respect of *money* which it receives in the course of carrying on an activity which would be *insurance mediation activity*, and which *money* would be *client money*, but for article 72D of the *Regulated Activities Order* (Large risks contracts where risk situated outside the EEA);

but the election must be in respect of all the *firm's* business which consists of that activity.

(4) A *firm* must keep a record of any election in (3).

5.1.2

FCA

G

A *firm* that is an *approved bank*, and relies on the exemption under ■ CASS 5.1.1 R (2)(e), should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time.

5.1.3

FCA

R

An *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the rules of its *designated professional body* as specified in ■ CASS 5.1.4 R, in force on 14 January 2005, must comply with those rules and if it does so, it will be deemed to comply with ■ CASS 5.2 to ■ CASS 5.6.

5.1.4

FCA

R

For the purposes of ■ CASS 5.1.3 R the relevant rules are:

- (1) If regulated by the Law Society (of England and Wales);
  - (a) the Solicitors' Accounts Rules 1998; or
  - (b) where applicable, the Solicitors Overseas Practice Rules 1990;
- (2) if regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;
- (3) if regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

5.1.4A

FCA

R

- (1) A *firm* will, subject to (3), be deemed to comply with ■ CASS 5.3 to ■ CASS 5.6 if it receives or holds *client money* and it either:

- (a) in relation to a service charge, complies with the requirement to segregate such money in accordance with section 42 of the Landlord and Tenant Act 1987 ("the 1987 Act"); or
  - (b) in relation to money which is clients' money for the purpose of the Royal Institution of Chartered Surveyors' Rules of Conduct ("RICS rules") in force as at 14 January 2005, it complies with the requirement to segregate and account for such money in accordance with the RICS Members' Accounts rules.
- (2) Paragraph (1)(a) also applies to a *firm* in Scotland or in Northern Ireland if in acting as a property manager the *firm* receives or holds a service charge and complies (so far as practicable) with section 42 of the 1987 Act as if the requirements of that provision applied to it.
- (3) In addition to complying with (1), a *firm* must ensure that an account in which *money* held pursuant to the trust fund mentioned in section 42(3) of the 1987 Act or an account maintained in accordance with the RICS rules satisfies the requirements in ■ CASS 5.5.49 R to the extent that the *firm* will hold money as trustee or otherwise on behalf of its clients.

5.1.5  
FCA

**R** Subject to ■ CASS 5.1.5A R *money* is not *client money* when:

- (1) it becomes properly due and payable to the *firm*:
  - (a) for its own account; or
  - (b) in its capacity as agent of an *insurance undertaking* where the *firm* acts in accordance with ■ CASS 5.2; or
- (2) it is otherwise received by the *firm* pursuant to an arrangement made between an *insurance undertaking* and another *person* (other than a *firm*) by which that other *person* has authority to underwrite risks, settle claims or handle refunds of *premiums* on behalf of that *insurance undertaking* outside the *United Kingdom* and where the *money* relates to that business.

5.1.5A  
FCA

**R** ■ CASS 5.1.5 R (1)(b) and ■ CASS 5.1.5 R (2) do not apply, and hence *money* is *client money*, in any case where:

- (1) in relation to an activity specified in ■ CASS 5.2.3 R (1) (a) to ■ CASS 5.2.3 R (1) (c), the *insurance undertaking* has agreed that the *firm* may treat *money* which it receives and holds as agent of the *undertaking*, as *client money* and in accordance with the provisions of ■ CASS 5.3 to ■ CASS 5.6; and



- (2) the agreement in (1) is in writing and adequate to show that the *insurance undertaking* consents to its interests under the trusts (or in Scotland agency) in ■ CASS 5.3.2 R or ■ CASS 5.4.7 R being subordinated to the interests of the *firm's* other *clients*.

5.1.6  
FCA

**R** Except where a *firm* and an *insurance undertaking* have (in accordance with ■ CASS 5.1.5A R) agreed otherwise, for the purposes of ■ CASS 5.1 to ■ CASS 5.6 an *insurance undertaking* (when acting as such) with whom a *firm* conducts *insurance mediation activity* is not to be treated as a *client* of the *firm*.

5.1.7  
FCA

**G** (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and handling of *client money*. The *rules* in ■ CASS 5.1 to ■ CASS 5.6 also give effect to the requirement in article 4.4 of the *Insurance Mediation Directive* that all necessary measures should be taken to protect *clients* against the inability of an *insurance intermediary* to transfer *premiums* to an *insurance undertaking* or to transfer the proceeds of a claim or *premium* refund to the insured.

- (2) There are two particular approaches which *firms* can adopt which reflect options given in article 4.4. The first is to provide by law or contract for a transfer of risk from the *insurance intermediary* to the *insurance undertaking* (■ CASS 5.2). The second is that *client money* is strictly segregated by being transferred to *client accounts* that cannot be used to reimburse other creditors in the event of the *firm's* insolvency (■ CASS 5.3 and ■ CASS 5.4 provide different means of achieving such segregation). ■ CASS 5.1.5A R permits a *firm* subject to certain conditions to treat *money* which it collects as agent of an *insurance undertaking* as *client money*; the principle of strict segregation is, however, satisfied because such *undertakings* must agree to their interests being subordinated to the interests of the *firm's* other *clients*.

5.1.8  
FCA

**G** *Firms* which carry on *designated investment business* which may, for example, involve them handling *client money* in respect of life assurance business should refer to the *non-directive client money chapter* which includes provisions enabling *firms* to elect to comply solely with that chapter or with the *insurance client money chapter* in respect of that business. *Firms* that also carry on *MiFID* or *equivalent third country business* may elect to comply solely with the *MiFID client money chapter* with respect of *client money* in respect of which the *non-directive client money chapter* or the *insurance client money chapter* apply.

5.1.9  
FCA

**G** *Firms* are reminded that ■ SUP 3 contains provisions which are relevant to the preparation and delivery of reports by auditors.



## 5.2 Holding money as agent of insurance undertaking

### Introduction

5.2.1  
FCA

G

If a *firm* holds *money* as agent of an *insurance undertaking* then the *firm's clients* (who are not *insurance undertakings*) will be adequately protected to the extent that the *premiums* which it receives are treated as being received by the *insurance undertaking* when they are received by the agent and claims *money* and *premium* refunds will only be treated as received by the *client* when they are actually paid over. The *rules* in ■ CASS 5.2 make provision for agency agreements between *firms* and *insurance undertakings* to contain terms which make clear when *money* should be held by a *firm* as agent of an undertaking. *Firms* should refer to ■ CASS 5.1.5 R to determine the circumstances in which they may treat *money* held on behalf of *insurance undertakings* as *client money*.

5.2.2  
FCA

G

- (1) Agency agreements between *insurance intermediaries* and *insurance undertakings* may be of a general kind and facilitate the introduction of business to the *insurance undertaking*. Alternatively, an agency agreement may confer on the *intermediary* contractual authority to commit the *insurance undertaking* to risk or authority to settle claims or handle *premium* refunds (often referred to as "binding authorities"). ■ CASS 5.2.3 R requires that binding authorities of this kind must provide that the *intermediary* is to act as the agent of the *insurance undertaking* for the purpose of receiving and holding *premiums* (if the *intermediary* has authority to commit the *insurance undertaking* to risk), claims *monies* (if the *intermediary* has authority to settle claims on behalf of the *insurance undertaking*) and *premium* refunds (if the *intermediary* has authority to make refunds of *premium* on behalf of the *insurance undertaking*). Accordingly such *money* is not, except where a *firm* and an *insurance undertaking* have in compliance with ■ CASS 5.1.5A R agreed otherwise, *client money* for the purposes of ■ CASS 5.
- (2) Other introductory agency agreements may also, depending on their precise terms, satisfy some or all of the requirements of the type of written agreement described in ■ CASS 5.2.3 R. It is desirable that an *intermediary* should, before informing its *clients* (in accordance with ■ CASS 5.2.3 R (3)) that it will receive *money* as agent of an *insurance undertaking*, agree the terms of that notification with the relevant *insurance undertakings*.

5.2.3  
FCA

R

### Requirement for written agreement before acting as agent of insurance undertaking

- (1) A *firm* must not agree to:

- (a) *deal in investments as agent for an insurance undertaking in connection with insurance mediation; or*
  - (b) *act as agent for an insurance undertaking for the purpose of settling claims or handling premium refunds; or*
  - (c) *otherwise receive money as agent of an insurance undertaking; unless:*
    - (d) *it has entered into a written agreement with the insurance undertaking to that effect; and*
    - (e) *it is satisfied on reasonable grounds that the terms of the policies issued by the insurance undertaking to the firm's clients are likely to be compatible with such an agreement; and*
    - (f) (i) *(in the case of (a)) the agreement required by (d) expressly provides for the firm to act as agent of the insurance undertaking for the purpose of receiving premiums from the firm's clients; and*
      - (ii) *(in the case of (b)) the agreement required by (d) expressly provides for the firm to act as agent of the insurance undertaking for the purpose of receiving and holding claims money (or, as the case may be, premium refunds) prior to transmission to the client making the claim (or, as the case may be, entitled to the premium refund) in question.*
- (2) *A firm must retain a copy of any agreement it enters pursuant to (1) for a period of at least six years from the date on which it is terminated.*
- (3) *Where a firm holds, or is to hold, money as agent for an insurance undertaking it must ensure that it informs those of its clients which are not insurance undertakings and whose transactions may be affected by the arrangement (whether in its terms of business, client agreements or otherwise in writing) that it will hold their money as agent of the insurance undertaking and if necessary the extent of such agency and whether it includes all items of client money or is restricted, for example, to the receipt of premiums.*
- (4) *A firm may (subject to the consent of the insurance undertaking concerned) include in an agreement in (1) provision for client money received by its appointed representative, field representatives and other agents to be held as agent for the insurance undertaking (in which event it must ensure that the representative or agent provides the information to clients required by (3)).*

may be treated as *client money* and may (but not otherwise) be kept in a *client bank account*.

5.2.5

FCA

G

A *firm* which provides for the protection of a *client* (which is not an *insurance undertaking*) under ■ CASS 5.2 is relieved of the obligation to provide protection for that *client* under ■ CASS 5.3 or ■ CASS 5.4 to the extent of the items of *client money* protected by the agency agreement.

5.2.6

FCA

G

A *firm* may, in accordance with ■ CASS 5.2.3 R (4), arrange for an *insurance undertaking* to accept responsibility for the *money* held by its *appointed representatives*, *field representatives*, and other agents, in which event ■ CASS 5.5.18 R to ■ CASS 5.5.25 G will not apply.

5.2.7

FCA

G

A *firm* may operate on the basis of an agency agreement as provided for by ■ CASS 5.2.3 R for some of its *clients* and with protection provided by a *client money* trust in accordance with ■ CASS 5.3 or ■ CASS 5.4 for other *clients*. A *firm* may also operate on either basis for the same *client* but in relation to different transactions. A *firm* which does so should be satisfied that its administrative systems and controls are adequate and, in accordance with ■ CASS 5.2.4 G, should ensure that *money* held for both types of *client* and business is kept separate.



## 5.3 Statutory trust

5

### 5.3.1

FCA

G

Section 137B(1) of the Act (Miscellaneous ancillary matters) provides that *rules* may make provision which results in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). ■ CASS 5.3.2 R creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of failure of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

### 5.3.2

FCA

R

A *firm* (other than a *firm* acting in accordance with ■ CASS 5.4) receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:

- (1) for the purposes of and on the terms of ■ CASS 5.3, ■ CASS 5.5 and the *client money (insurance) distribution rules*;
- (2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such) for whom that *money* is held, according to their respective interests in it;
- (3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* according to their respective interests in it;
- (4) on the failure of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2) and (3); and
- (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

### 5.3.3

FCA

G

- (1) A *firm* which holds *client money* can discharge its obligation to ensure adequate protection for its *clients* in respect of such *money* by complying with ■ CASS 5.3 which provides for such *money* to be held by the *firm* on the terms of a trust imposed by the *rules*.
- (2) The trust imposed by ■ CASS 5.3 is limited to a trust in respect of *client money* which a *firm* receives and holds. The consequential and supplementary requirements in ■ CASS 5.5 are designed to secure the proper segregation and

maintenance of adequate *client money* balances. In particular, ■ CASS 5.5 does not permit a *firm* to use *client money* balances to provide credit for *clients* (or potential *clients*) such that, for example, their *premium* obligations may be met in advance of the *premium* being remitted to the *firm*. A *firm* wishing to provide credit for *clients* may however do so out of its own funds.



## 5.4 Non-statutory client money trust

### Introduction

5.4.1  
FCA

G

- (1) ■ CASS 5.4 permits a *firm*, which has adequate resources, systems and controls, to declare a trust on terms which expressly authorise it, in its capacity as trustee, to make advances of credit to the *firm's clients*. The *client money* trust required by ■ CASS 5.4 extends to such debt obligations which will arise if the *firm*, as trustee, makes credit advances, to enable a *client's premium* obligations to be met before the *premium* is remitted to the *firm* and similarly if it allows claims and *premium* refunds to be paid to the *client* before receiving remittance of those *monies* from the *insurance undertaking*.
- (2) ■ CASS 5.4 does not permit a *firm* to make advances of credit to itself out of the *client money* trust. Accordingly, ■ CASS 5.4 does not permit a *firm* to withdraw *commission* from the *client money* trust before it has received the *premium* from the *client* in relation to the *non-investment insurance contract* which generated the *commission*.

### Voluntary nature of this section

5.4.2  
FCA

R

A *firm* may elect to comply with the requirements in this section, and may do so for some of its business whilst complying with ■ CASS 5.3 for other parts.

5.4.3  
FCA

R

A *firm* is not subject to ■ CASS 5.3 when and to the extent that it acts in accordance with this section.

### Conditions for using the non-statutory client money trust

5.4.4  
FCA

R

A *firm* may not handle *client money* in accordance with the *rules* in this section unless each of the following conditions is satisfied:

- (1) the *firm* must have and maintain systems and controls which are adequate to ensure that the *firm* is able to monitor and manage its *client money* transactions and any credit risk arising from the operation of the trust arrangement and, if in accordance with ■ CASS 5.4.2 R a *firm* complies with both the rules in ■ CASS 5.3 and ■ CASS 5.4, such systems and controls must extend to both arrangements;

- (2) the *firm* must obtain, and keep current, written confirmation from its auditor that it has in place systems and controls which are adequate to meet the requirements in (1);
- (3) the *firm* must designate a *manager* with responsibility for overseeing the *firm's* day to day compliance with the systems and controls in (1) and the *rules* in this section;
- (4) the *firm* (if, under the terms of the non-statutory trust, it is to handle *client money* for *retail customers*) must have and at all times maintain capital resources of not less than £50,000 calculated in accordance with ■ MIPRU 4.4.1 R; and
- (5) in relation to each of the *clients* for whom the *firm* holds *money* in accordance with ■ CASS 5.4, the *firm* must take reasonable steps to ensure that its *terms of business* or other *client agreements* adequately explain, and obtain the *client's* informed consent to, the *firm* holding the *client's money* in accordance with ■ CASS 5.4 (and in the case of a *client* which is an *insurance undertaking* (when acting as such) there must be an agreement which satisfies ■ CASS 5.1.5A R).

5.4.5  
FCA

**G** The amount of a *firm's* capital resources maintained for the purposes of ■ MIPRU 4.2.11 R will also satisfy (in whole or in part) the requirement in ■ CASS 5.4.4 R (4).

5.4.6  
FCA

**R** **Client money to be received under the non-statutory client money trust**  
Except to the extent that a *firm* acts in accordance with ■ CASS 5.3, a *firm* must not receive or hold any *client money* unless it does so as trustee (or, in Scotland, as agent) and has properly executed a deed (or equivalent formal document) to that effect.

5.4.7  
FCA

**R** **Contents of trust deed**  
The deed referred to in ■ CASS 5.4.6 R must provide that the *money* (and, if appropriate, *designated investments*) are held:

- (1) for the purposes of and on the terms of:
  - (a) ■ CASS 5.4;
  - (b) the applicable provisions of ■ CASS 5.5; and
  - (c) the *client money (insurance) distribution rules*
- (2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such) for whom that *money* is held, according to their respective interests in it;



- (3) after all valid claims in (2) have been met for *clients* which are *insurance undertakings* according to their respective interests in it;
- (4) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2) and (3); and
- (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

5.4.8

FCA

R

The deed (or equivalent formal document) referred to in ■ CASS 5.4.6 R may provide that:

- (1) the *firm*, acting as trustee (or, in Scotland, as agent), has power to make advances or give credit to *clients* or *insurance undertakings* from *client money*, provided that it also provides that any debt or other obligation of a *client* or resulting obligation of an *insurance undertaking*, in relation to an advance or credit, is held on the same terms as ■ CASS 5.4.7 R;
- (2) the benefit of a letter of credit or unconditional guarantee provided by an *approved bank* on behalf of a *firm* to satisfy any shortfall in the *firm's client money* resource (as calculated under ■ CASS 5.5.65 R) when compared with the *firm's client money* requirement (as calculated under ■ CASS 5.5.66 R or as appropriate ■ CASS 5.5.68 R), is held on the same terms as ■ CASS 5.4.7 R.

5



## 5.5 Segregation and the operation of client money accounts

### Application

5.5.1  
FCA

**R** Unless otherwise stated each of the provisions in ■ CASS 5.5 applies to *firms* which are acting in accordance with ■ CASS 5.3 (Statutory trust) or ■ CASS 5.4 (Non-statutory trust).

5.5.2  
FCA

**G** One purpose of ■ CASS 5.5 is to ensure that, unless otherwise permitted, *client money* is kept separate from the *firm's* own *money*. Segregation, in the event of a *firm's* failure, is important for the effective operation of the trust that is created to protect *client money*. The aim is to clarify the difference between *client money* and general creditors' entitlements in the event of the *failure* of the *firm*.

### Requirement to segregate

5.5.3  
FCA

**R** A *firm* must, except to the extent permitted by ■ CASS 5.5, hold *client money* separate from the *firm's* *money*.

### Money due to a client from a firm

5.5.4  
FCA

**R** If a *firm* is liable to pay *money* to a *client*, it must as soon as possible, and no later than one *business day* after the *money* is due and payable:

- (1) pay it into a *client bank account*, in accordance with ■ CASS 5.5.5 R; or
- (2) pay it to, or to the order of, the *client*.

### Segregation

5.5.5  
FCA

**R** A *firm* must segregate *client money* by either:

- (1) paying it as soon as is practicable into a *client bank account*;  
or
- (2) paying it out in accordance with ■ CASS 5.5.80 R.

5.5.6  
FCA

**G** The FCA expects that in most circumstances it will be practicable for a *firm* to pay *client money* into a *client bank account* by not later than the next *business day* after receipt.

**5.5.7** **G** Where an insurance transaction involves more than one *firm* acting in a chain such that for example *money* is transferred from a "producing" broker who has received *client money* from a *consumer* to an intermediate broker and thereafter to an *insurance undertaking*, each broker *firm* will owe obligations to its immediate *client* to segregate *client money* which it receives (in this example the producing broker in relation to the *consumer* and the intermediate broker in relation to the producing broker). A *firm* which allows a third party broker to hold or control *client money* will not thereby be relieved of its fiduciary obligations (see ■ CASS 5.5.34 R).

**5.5.8** **R** A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted at intervals of not more than twenty five *business days* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.

**5.5.9** **R** A *firm* must not hold *money* other than *client money* in a *client bank account* unless it is:

- (1) a minimum sum required to open the account, or to keep it open; or
- (2) *money* temporarily in the account in accordance with ■ CASS 5.5.16 R (Withdrawal of commission and mixed remittance); or
- (3) interest credited to the account which exceeds the amount due to *clients* as interest and has not yet been withdrawn by the *firm*.

**5.5.10** **R** If it is prudent to do so to ensure that *client money* is protected (and provided that doing so would otherwise be in accordance with ■ CASS 5.5.63 R (1)(b)(ii)), a *firm* may pay into, or maintain in, a *client bank account money* of its own, and that *money* will then become *client money* for the purposes of ■ CASS 5 and the *client money (insurance) distribution rules*.

**5.5.11** **R** A *firm*, when acting in accordance with ■ CASS 5.3 (statutory trust), must ensure that the total amount of *client money* held for each *client* in any of the *firm's client money bank accounts* is positive and that no payment is made from any such account for the benefit of a *client* unless the *client* has provided the *firm* with cleared funds to enable the payment to be made.

**5.5.11A** **G** When a *firm* acts in accordance with ■ CASS 5.3 (Statutory trust) it should not make a payment from the *client bank account* unless it is satisfied on reasonable grounds that the *client* has provided it with cleared funds. Accordingly, a *firm* should normally allow a reasonable period of time for cheques to clear. If a withdrawal is made and the *client's* cheque is subsequently dishonoured it will be the *firm's* responsibility to make good the *shortfall* in the account as quickly as possible (and without delay whilst a cheque is re-presented).

5.5.12

FCA

R

If *client money* is received by the *firm* in the form of an automated transfer, the *firm* must take reasonable steps to ensure that:

- (1) the *money* is received directly into a *client bank account*; and
- (2) if *money* is received directly into the *firm's* own account, the *money* is transferred into a *client bank account* no later than the next *business day* after receipt.

5.5.13

FCA

G

A *firm* can hold *client money* in either a *general client bank account* (■ CASS 5.5.38 R) or a *designated client bank account* (■ CASS 5.5.39 R). 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. A *firm* holds *client money* in *designated client bank accounts* for those *clients* who requested that 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. 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 (insurance) distribution rules*.

#### Non-statutory trust - segregation of designated investments

5.5.14

FCA

R

- (1) A *firm* which handles *client money* in accordance with the *rules* for a non-statutory trust in ■ CASS 5.4 may, to the extent it considers appropriate, but subject to (2), satisfy the requirement to segregate *client money* by segregating or arranging for the segregation of *designated investments* with a value at least equivalent to such *money* as would otherwise have been segregated into a *client bank account*.
- (2) A *firm* may not segregate *designated investments* unless it:
  - (a) takes reasonable steps to ensure that any *consumers* whose *client money* interests may be protected by such segregation are aware that the *firm* may operate such an arrangement and have (whether through its *terms of business*, client agreements, or otherwise in writing) an adequate opportunity to give their informed consent;
  - (b) ensures that the terms on which it will segregate *designated investments* include provision for it to take responsibility for meeting any *shortfall* in its *client money* resource which is attributable to falls in the market value of a segregated *investment*;
  - (c) provides in the deed referred to in ■ CASS 5.4.6 R for *designated investments* which it segregates to be held by it on the terms of the non-statutory trust; and
  - (d) takes reasonable steps to ensure that the segregation is at all times in conformity with the range of permitted

*investments, general principles and conditions in*

■ CASS 5 Annex 1 R.

5.5.15

FCA

G

A *firm* which takes advantage of ■ CASS 5.5.14 R will need to consider whether its *permission* should include the *permitted activity of managing investments*. If the *firm* is granted a power to manage with discretion the funds over which it is appointed as trustee under the trust deed required by ■ CASS 5.4 then it will be likely to need a *permission to manage investments*. It is unlikely to need such a permission, however, if it is merely granted a power to invest but the deed stipulates that the funds may only be managed with discretion by another *firm* (which has the necessary *permission*). Such an arrangement would not preclude the *firm* holding *client money* as trustee from appointing another *firm* (or *firms*) as manager and setting an appropriate strategy and overall asset allocation, subject to the limits set out in ■ CASS 5 Ann 1 R. A *firm* may also need to consider whether it needs a *permission* to operate a *collective investment scheme* if any of its *clients* are to participate in the income or gains arising from the acquisition or disposal of *designated investments*.

**Withdrawal of commission and mixed remittance**

5.5.16

FCA

R

(1) A *firm* may draw down *commission* from the *client bank account* if:

- (a) it has received the *premium* from the *client* (or from a third party *premium* finance provider on the *client's* behalf) ; and
- (b) this is consistent with the *firm's terms of business* which it maintains with the relevant *client* and the *insurance undertaking* to whom the *premium* will become payable;

and the *firm* may draw down *commission* before payment of the *premium* to the *insurance undertaking*, provided that the conditions in (a) and (b) are satisfied.

(2) If a *firm* receives a *mixed remittance* (that is part *client money* and part other *money*), it must:

- (a) pay the full sum into a *client bank account* in accordance with ■ CASS 5.5.5 R; and
- (b) pay the *money* that is not *client money* out of the *client bank account* as soon as reasonably practicable and in any event by not later than twenty-five *business days* after the day on which the remittance is cleared (or, if earlier, when the *firm* performs the *client money* calculation in accordance with ■ CASS 5.5.63 R (1)).

5.5.17

FCA

G

(1) As soon as *commission* becomes due to the *firm* (in accordance with ■ CASS 5.5.16 R (1)) it must be treated as a remittance which must be withdrawn in accordance with ■ CASS 5.5.16 R (2). The procedure required by ■ CASS 5.5.16 R will also apply where *money* is due and payable to the *firm* in respect of *fees* due from *clients* (whether to the *firm* or other professionals).

(2) *Firms* are reminded that *money* received in accordance with ■ CASS 5.2 must not, except where a *firm* and an *insurance undertaking* have (in accordance

5.5.18  
FCA

R

with ■ CASS 5.1.5A R) agreed otherwise, be kept in a *client bank account*. *Client money* received from a third-party *premium* finance provider should, however, be segregated into a *client bank account*.

- (3) Where a *client* makes payments of *premium* to a *firm* in instalments, ■ CASS 5.5.16 R (1) applies in relation to each instalment.
- (4) If a *firm* is unable to match a remittance with a transaction it may be unable to immediately determine whether the payment comprises a *mixed remittance* or is *client money*. In such cases the remittance should be treated as *client money* while the *firm* takes steps to match the remittance to a transaction as soon as possible.

### Appointed representatives, field representatives and other agents

- (1) Subject to (4), a *firm* must in relation to each of its *appointed representatives, field representatives* and other agents comply with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R (Immediate segregation) or with ■ CASS 5.5.23 R (Periodic segregation and reconciliation).
- (2) A *firm* must in relation to each *representative* or other agent keep a record of whether it is complying with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R or with ■ CASS 5.5.23 R.
- (3) A *firm* is, but without affecting the application of ■ CASS 5.5.19 R to ■ CASS 5.5.23 R, to be treated as the recipient of *client money* which is received by any of its *appointed representatives, field representatives* or other agents.
- (4) Paragraphs (1) to (3) do not apply in relation to an *appointed representative, field representative* or other agent to which (if it were a *firm*) ■ CASS 5.1.4AR (1) or ■ CASS 5.1.4AR (2) would apply, but subject to the *representative* or agent maintaining an account which satisfies the requirements of ■ CASS 5.5.49 R to the extent that the *representative* or agent will hold *client money* on trust or otherwise on behalf of its *clients*.

### Immediate segregation

5.5.19  
FCA

R

A *firm* must establish and maintain procedures to ensure that *client money* received by its *appointed representatives, field representatives, or other agents* of the *firm* is:

- (1) paid into a *client bank account* of the *firm* in accordance with ■ CASS 5.5.5 R; or
- (2) forwarded to the *firm*, or in the case of a *field representative* forwarded to a specified business address of the *firm*, so as to ensure that the *money* arrives at the specified business address by the close of the third *business day*.



**5.5.20** **G** For the purposes of **■** CASS 5.5.19 R, the *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* no later than the next *business day* after receipt (*business day* two) in order for it to reach that *firm* or specified business address by the close of the third *business day*. Procedures requiring the *client money* to be sent to the *firm* or the specified business address of the *firm* by first class post no later than the next *business day* after receipt would meet the requirements of **■** CASS 5.5.19 R.

**5.5.21** **R** If *client money* is received in accordance with **■** CASS 5.5.19 R, the *firm* must ensure that its *appointed representatives*, *field representatives* or other agents keep *client money* (whether in the form of *premiums*, *claims money* or *premium* refunds) separately identifiable from any other *money* (including that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.

**5.5.22** **G** A *firm* which acts in accordance with **■** CASS 5.5.19 R to **■** CASS 5.5.21 R need not comply with **■** CASS 5.5.23 R.

**Periodic segregation and reconciliation**

**5.5.23** **R** (1) A *firm* must, on a regular basis, and at reasonable intervals, ensure that it holds in its *client bank account* an amount which (in addition to any other amount which it is required by these *rules* to hold) is not less than the amount which it reasonably estimates to be the aggregate of the amounts held at any time by its *appointed representatives*, *field representatives*, and other agents.

- (2) A *firm* must, not later than ten *business days* following the expiry of each period in (1):
- (a) carry out, in relation to each such *representative* or agent, a reconciliation of the amount paid by the *firm* into its *client bank account* with the amount of *client money* actually received and held by the *representative* or other agent; and
  - (b) make a corresponding payment into, or withdrawal from, the account.

**5.5.24** **G** (1) **■** CASS 5.5.23 R allows a *firm* with *appointed representatives*, *field representatives* and other agents to avoid the need for the *representative* to forward *client money* on a daily basis but instead requires a *firm* to segregate into its *client money bank account* amounts which it reasonably estimates to be sufficient to cover the amount of *client money* which the *firm* expects its *representatives* or agents to receive and hold over a given period. At the expiry of each such period, the *firm* must obtain information about the actual amount of *client money* received and held by its *representatives* so that it can reconcile the amount of *client money* it has segregated with the amounts actually received and held by its *representatives* and agents. The frequency at which this reconciliation is to be performed is not prescribed but it must be at regular and reasonable intervals having regard to the nature and frequency of the *insurance business* carried on by its *representatives* and agents. For example, a period of six *months* might be appropriate for a *representative* which conducts business involving the receipt

of *premiums* only infrequently whilst for other *representatives* a periodic reconciliation at *monthly* intervals (or less) may be appropriate.

- (2) Where a *firm* operates on the basis of ■ CASS 5.5.23 R, the *money* which is segregated into its *client bank account* is *client money* and will be available to meet any obligations owed to the *clients* of its *representatives* who for this purpose are treated as the *firm's clients*.

5.5.25  
FCA

**G** A *firm* which acts in accordance with ■ CASS 5.5.23 R need not comply with ■ CASS 5.5.19 R to ■ CASS 5.5.21 R.

**Client entitlements**

5.5.26  
FCA

**R** A *firm* must take reasonable steps to ensure that it is notified promptly of any receipt of *client money* in the form of *client entitlements*.

5.5.27  
FCA

**G** The 'entitlements' mentioned in ■ CASS 5.5.26 R refer to any kind of miscellaneous payment which the *firm* receives on behalf of a *client* and which are due to be paid to the *client*.

5.5.28  
FCA

**R** When a *firm* receives a *client entitlement* on behalf of a *client*, it must pay any part of it which is *client money*:

- (1) for *client entitlements* received in the *United Kingdom*, into a *client bank account* in accordance with ■ CASS 5.5.5 R; or
- (2) for *client entitlements* received outside the *United Kingdom*, into any bank account operated by the *firm*, provided that such *client money* is:
  - (a) paid to, or in accordance with, the instructions of the *client* concerned; or
  - (b) paid into a *client bank account* in accordance with ■ CASS 5.5.5 R (1), as soon as possible but no later than five *business days* after the *firm* is notified of its receipt.

5.5.29  
FCA

**R** A *firm* must take reasonable steps to ensure that a *client entitlement* which is *client money* is allocated within a reasonable period of time after notification of receipt.

**Interest and investment returns**

5.5.30  
FCA

**R** (1) In relation to *consumers*, a *firm* must, subject to (2), take reasonable steps to ensure that its *terms of business* or other client agreements adequately explain, and where necessary obtain a *client's* informed consent to, the treatment of interest and, if applicable, investment returns, derived from its holding of *client money* and any segregated *designated investments*.



(2) In respect of interest earned on *client bank* accounts, (1) does not apply if a *firm* has reasonable ground to be satisfied that in relation to *insurance mediation activities* carried on with or for a *consumer* the amount of interest earned will be not more than £20 per transaction.

5.5.31 **G** If no interest is payable to a *consumer*, that fact should be separately identified in the *firm's* client agreement or *terms of business*.  
**FCA**

5.5.32 **G** If a *firm* outlines its *policy* on its payment of interest, it need not necessarily disclose the actual rates prevailing at any particular time; the *firm* should disclose the terms, for example, LIBOR plus or minus 'x' percentage points.  
**FCA**

**Transfer of client money to a third party**

5.5.33 **G** ■ CASS 5.5.34 R sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to another broker for the purposes of the *client's* transaction being effected. A *firm* can only discharge itself from its fiduciary duty by acting in accordance with, and in the circumstances permitted by, ■ CASS 5.5.80 R.  
**FCA**

5.5.34 **R** A *firm* may allow another *person*, such as another broker to hold or control *client money*, but only if:  
**FCA**

- (1) the *firm* transfers the *client money* for the purpose of a transaction for a *client* through or with that *person*; and
- (2) in the case of a *consumer*, that *customer* has been notified (whether through a client agreement, *terms of business*, or otherwise in writing) that the *client money* may be transferred to another *person*.

5.5.35 **G** In relation to the notification required by ■ CASS 5.5.34 R (2), there is no need for a *firm* to make a separate disclosure in relation to each transfer made.  
**FCA**

5.5.36 **G** A *firm* should not hold excess *client money* with another broker. It should be held in a *client bank account*.  
**FCA**

**Client bank accounts**

5.5.37 **G** The *FCA* generally requires a *firm* to place *client money* in a *client bank account* with an *approved bank*. However, a *firm* which is an *approved bank* must not (subject to ■ CASS 5.1.1 R (2)(e)) hold *client money* in an account with itself.  
**FCA**

5.5.38 **R** (1) A *firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.  
**FCA**

5

- (2) If the *firm* is a bank, it must not hold *client money* in an account with itself.

5.5.39  
FCA

R

A *firm* may open one or more *client bank accounts* in the form of a *designated client bank account*. Characteristics of these accounts are that:

- (1) the account holds *money* of one or more *clients*;
- (2) the account includes in its title the word 'designated';
- (3) the *clients* whose *money* is in the account have each consented in writing to the use of the bank with which the *client money* is to be held; and
- (4) in the event of the *failure* of that bank, the account is not pooled with any other type of account unless a *primary pooling event* occurs.

5.5.40  
FCA

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- (1) A *firm* may operate as many *client* accounts as it wishes.
- (2) A *firm* is not obliged to offer its *clients* the facility of a *designated client bank account*.
- (3) Where a *firm* holds *money* in a *designated client bank account*, the effect upon either:
  - (a) the *failure* of a bank where any other *client bank account* is held; or
  - (b) the *failure* of a third party to whom *money* has been transferred out of any other *client bank account* in accordance with ■ CASS 5.5.34 R;

(each of which is a *secondary pooling event*) is that *money* held in the *designated client bank account* is not pooled with *money* held in any other account. Accordingly *clients* whose *money* is held in a *designated client bank account* will not share in any *shortfall* resulting from a *failure* of the type described in (a) or (b).

- (4) Where a *firm* holds *client money* in a *designated client bank account*, the effect upon the failure of the *firm* (which is a *primary pooling event*) is that *money* held in the *designated client bank account* is pooled with *money* in every other *client bank account* of the *firm*. Accordingly, *clients* whose *money* is held in a *designated client bank account* will share in any *shortfall* resulting from a *failure* of the *firm*.

5.5.41  
FCA

R

A *firm* may hold *client money* with a bank that is not an *approved bank* if all the following conditions are met:

- (1) the *client money* relates to one or more insurance transactions which are subject to the law or market practice of a jurisdiction outside the *United Kingdom*;

- (2) because of the applicable law or market practice of that overseas jurisdiction, it is not possible to hold the *client money* in a *client bank account* with an *approved bank*;
- (3) the *firm* holds the *money* with such a bank for no longer than is necessary to effect the transactions;
- (4) the *firm* notifies each relevant *client* and has, in relation to a *consumer* , a client agreement, or *terms of business* which adequately explain that:
  - (a) *client money* will not be held with an *approved bank*;
  - (b) in such circumstances, the legal and regulatory regime applying to the bank with which the *client money* is held will be different from that of the *United Kingdom* and, in the event of a *failure* of the bank, the *client money* may be treated differently from the treatment which would apply if the *client money* were held by an *approved bank* in the *United Kingdom*; and
  - (c) if it is the case, the particular bank has not accepted that it has no right of set-off or counterclaim against *money* held in a *client bank account*, in respect of any sum owed on any other account of the *firm*, notwithstanding the *firm's* request to the bank as required by ■ CASS 5.5.49 R; and
- (5) the *client money* is held in a designated bank account.

**A firm's selection of a bank**

5.5.42

FCA

G

A *firm* owes a duty of care to a *client* when it decides where to place *client money*. The review required by ■ CASS 5.5.43 R is intended to ensure that the risks inherent in placing *client money* with a bank are minimised or appropriately diversified by requiring a *firm* to consider carefully the bank or banks with which it chooses to place *client money*. For example, a *firm* which is likely only to hold relatively modest amounts of *client money* will be likely to be able to satisfy this requirement if it selects an *authorised* UK clearing bank.

5.5.43

FCA

R

Before a *firm* opens a *client bank account* and as often as is appropriate on a continuing basis (and no less than once in each financial year), it must take reasonable steps to establish that the bank is appropriate for that purpose.

5.5.44

FCA

G

A *firm* should consider diversifying placements of *client money* with more than one bank where the amounts are, for example, of sufficient size to warrant such diversification.

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5.5.45

FCA

G

When considering where to place *client money* and to determine the frequency of the appropriateness test under ■ CASS 5.5.43 R, a *firm* should consider taking into account, together with any other relevant matters:

- (1) the capital of the bank;

- (2) the amount of *client money* placed, as a proportion of the bank's capital and *deposits*;
- (3) the credit rating of the bank (if available); and
- (4) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the bank and its *affiliated companies*.

5.5.46

FCA

G

A *firm* will be expected to perform due diligence when opening a *client bank account* with a bank that is authorised by an *EEA regulator*. Any continuing assessment of that bank may be restricted to verification that it remains authorised by an *EEA regulator*.

### Group banks

5.5.47

FCA

R

Subject to ■ CASS 5.5.41 R, a *firm* that holds or intends to hold *client money* with a bank which is in the same *group* as the *firm* must:

- (1) undertake a continuous review in relation to that bank which is at least as rigorous as the review of any bank which is not in the same *group*, in order to ensure that the decision to use a *group* bank is appropriate for the *client*;
- (2) disclose in writing to its *client* at the outset of the *client* relationship (whether by way of a client agreement, *terms of business* or otherwise in writing) or, if later, not less than 20 *business days* before it begins to hold *client money* of that *client* with that bank:
  - (a) that it is holding or intends to hold *client money* with a bank in the same *group*;
  - (b) the identity of the bank concerned; and
  - (c) that the *client* may choose not to have his *money* placed with such a bank.

5.5.48

FCA

R

If a *client* has notified a *firm* in writing that he does not wish his *money* to be held with a bank in the same *group* as the *firm*, the *firm* must either:

- (1) place that *client money* in a *client bank account* with another bank in accordance with ■ CASS 5.5.38 R; or
- (2) return that *client money* to, or pay it to the order of, the *client*.

**Notification and acknowledgement of trust (banks)**

5.5.49

FCA

R

When a *firm* opens a *client bank account*, the *firm* must give or have given written notice to the bank requesting the bank to acknowledge to it in writing:

- (1) that all *money* standing to the credit of the account is held by the *firm* as trustee (or if relevant in Scotland, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against *money* in that account in respect of any sum owed to it on any other account of the *firm*; and
- (2) that the title of the account sufficiently distinguishes that account from any account containing *money* that belongs to the *firm*, and is in the form requested by the *firm*.

5.5.50

FCA

R

In the case of a *client bank account* in the *United Kingdom*, if the bank does not provide the acknowledgement referred to in ■ CASS 5.5.49 R within 20 *business days* after the *firm* dispatched the notice, the *firm* must withdraw all *money* standing to the credit of the account and deposit it in a *client bank account* with another bank as soon as possible.

5.5.51

FCA

R

In the case of a *client bank account* outside the *United Kingdom*, if the bank does not provide the acknowledgement referred to in ■ CASS 5.5.49 R within 20 *business days* after the *firm* dispatched the notice, the *firm* must notify the *client* of this fact as set out in ■ CASS 5.5.53 R.

5.5.52

FCA

G

*Firms* are reminded of the provisions of ■ CASS 5.5.41 R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

**Notification to clients: use of an approved bank outside the United Kingdom**

5.5.53

FCA

R

A *firm* must not hold, for a *consumer*, *client money* in a *client bank account* outside the *United Kingdom*, unless the *firm* has previously disclosed to the *consumer* (whether in its *terms of business*, client agreement or otherwise in writing):

- (1) that his *money* may be deposited in a *client bank account* outside the *United Kingdom* but that the *client* may notify the *firm* that he does not wish his *money* to be held in a particular jurisdiction;
- (2) that in such circumstances, the legal and regulatory regime applying to the *approved bank* will be different from that of the *United Kingdom* and, in the event of a *failure* of the bank, his *money* may be treated in a different manner from that which would apply if the *client money* were held by a bank in the *United Kingdom*; and
- (3) if it is the case, that a particular bank has not accepted that it has no right of set-off or counterclaim against *money* held in a *client*

*bank account* in respect of any sum owed on any other account of the *firm*, notwithstanding the *firm's* request to the bank as required by ■ CASS 5.5.49 R.

5.5.54 FCA G There is no need for a *firm* to make a separate disclosure under ■ CASS 5.5.53 R (1) and ■ CASS 5.5.53 R (2) in relation to each jurisdiction.

5.5.55 FCA G *Firms* are reminded of the provisions of ■ CASS 5.5.41 R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

5.5.56 FCA R If a *client* has notified a *firm* in writing before entering into a transaction that *client money* is not to be held in a particular jurisdiction, the *firm* must either:

- (1) hold the *client money* in a *client bank account* in a jurisdiction to which the *client* has not objected; or
- (2) return the *client money* to, or to the order of, the *client*.

5.5.57 FCA G *Firms* are reminded of the provisions of ■ CASS 5.5.41 R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

**Notification to consumers : use of broker or settlement agent outside the United Kingdom**

5.5.58 FCA R A *firm* must not undertake any transaction for a *consumer* that involves *client money* being passed to another broker or *settlement agent* located in a jurisdiction outside the *United Kingdom*, unless the *firm* has previously disclosed to the *consumer* (whether in its *terms of business*, client agreement or otherwise in writing):

- (1) that his *client money* may be passed to a *person* outside the *United Kingdom* but the *client* may notify the *firm* that he does not wish his *money* to be passed to a *money* in a particular jurisdiction; and
- (2) that, in such circumstances, the legal and regulatory regime applying to the broker or *settlement agent* will be different from that of the *United Kingdom* and, in the event of a *failure* of the broker or *settlement agent*, this *money* may be treated in a different manner from that which would apply if the *money* were held by a broker or *settlement agent* in the *United Kingdom*.

5.5.59 FCA G There is no need for a *firm* to make a separate disclosure under ■ CASS 5.5.58 R in relation to each jurisdiction.



5.5.60

FCA

R

If a *client* has notified a *firm* before entering into a transaction that he does not wish his *money* to be passed to another broker or *settlement agent* located in a particular jurisdiction, the *firm* must either:

- (1) hold the *client money* in a *client bank account* in the *United Kingdom* or a jurisdiction to which the *money* has not objected and pay its own *money* to the *firm's* own account with the broker, agent or counterparty; or
- (2) return the *money* to, or to the order of, the *client*.

**Notification to the FCA: failure of a bank, broker or settlement agent**

5.5.61

FCA

R

On the *failure* of a third party with which *client money* is held, a *firm* must notify the *FCA*:

- (1) as soon as it becomes aware, of the *failure* of any bank, other broker or *settlement agent* or other entity with which it has placed, or to which it has passed, *client money*; and
- (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.

**Client money calculation and reconciliation**

5.5.62

FCA

G

- (1) In order that a *firm* may check that it has sufficient *money* segregated in its *client bank account* (and held by third parties) to meet its obligations to *clients* it is required periodically to calculate the amount which should be segregated (the *client money* requirement) and to compare this with the amount shown as its *client money* resource. This calculation is, in the first instance, based upon the *firm's* accounting records and is followed by a reconciliation with its banking records. A *firm* is required to make a payment into the *client bank account* if there is a shortfall or to remove any *money* which is not required to meet the *firm's* obligations.
- (2) For the purpose of calculating its *client money* requirement two alternative calculation methods are permitted, but a *firm* must use the same method in relation to ■ CASS 5.3 and ■ CASS 5.4. The first refers to individual *client* cash balances; the second to aggregate amounts of *client money* recorded on a *firm* business ledgers.

5.5.63

FCA

R

- (1) A *firm* must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 *business days*:
  - (a) check whether its *client money* resource, as determined by ■ CASS 5.5.65 R on the previous *business day*, was at least equal to the *client money* requirement, as determined by ■ CASS 5.5.66 R or ■ CASS 5.5.68 R, as at the close of business on that day; and
  - (b) ensure that:

- (i) any *shortfall* is paid into a *client bank account* by the close of business on the day the calculation is performed; or
  - (ii) any excess is withdrawn within the same time period unless ■ CASS 5.5.9 R or ■ CASS 5.5.10 R applies to the extent that the *firm* is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and
- (c) include in any calculation of its *client money* requirement (whether calculated in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R) any amounts attributable to *client money* received by its *appointed representatives*, *field representatives* or other agents and which, as at the date of calculation, it is required to segregate in accordance with ■ CASS 5.5.19 R.

- (2) A *firm* must within ten *business days* of the calculation in (a) reconcile the balance on each *client bank account* as recorded by the *firm* with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.
- (3) When any discrepancy arises as a result of the reconciliation carried out in (2), the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the *firm*.
- (4) While a *firm* is unable to resolve a difference arising from a reconciliation, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and either pay its own *money* into a relevant account or make a withdrawal of any excess.

5.5.64

FCA

R

A *firm* must keep a record of whether it calculates its *client money* requirement in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R and may only use one method during each annual accounting period (which method must be the same in relation to both ■ CASS 5.3 and ■ CASS 5.4).



**Client money resource**

5.5.65

FCA

R

The *client money* resource, for the purposes of ■ CASS 5.5.63 R (1)(a), is:

- (1) the aggregate of the balances on the *firm's client money bank accounts*, as at the close of business on the previous *business day* and, if held in accordance with ■ CASS 5.4, *designated investments* (valued on a prudent and consistent basis) together with *client money* held by a third party in accordance with ■ CASS 5.5.34 R; and
- (2) (but only if the *firm* is comparing the *client money* resource with its *client's money* (accruals) requirement in accordance with ■ CASS 5.5.68 R) to the extent that *client money* is held in accordance with ■ CASS 5.3 (statutory trust), insurance debtors (which in this case cannot include pre-funded items); and
- (3) (but only if the *firm* is comparing the *client money* resource with its *client's money* (accruals) requirement in accordance with ■ CASS 5.5.68 R) to the extent that *client money* is held in accordance with ■ CASS 5.4 (non-statutory trust):
  - (a) all insurance debtors (including pre-funded items whether in respect of advance *premiums*, claims, *premium* refunds or otherwise) shown in the *firm's* business ledgers as amounts due from *clients*, *insurance undertakings* and other *persons*, such debts valued on a prudent and consistent basis to the extent required to meet any shortfall of the *client money* resource compared with the *firm's client money* requirement; and
  - (b) the amount of any letter of credit or unconditional guarantee provided by an *approved bank* and held on the terms of the trust (or, in Scotland, agency), limited to:
    - (i) the maximum sum payable by the *approved bank* under the letter of credit or guarantee; or
    - (ii) if less, the amount which would, apart from the benefit of the letter of credit or guarantee, be the *shortfall* of the *client money* resource compared with the *client money* requirement under ■ CASS 5.5.66 R or ■ CASS 5.5.68 R.

But a *firm* may treat a transaction with an *insurance undertaking* which is not a *UK domestic firm* as complete, and accordingly may (but only for the purposes of the calculation in (1)) disregard any unreconciled items of *client money* transferred to an intermediate broker relating to such a transaction, if:

- (4) it has taken reasonable steps to ascertain whether the transaction is complete; and

- (5) it has no reason to consider the transaction has not been completed; and
- (6) a period of at least 12 *months* has elapsed since the *money* was transferred to the intermediate broker for the purpose of the transaction.

**Client money (client balance) requirement**

5.5.66  
FCA

**R** A *firm's client money (client balance)* requirement is the sum of, for all *clients*, the individual *client* balances calculated in accordance with **■ CASS 5.5.67 R** but excluding any individual balances which are negative (that is, uncleared *client* funds).

5.5.67  
FCA

**R** The individual *client* balance for each *client* must be calculated as follows:

- (1) the amount paid by a *client* to the *client* (to include all *premiums*); plus
- (2) the amount due to the *client* (to include all claims and *premium* refunds); plus
- (3) the amount of any interest or investment returns due to the *client*;
- (4) less the amount paid to *insurance undertakings* for the benefit of the *client* (to include all *premiums* and *commission* due to itself) (i.e. *commissions* that are due but have not yet been removed from the client account);
- (5) less the amount paid by the *firm* to the *client* (to include all claims and *premium* refunds);

and where the individual *client* balance is found by the sum ((1) + (2) + (3)) - ((4) + (5)).

**Client money (accruals) requirement**

5.5.68  
FCA

**R** A *firm's client money (accruals)* requirement is the sum of the following:

- (1) all insurance creditors shown in the *firm's* business ledgers as amounts due to *insurance undertakings, clients* and other *persons*; plus
- (2) unearned commission being the amount of commission shown as accrued (but not shown as due and payable) as at the date of the calculation (a prudent estimate must be used if the *firm* is unable to produce an exact figure at the date of the calculation).

5.5.69 **R** A *firm* which calculates its *client money* requirement on the preceding basis must in addition and within a reasonable period be able to match its *client money* resource to its requirement by reference to individual *clients* (with such matching being achieved for the majority of its *clients* and transactions).  
**FCA**

**Failure to perform calculations or reconciliation**

5.5.76 **R** A *firm* must notify the *FCA* immediately if it is unable to, or does not, perform the calculation required by ■ CASS 5.5.63 R (1) .  
**FCA**

5.5.77 **R** A *firm* must notify the *FCA* immediately it becomes aware that it may not be able to make good any *shortfall* identified by ■ CASS 5.5.63 R (1) by the close of business on the day the calculation is performed and if applicable when the reconciliation is completed .  
**FCA**

**Discharge of fiduciary duty**

5.5.79 **G** The purpose of ■ CASS 5.5.80 R to ■ CASS 5.5.83 R is to set out those situations in which a *firm* will have fulfilled its contractual and fiduciary obligations in relation to any *client money* held for or on behalf of its *client*, or in relation to the *firm's* ability to require repayment of that *money* from a third party .  
**FCA**

5.5.80 **R** Money ceases to be *client money* if it is paid:  
**FCA**

- (1) to the *client*, or a duly authorised representative of the *client*; or
- (2) to a third party on the instruction of or with the specific consent of the *client*, but not if it is transferred to a third party in the course of effecting a transaction, in accordance with ■ CASS 5.5.34 R; or
- (3) into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
- (4) to the *firm* itself, when it is due and payable to the *firm* in accordance with ■ CASS 5.1.5 R (1); or
- (5) to the *firm* itself, when it is an excess in the *client bank account* as set out in ■ CASS 5.5.63 R (1)(b)(ii).

5.5.81 **G** (1) A *firm* which pays professional fees (for example to a loss adjuster or valuer) on behalf of a *client* may do so in accordance with ■ CASS 5.5.80 R (2) where this is done on the instruction of or with the consent of the *client*.  
**FCA**

(2) When a *firm* wishes to transfer *client money* balances to a third party in the course of transferring its business to another *firm*, it should do so in compliance with ■ CASS 5.5.80 R and a transferee *firm* will come under an obligation to treat any *client money* so transferred in accordance with these *rules*.

(3) *Firms* are reminded of their obligation, when transferring *money* to third parties in accordance with ■ CASS 5.5.34 R, to use appropriate skill, care and judgment

in their selection of third parties in order to ensure adequate protection of *client money*.

- (4) *Firms* are reminded that, in order to calculate their *client money* resource in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.65 R, they will need to have systems in place to produce an accurate accounting record showing how much *client money* is being held by third parties at any point in time. For the purposes of ■ CASS 5.5.63 R to ■ CASS 5.5.65 R, however, a *firm* must assume that *monies* remain at an intermediate broker awaiting completion of the transaction unless it has received confirmation that the transaction has been completed.

5.5.82  
FCA

**R** When a *firm* draws a cheque or other payable order to discharge its fiduciary duty under ■ CASS 5.5.80 R, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.

5.5.83  
FCA

**R** For the purposes of ■ CASS 5.1.5 R, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum will become due and payable to the *firm* or may be withdrawn from a *client bank account* by way of reimbursement.

**Records**

5.5.84  
FCA

**R** A *firm* must ensure that proper records, sufficient to show and explain the *firm's* transactions and commitments in respect of its *client money*, are made and retained for a period of three years after they were made.



## 5.6 Client money distribution

### Application

5.6.1  
FCA

R

- (1) ■ CASS 5.6 (the *client money (insurance) distribution rules*) applies to a *firm* that in holding *client money* is subject to ■ CASS 5.3 (statutory trust) or ■ CASS 5.4 (Non-statutory trust) when a *primary pooling event* or a *secondary pooling event* occurs.
- (2) In the event of there being any discrepancy between the terms of the trust as required by ■ CASS 5.4.7 R (1)(c) and the provisions of ■ CASS 5.6, the latter shall apply.

5.6.2  
FCA

G

- (1) The *client money (insurance) distribution rules* have force and effect on any *firm* that holds *client money* in accordance with ■ CASS 5.3 or ■ CASS 5.4. Therefore, they may apply to a *UK branch* of a non-EEA *firm*. In this case, the *UK branch* of the *firm* may be treated as if the *branch* itself is a free-standing entity subject to the *client money (insurance) distribution rules*.
- (2) *Firms* that act in accordance with ■ CASS 5.4 (Non-statutory trust) are reminded that the *client money (insurance) distribution rules* should be given effect in the terms of trust required by ■ CASS 5.4.

5.6.3  
FCA

G

The *client money (insurance) distribution rules* seek to facilitate the timely return 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*.

### Failure of the authorised firm: primary pooling event

5.6.4  
FCA

G

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.

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33

5.6.5  
FCA

R

A *primary pooling event* occurs:

- (1) on the *failure* of the *firm*; or

- (2) on the vesting of assets in a trustee in accordance with an 'assets requirement' imposed under 55P(1)(b) or (c) (as the case may be) of the Act; or
- (3) on the coming into force of a requirement for all client money held by the firm; or
- (4) when the firm notifies, or is in breach of its duty to notify, the FCA, in accordance with ■ CASS 5.5.77 R, that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a secondary pooling event.

5.6.6

FCA

R

■ CASS 5.6.5 R (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.

#### Pooling and distribution

5.6.7

FCA

R

If a primary pooling event occurs:

- (1) client money held in each client money account of the firm is treated as pooled;
- (2) the firm must distribute that client money in accordance with ■ CASS 5.3.2 R or, as appropriate, ■ CASS 5.4.7 R, so that each client receives a sum which is rateable to the client money entitlement calculated in accordance with ■ CASS 5.5.66 R; and
- (3) the firm must, as trustee, call in and make demand in respect of any debt due to the firm as trustee, and must liquidate any designated investment, and any letter of credit or guarantee upon which it relies for meeting any shortfall in its client money resource and the proceeds shall be pooled together with other client money as in (1) and distributed in accordance with (2).

5.6.8

FCA

G

A client's main claim is for the return of client money held in a client bank account. A client may claim for any shortfall against money held in a firm's own account. For that claim, the client will be an unsecured creditor of the firm.

#### Client money received after the failure of the firm

5.6.9

FCA

R

Client money received by the firm (including in its capacity as trustee under ■ CASS 5.4 (Non-statutory trust)) after a primary pooling event must not be pooled with client money held in any client money account operated by the firm 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 completed at the time of the *primary pooling event*; or
- (2) it is *money* relating to a *client*, for whom the *client money* requirement, calculated in accordance with ■ CASS 5.5.66 R or ■ CASS 5.5.68 R, shows that *money* is due from the *client* to the *firm* including in its capacity as trustee under ■ CASS 5.4 (Non-statutory trust) at the time of the *primary pooling event*.

5.6.10

FCA

G

*Client money* received after the *primary pooling event* relating to an incomplete transaction should be used to complete that transaction.

5.6.11

FCA

R

If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:

- (1) pay the full sum into the separate *client bank account* opened in accordance with ■ CASS 5.6.9 R; and
- (2) pay the *money* that is not *client money* out of that *client bank account* into the *firm's* own bank account within one *business day* of the *day* on which the remittance is cleared.

5.6.12

FCA

G

Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

#### Failure of a bank, other broker or settlement agent: secondary pooling events

5.6.13

FCA

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.

5.6.14

FCA

R

A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under ■ CASS 5.5.34 R.

5.6.15

FCA

R

■ CASS 5.6.20 R to ■ CASS 5.6.31 R do not apply if, on the *failure* of the third party, 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.

5.6.16

FCA

G

When *client money* is transferred to a third party, a *firm* continues to owe a fiduciary duty to the *client*. However, consistent with a fiduciary's responsibility (whether as agent or trustee) for third parties under general law, a *firm* will not be held responsible for a *shortfall* in *client money* caused by a third party *failure* if it has complied with those duties.



5

5.6.17  
FCA

G

To comply with its duties, the *firm* should show proper care:

- (1) in the selection of a third party; and
- (2) when monitoring the performance of the third party.

In the case of *client money* transferred to a bank, by demonstrating compliance with ■ CASS 5.5.43 R, a *firm* should be able to demonstrate that it has taken reasonable steps to comply with its duties.

**Failure of a bank**

5.6.18  
FCA

G

When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with ■ CASS 5.6.20 R. The *firm* would be expected to reflect the *shortfall* that arises at the *firm's* bank in the periodic *client money* calculation by reducing the *client money* resource and *client money* requirement accordingly.

5.6.19  
FCA

G

The *client money (insurance) distribution 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* as a different bank, should not suffer the loss of the bank that has *failed*.

**Failure of a bank: pooling**

5.6.20  
FCA

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, then:

- (1) in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 5.6.22 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply;
- (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 5.6.24 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply; and
- (3) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* is not pooled with any other *client money*.

5.6.21  
FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* are held then in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 5.6.24 R and ■ CASS 5.6.26 R to ■ CASS 5.6.28 G will apply.



5.6.22

FCA

**R** Money held in each *general client bank account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in a *general client bank account* of the *firm*, 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 in (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 until the *client* is repaid; and
- (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

5.6.23

FCA

**G** The term 'which should have been held' is a reference to the *failed* bank's failure (and elsewhere, as appropriate, is a reference to the other *failed* third party's failure) to hold the *client money* at the time of the pooling event.

5.6.24

FCA

**R** For each *client* with a *designated client bank account* held at the *failed* bank:

- (1) any *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* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients* 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* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

5.6.25

FCA

**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*.

**Client money received after the failure of a bank**

5.6.26

FCA

R

*Client money* received by the *firm* after the *failure* of a bank, that would otherwise have been paid into a *client bank account* at that bank:

- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
  - (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.

5.6.27

FCA

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 remittance is cleared.

5.6.28

FCA

G

Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

**Failure of an intermediate broker or settlement agent: pooling**

5.6.29

FCA

R

If a *secondary pooling event* occurs as a result of the *failure* of another broker or *settlement agent* to whom the *firm* has transferred *client's money* then, in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 5.6.26 R to ■ CASS 5.6.28 G and ■ CASS 5.6.30 R will apply.

5.6.30

FCA

R

*Money* held in each *general client bank account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client*

money is held in a *general client bank account* of the *firm*, 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;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* intermediate broker or *settlement agent* until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with ■ CASS 5.5.63 R to ■ CASS 5.5.69 R.

**Client money received after the failure of a broker or settlement agent** .....

5.6.31

FCA

R

*Client money* received by the *firm* after the *failure* of another broker or *settlement agent*, to whom the *firm* has transferred *client money* that would otherwise have been paid into a *client bank account* at that broker or *settlement agent*:

- (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* broker or *settlement agent*; and
- (2) must be, subject to (1), placed in a separate *client bank account* 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.

**Notification on the failure of a bank, other broker or settlement agent** .....

5.6.32

FCA

R

The provisions of ■ CASS 5.5.61 R apply.



## 5.8 Safe keeping of client's documents and other assets

### Application

5.8.1

FCA

R

- (1) ■ CASS 5.8 applies to a *firm* (including in its capacity as trustee under ■ CASS 5.4) which in the course of *insurance mediation activity* takes into its possession for safekeeping any *client title documents* (other than *documents* of no value) or other tangible assets belonging to *clients*.
- (2) ■ CASS 5.8 does not apply to a *firm* when:
  - (a) carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or
  - (b) acting in accordance with ■ CASS 6 (Custody rules).

### Purpose

5.8.2

FCA

G

The *rules* in this section amplify the obligation in *Principle 10* which requires a *firm* to arrange adequate protection for *client's* assets. *Firms* carrying on *insurance mediation activities* may hold, on a temporary or longer basis, *client title documents* such as *policy documents* (other than *policy documents* of no value) and also items of physical property if, for example, a *firm* arranges for a valuation. The *rules* are intended to ensure that *firms* make adequate arrangements for the safe keeping of such property.

### Requirement

5.8.3

FCA

R

- (1) A *firm* which has in its possession or control *documents* evidencing a *client's* title to a *contract of insurance* or other similar *documents* (other than documents of no value) or which takes into its possession or control tangible assets belonging to a *client*, must take reasonable steps to ensure that any such *documents* or items of property:
  - (a) are kept safe until they are delivered to the *client*;
  - (b) are not delivered or given to any other *person* except in accordance with instructions given by the *client*; and that a record is kept as to the identity of any such *documents* or items of property and the dates on which they were received by the *firm* and delivered to the *client* or other *person*.

- 
- (2) *A firm must retain the record required in (1) for a period of three years after the document or property concerned is delivered to the client or other person.*



**Segregation of designated investments: permitted investments, general principles and conditions (This Annex belongs to **■** CASS 5.5.14 R)**

**FCA**

- 1** The general principles which must be followed when client money segregation includes designated investments:
- (a) there must be a suitable spread of investments;
  - (b) investments must be made in accordance with an appropriate liquidity strategy;
  - (c) the investments must be in accordance with an appropriate credit risk policy;
  - (d) any foreign exchange risks must be prudently managed.

**2** Table of permitted designated investments for the purpose of CASS 5.5.14 R (1).

Investment type	Qualification
1. Negotiable <i>debt security</i> (including a certificate of deposit)	<p>(a) Remaining term to maturity of 5 years or less; and</p> <p>(b) The issuer or <i>investment</i> must have a short-term credit rating of A1 by Standard and Poor's, or P1 by Moody's Investor Services, or F1 by Fitch if the instrument has a remaining term to maturity of 366 days or less; or a minimum long term credit rating of AA- by Standards and Poor's, or Aa3 by Moody's Investor Services or AA- by Fitch if the instrument has a term to maturity of more than 366 days.</p>
2. A <i>repo</i> in relation to negotiable <i>debt security</i>	As for 1 above and where the credit rating of the counterparty also meets the criteria in 1.
3. Bond funds	<p>(a) An <i>authorised fund</i> or a <i>recognised scheme</i> or an investment company which is registered by the Securities and Exchange Commission of the United States of America under the Investment Company Act 1940;</p> <p>(b) A minimum credit rating and risk rating of Aaf and S2 respectively by Standard and Poor's or Aa and MR2 respectively by Moody's Investor Services or AA and V2 respectively by Fitch.</p>
4. Money market fund	<p>(a) An <i>authorised fund</i> or a <i>recognised scheme</i>;</p> <p>(b) A minimum credit and risk rating of Aaa and MR1+ respectively by Moody's Investor Services or AAAM by Standard and Poor's or AAA and V1+ respectively by Fitch.</p>

**5. Derivatives**

Only for the purpose of prudently managing foreign currency risks.

**3** The general conditions which must be satisfied in the segregation of *designated investments* are:

- (a) any redemption of an *investment* must be by payment into the *firm's client money* bank account;
- (b) where the credit or risk rating of a *designated investment* falls below the minimum set out in the Table, the *firm* must dispose of the *investment* as soon as possible and in any event not later than 20 *business days* following the downgrade;
- (c) where any *investment* or issuer has more than one rating, the lowest shall apply.



# Chapter 6

## Custody rules

## 6.1 Application

### 6.1.1

FCA

R

This chapter (the *custody rules*) applies to a *firm*:

(1) [deleted]

(a) [deleted]

(b) [deleted]

(1A) when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*;

(1B) when it is *safeguarding and administering investments*, in the course of business that is not *MiFID business*;

(1C) when it is *acting as trustee or depositary of an AIF*; and/or

(1D) when it is *acting as trustee or depositary of a UCITS*.

(2) [deleted]

### 6.1.1A

FCA

G

The *regulated activity of safeguarding and administering investments* covers both the *safeguarding and administration of assets (without arranging)* and *arranging safeguarding and administration of assets*, when those assets are either *safe custody investments* or *custody assets*. A *safe custody investment* is, in summary, a *designated investment* which a *firm* receives or holds on behalf of a *client*. *Custody assets* include *designated investments*, and any other assets that the *firm* holds or may hold in the same portfolio as a *designated investment* held for or on behalf of a *client*.

### 6.1.1B

FCA

R

*Firms* to which the *custody rules* apply by virtue of ■ CASS 6.1.1R (1B) , ■ (1C) or ■ (1D) must also apply the *custody rules* to those *custody assets* which are not *safe custody investments* in a manner appropriate to the nature and value of those *custody assets*.

### 6.1.1C

FCA

G

In accordance with article 42 of the *Regulated Activities Order*, a *firm* ("I") will not be *arranging safeguarding and administration of assets* if it introduces a *client* to another *firm* whose *permitted activities* include the *safeguarding and administration of investments*, or to an *exempt person* acting as such, with a view to that other *firm* or *exempt person*:

- (1) providing a safe custody service in the *United Kingdom*; or
- (2) arranging for the provision of a safe custody service in the *United Kingdom* by another *person*;

and the other *firm, exempt person* or other *person* who is to provide the safe custody service is not in the same *group* as I, and does not remunerate I.

6.1.2  
FCA

**G** *Firms* are reminded that dividends (actual or payments in lieu), *stock lending* fees and other payments received for the benefit of a *client*, and which are due to the *clients*, should be held in accordance with the *client money chapter* where appropriate.

**Business in the name of the firm**

6.1.4  
FCA

**R** The *custody rules* do not apply where a *firm* carries on business in its name but on behalf of the *client* where that is required by the very nature of the transaction and the *client* is in agreement.

[Note: recital 26 to *MiFID*]

6.1.5  
FCA

**G** For example, this chapter does not apply where a *firm* borrows *safe custody assets* from a client as principal under a *stock lending* agreement.

**Title transfer collateral arrangements**

6.1.6  
FCA

**R** (1) The *custody rules* do not apply where a *client* transfers full ownership of a *safe custody asset* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.

[Note: recital 27 to *MiFID*]

- (2) Excepted from (1) is a transfer of the full ownership of a *safe custody asset*:
  - (a) belonging to a *retail client*;
  - (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and
  - (c) which is made to that *firm* or to any other *person* arranging on its behalf.

PAGE 3  
6.1.6A  
FCA

**R** (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's safe custody assets*.

- (2) The application of (1) is confined to the taking of a transfer of full ownership:
- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and
  - (b) which is made to that *firm* or to any other *person* arranging on its behalf.

6.1.7

FCA

G

A title transfer financial collateral arrangement under the *Financial Collateral Directive* is a type of transfer of instruments to cover obligations where the *financial instrument* will not be regarded as belonging to the *client*.

6.1.8

FCA

G

*Firms* are reminded of the *client's best interests rule*, which requires them to act honestly, fairly and professionally in accordance with the best interests of their *clients* when structuring their business particularly in respect of the effect of that structure on *firms'* obligations under this chapter.

6.1.9

FCA

G

*Firms* are reminded that, in certain cases, the *collateral rules* apply where a *firm* receives collateral from a *client* in order to secure the obligations of the *client*.

### Prime brokerage agreements

6.1.9A

FCA

G

A *prime brokerage firm* is reminded of the additional obligations in ■ CASS 9.3.1 R which apply to *prime brokerage agreements*.

### Affiliated companies - MiFID business

6.1.10

FCA

G

The fact that a *client* is an *affiliated company* in respect of *MiFID business* does not affect the operation of the *custody rules* in relation to that *client*.

### Affiliated companies - non-MiFID business

6.1.10A

FCA

G

In respect of business which is not *MiFID business*, the *custody rules* do not apply to a *firm* when it safeguards and administers a *designated investment* on behalf of an *affiliated company*, unless:

- (1) the *firm* has been notified that the *designated investment* belongs to a *client* of the *affiliated company*; or
- (2) the *affiliated company* is a *client* dealt with at arm's length.

### Delivery versus payment transactions

6.1.12

FCA

R

- (1) A *firm* need not treat this chapter as applying in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that the *safe custody asset* is either to be:

- (a) in respect of a *client's* purchase, due to the *client* within one *business day* following the *client's* fulfilment of a payment obligation; or
- (b) in respect of a *client's* sale, due to the firm within one *business day* following the fulfilment of a payment obligation;

unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *safe custody asset* by the *client*.

- (2) Until such a delivery versus payment transaction through a commercial settlement system settles, a *firm* may segregate *money* (in accordance with the *client money chapter*) instead of the *client's safe custody assets*.

#### Temporary handling of safe custody assets

6.1.15

FCA

G

The *custody rules* do not apply if a *firm* temporarily handles a *safe custody asset* belonging to a *client*. A *firm* should temporarily handle a *safe custody asset* for no longer than is reasonably necessary. In most transactions this would be no longer than one *business day*, but it may be longer or shorter depending upon the transaction in question. For example, when a *firm* executes an order to sell shares which have not been registered on a de-materialised exchange, handling documents for longer periods may be reasonably necessary. However, in the case of *safe custody assets* in *bearer form*, the *firm* is expected to handle them for less than one *business day*. When a *firm* temporarily handles *safe custody assets*, it is still obliged to comply with *Principle 10* (Clients' assets).

6.1.16

FCA

G

When a *firm* temporarily handles a *safe custody asset*, in order to comply with its obligation to act in accordance with *Principle 10* (Clients' assets), the following are guides to good practice:

- (1) a *firm* should keep the *safe custody asset* secure, record it as belonging to that *client*, and forward it to the *client* or in accordance with the *client's* instructions as soon as practicable after receiving it; and
- (2) a *firm* should make and retain a record of the fact that the *firm* has handled that *safe custody asset* and of the details of the *client* concerned and of any action the *firm* has taken.

#### Exemptions which do not apply to MiFID business

6.1.16A

FCA

R

The exemptions in ■ CASS 6.1.16B R to ■ CASS 6.1.16D G do not apply to a *MiFID investment firm* which holds *financial instruments* belonging to a *client* in the course of *MiFID business*.

#### Operators of regulated collective investment schemes

PAGE  
5

6.1.16B

FCA

R

The *custody rules* do not apply to a *firm* when it acts as the *operator* of a *regulated collective investment scheme*, in relation to activities carried on for the purpose of, or in connection with, the operation of the *scheme*.

**Managers of AIFs and UCITS**

**Personal investment firms**

6.1.16C  
FCA

**R**

The *custody rules* do not apply to a *personal investment firm* when it temporarily holds a *designated investment*, other than in *bearer form*, belonging to a *client*, if the *firm*:

- (1) keeps it secure, records it as belonging to that *client*, and forwards it to the *client* or in accordance with the *client's* instructions, as soon as practicable after receiving it;
- (2) retains the *designated investment* for no longer than the *firm* has taken reasonable steps to determine is necessary to check for errors and to receive the final *document* in connection with any series of transactions to which the *documents* relate; and
- (3) makes a record, which must then be retained for a period of 5 years after the record is made, of all the *designated investments* handled in accordance with (1) and (2) together with the details of the *clients* concerned and of any action the *firm* has taken.

6.1.16D  
FCA

**G**

Administrative convenience alone should not lead a *personal investment firm* to rely on ■ CASS 6.1.16C R. *Personal investment firms* should consider what is in the *client's* interest and not rely on ■ CASS 6.1.16C R as a matter of course.

**Trustees and depositaries (except depositaries of AIFs)**

6.1.16E  
FCA

**R**

The specialist regime in ■ CASS 6.1.16F R to ■ CASS 6.1.16I G does not apply to a *MiFID investment firm* which holds *financial instruments* belonging to a *client* in the course of *MiFID business*.

6.1.16F  
FCA

**R**

When a *trustee firm* or *depositary* acts as a *custodian* for a trust or *collective investment scheme*, (except for a *firm acting as trustee or depositary of an AIF*), and:

- (1) the trust or *scheme* is established by written instrument; and
- (2) the *trustee firm* or *depositary* has taken reasonable steps to determine that the relevant law and provisions of the trust instrument or *scheme* constitution will provide protections at least equivalent to the *custody rules* for the trust property or *scheme* property;

the *trustee firm* or *depositary* need comply only with the *custody rules* listed in the table below.

Reference	Rule
CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16C R	Application
CASS 6.1.16E R to CASS 6.1.16I G	Trustees and depositaries

Reference	Rule
CASS 6.1.22 G to CASS 6.1.24 G	<b>General purpose</b>
CASS 6.2.1 R and CASS 6.2.2 R	<b>Protection of clients' safe custody assets</b>
CASS 6.2.3 R and CASS 6.2.6 G	<b>Registration and recording</b>
CASS 6.2.7 R	<b>Holding</b>
CASS 6.4.1 R and CASS 6.4.2 G	<b>Use of safe custody assets</b>
CASS 6.5.	<b>Records, accounts and reconciliations</b>

**6.1.16G** G The reasonable steps referred in ■ CASS 6.1.16FR (2) could include obtaining an appropriate legal opinion to that effect.

FCA

**6.1.16H** R When a *trustee firm* or *depository* within ■ CASS 6.1.16F R arranges for, or delegates the provision of safe custody services by or to another *person*, the *trustee firm* or *depository* must also comply with ■ CASS 6.3.1 R (Depositing assets and arranging for assets to be deposited with third parties) in addition to the custody rules listed in the table in ■ CASS 6.1.16F R.

FCA

**6.1.16I** G A *trustee firm* or *depository* that just *arranges safeguarding and administration of assets* may also take advantage of the exemption in ■ CASS 6.1.16J R (Arrangers).

FCA

**Depositories of AIFs**

**6.1.16IA** R (1) Subject to (2), when a *firm* is *acting as trustee or depository of an AIF* the *firm* need comply only with the *custody rules* in the table below:

FCA

Reference	Rule
CASS 6.1.1 R, CASS 6.1.9 G, CASS 6.1.9A G and CASS 6.1.16IB G	<b>Application</b>
CASS 6.1.22 G to CASS 6.1.24 G	<b>General purpose</b>
CASS 6.2.3 R and CASS 6.2.4 R to CASS 6.2.6 G	<b>Registration and recording</b>
CASS 6.2.7 R	<b>Holding</b>
CASS 6.3.1R (1A) and CASS 6.3.1R (4)	<b>Arranging registration</b>
CASS 6.5.1 R, CASS 6.5.2 R, CASS 6.5.3 R, CASS 6.5.13R (1A) and CASS 6.5.14 G	<b>Records, accounts and reconciliations</b>

(2) When a firm is acting as trustee or depositary of an AIF that is an authorised AIF the firm must, in addition to the custody rules in (1), also comply with the custody rules in the table below:

Reference	Rule
CASS 6.1.1B R	Application
CASS 6.5.4 G to CASS 6.5.4 G, CASS 6.5.5 R, CASS 6.5.7A G, CASS 7.5.8AG, CASS 6.5.9 G and CASS 6.5.15 G	Records, accounts and reconciliations

6.1.16IB  
FCA

G

Firms acting as trustee or depositary of an AIF are reminded of the obligations in ■ FUND 3.11 (Depositaries) and Chapter IV (Depositary) of the AIFMD level 2 regulation which apply in addition to those in ■ CASS 6.

6.1.16IC  
FCA

G

A firm (Firm A) to which another firm acting as trustee or depositary of an AIF (Firm B) has delegated safekeeping functions in line with ■ FUND 3.11.25R (Delegation: safekeeping) will not itself be acting as trustee or depositary of an AIF for that AIF. ■ CASS 6.1.16IA R will not apply to Firm A in respect of that AIF. However, Firm A may be safeguarding and administering investments in respect of that AIF.

**Arrangers**

6.1.16J  
FCA

R

Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets.

Reference	Rule
CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16B R	Application
CASS 6.1.16J R	Arrangers
CASS 6.1.22 G to CASS 6.1.24 G	General purpose
CASS 6.3.1 R (1A) and CASS 6.3.2 G	Arranging for assets to be deposited with third parties
CASS 6.1.16K R	Records

6.1.16K  
FCA

R

When a firm arranges safeguarding and administration of assets, it must ensure that proper records of the custody assets which it arranges for another to hold or receive, on behalf of the client, are made and retained for a period of 5 years after they are made.

**General purpose**

6.1.22  
FCA

G

Principle 10 (Clients' assets) requires a firm to arrange adequate protection for clients' assets when it is responsible for them. As part of these protections, the custody rules



require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.

6.1.23

FCA

G

The *rules* in this chapter are designed primarily to restrict the commingling of *client* and the *firm's* assets and minimise the risk of the *client's safe custody assets* being used by the *firm* without the *client's* agreement or contrary to the *client's* wishes, or being treated as the *firm's* assets in the event of its insolvency.

6.1.24

FCA

G

The *custody rules* also, where relevant, implement the provisions of *MiFID* which regulate the obligations of a *firm* when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*.

## 6.2 Holding of client assets

### Requirement to protect clients' safe custody assets

6.2.1  
FCA

R

A *firm* must, when holding *safe custody assets* belonging to *clients*, make adequate arrangements so as to safeguard *clients'* ownership rights, especially in the event of the *firm's* insolvency, and to prevent the use of *safe custody assets* belonging to a *client* on the *firm's* own account except with the *client's* express consent.

[Note: article 13(7) of *MiFID*]

### Requirement to have adequate organisational arrangements

6.2.2  
FCA

R

A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients' safe custody assets*, or the rights in connection with those *safe custody assets*, as a result of the misuse of the *safe custody assets*, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the *MiFID implementing Directive*]

### Registration and recording of legal title

6.2.3  
FCA

R

To the extent practicable, a *firm* must effect appropriate registration or recording of legal title to a *safe custody asset* in the name of:

- (1) the *client* (or, where appropriate, the *trustee firm*), unless the *client* is an *authorised person* acting on behalf of its *client*, in which case it may be registered in the name of the *client* of that *authorised person*;
- (2) a *nominee company* which is controlled by:
  - (a) the *firm*;
  - (b) an *affiliated company*;
  - (c) a *recognised investment exchange* or a *designated investment exchange*; or

(d) a third party with whom *financial instruments* are deposited under ■ CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties);

(3) any other third party if:

(a) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(b) the *firm* has notified the *client* in writing;

(4) the *firm* if:

(a) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(b) the *firm* has notified the *client* if a *professional client*, or obtained prior written consent if a *retail client*.

6.2.3A

FCA

R

If:

(1) the *safe custody asset* is an *emission auction product* that is a *financial instrument*; and

(2) it is not practicable or possible for a *firm* to effect registration or recording of legal title in this asset in the manner set out in

■ CASS 6.2.3 R,

the *firm* must register or record legal title in its name provided it has notified the *client* in writing.

6.2.4

FCA

R

A *firm* must accept the same level of responsibility to its *client* for any *nominee company* controlled by the *firm* with respect of any requirements of the *custody rules*.

6.2.5

FCA

R

A *firm* may register or record legal title to its own *applicable assets* in the same name as that in which legal title to a *safe custody asset* is registered or recorded, but only if:

(1) the *firm's applicable assets* are separately identified in the *firm's* records from the *safe custody assets*; or

(2) the *firm* registers or records a *safe custody asset* in accordance with ■ CASS 6.2.3 R (4).

6.2.6

FCA

G

A *firm* when complying with ■ CASS 6.2.3 R (3) or ■ CASS 6.2.3 R (4) will be expected to demonstrate that adequate investigations have been made of the market concerned by reference to local sources, which may include an appropriate legal opinion.

6.2.7

FCA

R

A *firm* must ensure that any documents of title to *applicable assets* in *bearer form*, belonging to the *firm* and which it holds in its physical possession, are kept separately from any document of title to a *client's safe custody assets in bearer form*.

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

6.3.1

FCA

R

- (1) A *firm* may deposit *safe custody assets* held by it on behalf of its *clients* into an account or accounts opened with a third party, but only if it exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those *safe custody assets*.
- (1A) A *firm* which arranges the registration of a *safe custody investment* through a third party must exercise all due skill, care and diligence in the selection and appointment of the third party.
- (2) A *firm* must take the necessary steps to ensure that any *client's safe custody assets* deposited with a third party, in accordance with this *rule* are identifiable separately from the *applicable assets* belonging to the *firm* and from the *applicable assets* belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.
- (3) When a *firm* makes the selection, appointment and conducts the periodic review referred to under this *rule*, it must take into account:
  - (a) the expertise and market reputation of the third party; and
  - (b) any legal requirements or market practices related to the holding of those *safe custody assets* that could adversely affect *clients'* rights.
- (4) A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a third party as required in this *rule*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the third party to hold *safe custody assets* belonging to *clients*.

[Note: articles 16(1)(d) and 17(1) of the *MiFID implementing Directive*]

## 6.3.2

FCA

G

In discharging its obligations under this section, a *firm* should also consider, together with any other relevant matters:

- (1) once a *safe custody asset* has been lodged by the *firm* with the third party, the third party's performance of its services to the *firm*;
- (2) the arrangements that the third party has in place for holding and safeguarding the *safe custody asset*;
- (3) current industry standard reports, for example Financial Reporting and Auditing Group (FRAG) 21 report or its equivalent;
- (4) the capital or financial resources of the third party;
- (5) the credit rating of the third party; and
- (6) any other activities undertaken by the third party and, if relevant, any *affiliated company*.

## 6.3.3

FCA

G

A *firm* should consider carefully the terms of its agreements with third parties with which it will deposit *safe custody assets* belonging to a *client*. The following terms are examples of the issues *firms* should address in this agreement:

- (1) that the title of the account indicates that any *safe custody asset* credited to it does not belong to the *firm*;
- (2) that the third party will hold or record a *safe custody asset* belonging to the *firm's client* separately from any *applicable asset* belonging to the *firm* or to the third party;
- (3) the arrangements for registration or recording of the *safe custody asset* if this will not be registered in the *client's* name;
- (4) [deleted]
- (5) the restrictions over the circumstances in which the third party may withdraw assets from the account;
- (6) the procedures and authorities for the passing of instructions to or by the *firm*;
- (7) the procedures regarding the claiming and receiving of dividends, interest payments and other entitlements accruing to the *client*; and
- (8) the provisions detailing the extent of the third party's liability in the event of the loss of a *safe custody asset* caused by the fraud, wilful default or negligence of the third party or an agent appointed by him.

## 6.3.4

FCA

R

- (1) **A *firm* must only deposit *safe custody assets* with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of *safe custody assets* for the account of another person with a third party who is subject to such regulation.**

- (2) A *firm* must not deposit *safe custody assets* held on behalf of a *client* with a third party in a country that is not an *EEA State* (third country) and which does not regulate the holding and safekeeping of *safe custody assets* for the account of another person unless:
- (a) the nature of the *safe custody assets* or of the *investment services* connected with those *safe custody assets* requires them to be deposited with a third party in that third country; or
  - (b) the *safe custody assets* are held on behalf of a *professional client* and the *client* requests the *firm* in writing to deposit them with a third party in that third country.
- (3) [deleted]
- (a) [deleted]
  - (b) [deleted]
    - (i) [deleted]
    - (ii) [deleted]
    - (iii) [deleted]

[Note: article 17(2) and (3) of the *MiFID implementing Directive*]

6.3.5

FCA

R

Subject to ■ CASS 6.3.6 R, in relation to a third party with which a *firm* deposits *safe custody assets* belonging to a *client*, a *firm* must ensure that any agreement with that third party relating to the custody of those assets does not include the grant to that party, or to any other *person*, of a lien or a right of retention or sale over the *safe custody assets*, or a right of set-off over any *client money* derived from those *safe custody assets*.

6.3.6

FCA

R

A *firm* may conclude an agreement with a third party relating to the custody of *safe custody assets* which confers on that party, or on another *person* instructed by that party to provide custody services for those assets, a lien, right of retention or sale, or right of set-off in favour of that party or that other *person* only if that lien or right:

- (1) is confined to those *safe custody assets* held in an account with that third party or that other person and extends only to properly incurred charges and liabilities arising from the provision of custody services in respect of *safe custody assets* held in that account; or
- (2) arises under the operating terms of a securities depository, securities settlement system or central counterparty in whose account *safe custody assets* are recorded or held, and provided that it does so for the purpose only of facilitating the settlement of trades involving the assets held in that account; or

- (3) arises in relation to those *safe custody assets* held in a jurisdiction outside the *United Kingdom*, provided that:
- (a) it does so as a result of local applicable law in that jurisdiction or is necessary for that *firm* to gain access to the local market in that jurisdiction; and
  - (b) in respect of each *client* to which those assets belong, either:
    - (i) the *firm* has taken reasonable steps to determine that holding those assets subject to that lien or right is in the best interests of that *client*; or
    - (ii) where a *client* is a *professional client*, the *firm* is instructed by that *client* to hold those assets in that jurisdiction notwithstanding the existence of that lien or right.

6.3.7  
FCA

**G** A *firm* will be considered to be acting on the instructions of its *professional client* under ■ CASS 6.3.6R (3)(b)(ii) where:

- (1) the *firm* has received an individual instruction or has a standing instruction in its terms of business which results in it holding *safe custody assets* in the relevant jurisdiction; and
- (2) prior to acting on the instruction, the *firm* has expressly informed the *client* that holding that *client's safe custody assets* in the relevant jurisdiction will involve the granting of a lien or right over those assets. The *firm* may do this by discussing the lien or right individually with the *client* or by including reference to it in terms of business (which may themselves cross refer to a separate list of relevant jurisdictions to which ■ CASS 6.3.6R (3)(a) applies maintained on the *firm's* website in a form accessible to *clients*) or by a similar method.

6.3.8  
FCA

**R** For the purpose of ■ CASS 6.3.6 R, references to a *safe custody asset* include any *client money* derived from that *safe custody asset*. *Client money* derived from a *safe custody asset* may be regarded as held in the same account as that *safe custody asset* even though that money and those assets may be recorded separately.

6.3.9  
FCA

**R** ■ CASS 6.3.6 R does not permit a *firm* to agree to a right of set-off of the kind prohibited by either ■ CASS 7.8.1 R or ■ CASS 7.8.2 R in relation to *client money*.



## 6.4 Use of safe custody assets

6.4.1

FCA

R

- (1) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* or otherwise use such *safe custody assets* for its own account or the account of another *client* of the *firm*, unless:
  - (a) the *client* has given express prior consent to the use of the *safe custody assets* on specified terms; and
  - (b) the use of that *client's safe custody assets* is restricted to the specified terms to which the *client* consents.
- (2) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *safe custody assets* held by it on behalf of a *client* in an omnibus account held by a third party, or otherwise use *safe custody assets* held in such an account for its own account or for the account of another *client* unless, in addition to the conditions set out in (1):
  - (a) each *client* whose *safe custody assets* are held together in an omnibus account has given express prior consent in accordance with (1)(a); or
  - (b) the *firm* has in place systems and controls which ensure that only *safe custody assets* belonging to *clients* who have given express prior consent in accordance with the requirements of (1)(a) are used.
- (3) For the purposes of obtaining the express prior consent of a *retail client* under this *rule* the signature of the *retail client* or an equivalent alternative mechanism is required.
- (4) [deleted]

[Note: article 19 of the *MiFID implementing Directive*]

6.4.2

FCA

G

*Firms* are reminded of the *client's best interests rule*, which requires the *firm* to act honestly, fairly and professionally in accordance with the best interests of their *clients*. An example of what is generally considered to be such conduct, in the context of *stock lending activities* involving *retail clients* is that:

- (1) the *firm* ensures that *relevant collateral* is provided by the borrower in favour of the *client*;
- (2) the current realisable value of the *safe custody asset* and of the *relevant collateral* is monitored daily; and
- (3) the *firm* provides *relevant collateral* to make up the difference where the current realisable value of the collateral falls below that of the *safe custody asset* , unless otherwise agreed in writing by the *client*.

6.4.3

FCA

R

Where a *firm* uses *safe custody assets* as permitted in this section, the records of the *firm* must include details of the *client* on whose instructions the use of the *safe custody assets* has been effected, as well as the number of *safe custody assets* used belonging to each *client* who has given consent, so as to enable the correct allocation of any loss.

[Note: article 19(2) of the *MiFID implementing Directive*]

## 6.5 Records, accounts and reconciliations

### Records and accounts

6.5.1  
FCA

**R** A *firm* must keep such records and accounts as necessary to enable it at any time and without delay to distinguish *safe custody assets* held for one *client* from *safe custody assets* held for any other *client*, and from the *firm's* own *applicable assets*.

[Note: article 16(1)(a) of the *MiFID implementing Directive*]

6.5.2  
FCA

**R** A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *safe custody assets* held for *clients*.

[Note: article 16(1)(b) of the *MiFID implementing Directive*]

6.5.2A  
FCA

**R** A *firm* must keep a copy of every executed *client* agreement that includes that *firm's* right to use *safe custody assets* for its own account, including in the case of a *prime brokerage agreement* the disclosure annex referred to in ■ CASS 9.3.1 R.

### Record keeping

6.5.3  
FCA

**R** A *firm* must ensure that the records made under this section are retained for a period of five years after they are made.

### Internal reconciliation of safe custody assets held for clients

6.5.4  
FCA

- G**
- (1) Carrying out internal reconciliations of the *safe custody assets* held for each *client* with the *safe custody assets* held by the *firm* and third parties is an important step in the discharge of the *firm's* obligations under ■ CASS 6.5.2 R (Records and accounts) and, where relevant, ■ SYSC 4.1.1 R (General requirements) and ■ SYSC 6.1.1 R (Compliance).
  - (1A) For a *firm acting as trustee or depositary of an AIF* that is an *authorised AIF*, carrying out internal reconciliations of the *safe custody assets* held for each *client* with the *safe custody assets* held by the *firm* and third parties is an important step in the discharge of the *firm's* obligations under article 89(1)(b) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation* and, where relevant, ■ SYSC 4.1.1 R (General requirements) and ■ SYSC 6.1.1 R (Compliance).

- (2) A *firm* should perform such internal reconciliations:
- (a) as often as is necessary; and
  - (b) as soon as reasonably practicable after the date to which the reconciliation relates;
- to ensure the accuracy of the *firm's* records and accounts.
- (3) Reconciliation methods which can be adopted for these purposes include the 'total count method', which requires that all *safe custody assets* be counted and reconciled as at the same date.
- (4) If a *firm* chooses to use an alternative reconciliation method (for example the 'rolling stock method') it needs to ensure that:
- (a) all of a particular *safe custody asset* are counted and reconciled as at the same date; and
  - (b) all *safe custody assets* are counted and reconciled during a period of six months.

6

6.5.5

FCA

R

A *firm* that uses an alternative reconciliation method must first send a written confirmation to the *FCA* from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to use the method effectively.

#### Reconciliations with external records

6.5.6

FCA

R

A *firm* must conduct on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those *safe custody assets* are held.

[Note: article 16(1)(c) of the *MiFID implementing Directive*]

6.5.7

FCA

G

Where a *firm* deposits *safe custody assets* belonging to a *client* with a third party, in complying with the requirements of ■ CASS 6.5.6 R, the *firm* should seek to ensure that the third party will deliver to the *firm* a statement as at a date or dates specified by the *firm* which details the description and amounts of all the *safe custody assets* credited to the account, and that this statement is delivered in adequate time to allow the *firm* to carry out the periodic reconciliations required in ■ CASS 6.5.6 R.

6.5.7A

FCA

G

If a *firm* acting as trustee or depositary of an AIF that is an authorised AIF deposits *safe custody assets* belonging to a *client* with a third party, under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*, the *firm* should seek to ensure that the third party will deliver to the *firm* a statement as at a date or dates specified by the *firm* which details the description and amounts of all the *safe custody assets* credited to the account, and that this statement is delivered in adequate time to allow the *firm* to carry out the periodic reconciliations required under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*.

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20

### Frequency of external reconciliations

6.5.8

FCA

G

A *firm* should perform the reconciliation required by ■ CASS 6.5.6 R:

- (1) as regularly as is necessary; and
- (2) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom *safe custody assets* are held.

6.5.8A

FCA

G

A *firm acting as trustee or depositary of an AIF* that is an *authorised AIF* should perform the reconciliation under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*:

- (1) as regularly as is necessary; and
- (2) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom *safe custody assets* are held.

### Independence of person conducting reconciliations

6.5.9

FCA

G

Whenever possible, a *firm* should ensure that reconciliations are carried out by a *person* (for example an *employee* of the *firm*) who is independent of the production or maintenance of the records to be reconciled.

### Reconciliation discrepancies

6.5.10

FCA

R

A *firm* must promptly correct any discrepancies which are revealed in the reconciliations envisaged by this section, and make good, or provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.

6.5.11

FCA

G

Items recorded or held within a suspense or error account fall within the scope of discrepancies.

6.5.12

FCA

G

A *firm* may, where justified, conclude that another *person* is responsible for an irreconcilable *shortfall* despite the existence of a dispute with that other *person* about the unreconciled item. In those circumstances, the *firm* is not required to make good the *shortfall* but is expected to take reasonable steps to resolve the position with the other *person*.

### Notification requirements

6.5.13

FCA

R

A *firm* must inform the *FCA* in writing without delay:

- (1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in ■ CASS 6.5.1 R, ■ CASS 6.5.2 R or ■ CASS 6.5.6 R; or

- (1A) if it is a *firm acting as trustee or depositary of an AIF* and has not complied with, or is materially unable to comply with, the requirements in ■ CASS 6.5.1 R and/or articles 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2* regulation; or
- (2) if, having carried out a reconciliation, it has not complied with, or is unable, in any material respect, to comply with ■ CASS 6.5.10 R.

#### **Audit of compliance with the custody rules**

6.5.14

FCA

G

*Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FCA* under ■ SUP 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *custody rules*.

6.5.15

FCA

G

*Firms* that use an alternative reconciliation method are reminded that the *firm's* auditor must confirm to the *FCA* in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see ■ CASS 6.5.5 R).

# Chapter 7

## Client money rules

## 7.1 Application and Purpose

### Application

7.1.1  
FCA

R

This chapter (the *client money rules*) applies to a *firm* that receives *money* from or holds *money* for, or on behalf of, a *client* in the course of, or in connection with:

- (1) [deleted]
  - (a) [deleted]
  - (b) [deleted]
- (2) [deleted]
- (3) its *MiFID business*; and/or
- (4) its *designated investment business*, that is not *MiFID business* in respect of any *investment agreement* entered into, or to be entered into, with or for a *client*;

unless otherwise specified in this section.

### Opt-in to the client money rules

7.1.3  
FCA

R

- (1) A *firm* that receives or holds *money* to which this chapter applies in relation to:
  - (a) its *MiFID business*; or
  - (b) its *MiFID business* and its *designated investment business* which is not *MiFID business*;

and holds *money* in respect of which ■ CASS 5 applies, may elect to comply with the provisions of this chapter in respect of all such *money* and if it does so, this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of, or in connection with, its *MiFID business*.

- (1A) [deleted]



(1B) A *firm* that receives or holds *money* to which this chapter applies solely in relation to its *designated investment business* which is not *MiFID business* and receives or holds *money* in respect of which the *insurance client money chapter* applies, may elect to comply with the provisions of this chapter in respect of all such *money* and if it does so, this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of or in connection with its *designated investment business*.

(2) A *firm* must make and retain a written record of any election it makes under this *rule*, including the date from which the election is to be effective. The *firm* must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

7.1.4  
FCA

G The opt-in to the *client money rules* in this chapter does not apply in respect of *money* that a *firm* holds outside of the scope of the *insurance client money chapter*.

7.1.5  
FCA

G If a *firm* has opted to comply with this chapter, the *insurance client money chapter* will have no application to the activities to which the election applies.

7.1.6  
FCA

G A *firm* that is only subject to the *insurance client money chapter* may not opt to comply with this chapter.

**Money that is not client money: 'opt outs' for any business other than insurance mediation activity**

7.1.7B  
FCA

R ■ CASS 7.1.7C G to ■ CASS 7.1.7I G do not apply to a *firm* in relation to *money* held in connection with its *MiFID business* to which this chapter applies or in relation to *money* for which the *firm* has made an election under ■ CASS 7.1.3 R (1).

**Professional client opt-out**

7.1.7C  
FCA

G The 'opt out' provisions provide a *firm* with the option of allowing a *professional client* to choose whether their *money* is subject to the *client money rules* (unless the *firm* is conducting *insurance mediation activity*).

7.1.7D  
FCA

R Subject to ■ CASS 7.1.7F R, *money* is not *client money* when a *firm* (other than a *sole trader*) holds that *money* on behalf of, or receives it from, a *professional client*, other than in the course of *insurance mediation activity*, and the *firm* has obtained written acknowledgement from the *professional client* that:

(1) *money* will not be subject to the protections conferred by the *client money rules*;

- (2) as a consequence, this *money* will not be segregated from the *money* of the *firm* in accordance with the *client money rules* and will be used by the *firm* in the course of its own business; and
- (3) the *professional client* will rank only as a general creditor of the *firm*.

#### 'Opt-outs' for non-IMD business

7.1.7E  
FCA

G

For a *firm* whose business is not governed by the *Insurance Mediation Directive*, it is possible to 'opt out' on a one-way basis. However, in order to maintain a comparable regime to that applying to *MiFID business*, all '*MiFID* type' business undertaken outside the scope of *MiFID*, should comply with the *client money rules* or be 'opted out' on a two-way basis.

7.1.7F  
FCA

R

*Money is not client money if a firm, in respect of designated investment business which is not an investment service or activity, an ancillary service, a listed activity or insurance mediation activity:*

- (1) holds it on behalf of or receives it from a *professional client* who is not an *authorised person*; and
- (2) has sent a separate written notice to the *professional client* stating the matters set out in ■ CASS 7.1.7DR (1) to ■ CASS 7.1.7DR (3).

7.1.7G  
FCA

G

When a *firm* undertakes a range of business for a *professional client* and has separate agreements for each type of business undertaken, the *firm* may treat *client money* held on behalf of the *client* differently for different types of business; for example, a *firm* may, under ■ CASS 7.1.7D R or ■ CASS 7.1.7F R, elect to segregate *client money* in connection with *securities* transactions and not segregate (by complying with ■ CASS 7.1.7D R or ■ CASS 7.1.7F R) *money* in connection with *contingent liability investments* for the same *client*.

7.1.7H  
FCA

R

When a *firm* transfers *client money* to another *person*, the *firm* must not enter into an agreement under ■ CASS 7.1.7D R or ■ CASS 7.1.7F R with that other *person* in relation to that *client money* or represent to that other *person* that the *money* is not *client money*.

7.1.7I  
FCA

G

■ CASS 7.1.7H R prevents a *firm*, when passing *client money* to another *person* under ■ CASS 7.5.2 R (transfer of client money to a third party), from making use of the 'opt out' provisions under ■ CASS 7.1.7D R or ■ CASS 7.1.7F R.

**Credit institutions and approved banks**

7.1.8

FCA

R

The *client money rules* do not apply to a *BCD credit institution* in relation to deposits within the meaning of the *BCD* held by that *institution*.

[Note: article 13(8) of *MiFID* and article 18(1) of the *MiFID implementing Directive*]

7.1.9

FCA

G

If a *credit institution* that holds *money* as a deposit with itself is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the *client* that:

- (1) *money* held for that *client* in an account with the *credit institution* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
- (2) as a result, the *money* will not be held in accordance with the *client money rules*.

7.1.10

FCA

G

Pursuant to *Principle 10* (Clients' assets), a *credit institution* that holds *money* as a deposit with itself should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time. Similarly, where that *money* is reflected only in a *firm's* bank account with other banks (nostro accounts), the *firm* should be able to reconcile amounts owed to that *client* within a reasonable period of time.

7.1.11

FCA

G

A *credit institution* is reminded that the exemption for deposits is not an absolute exemption from the *client money rules*.

7.1.11A

FCA

R

- (1) This *rule* applies to a *firm* which is an *approved bank* but not a *BCD credit institution*.
- (2) The *client money rules* do not apply to money held by the *approved bank* if it is undertaking business which is not *MiFID business* but only when the money is held in an account with itself, in which case the *firm* must notify the *client* in writing that:
  - (a) *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
  - (b) as a result, the *money* will not be held in accordance with the *client money rules*.

**Affiliated companies - MiFID business**

7.1.12

FCA

G

A *firm* that holds *money* on behalf of, or receives *money* from, an *affiliated company* in respect of *MiFID business* must treat the *affiliated company* as any other *client* of the *firm* for the purposes of this chapter.

**Affiliated companies - non-MiFID business**

7.1.12A

FCA

R

A *firm* that holds *money* on behalf of, or receives *money* from, an *affiliated company* in respect of *designated investment business* which is not *MiFID business* must not treat the *money* as *client money* unless:

- (1) the *firm* has been notified by the *affiliated company* that the *money* belongs to a *client* of the *affiliated company*; or
- (2) the *affiliated company* is a *client* dealt with at arm's length; or
- (3) the *affiliated company* is a manager of an *occupational pension scheme* or is an overseas company; and
  - (a) the *money* is given to the *firm* in order to carry on *designated investment business* for or on behalf of the *clients* of the *affiliated company*; and
  - (b) the *firm* has been notified by the *affiliated company* that the *money* is to be treated as *client money*.

**Coins**

7.1.14

FCA

R

The *client money rules* do not apply with respect to coins held on behalf of a *client* if the *firm* and the *client* have agreed that the *money* (or *money* of that type) is to be held by the *firm* for the intrinsic value of the metal which constitutes the coin.

**Solicitors**

7.1.15

FCA

R

- (1) An *authorised professional firm* regulated by the Law Society (of England and Wales), the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the following rules of its *designated professional body*, must comply with those rules and, where relevant paragraph (3), and if it does so, it will be deemed to comply with the *client money rules*.
- (2) The relevant rules are:
  - (a) if the *firm* is regulated by the Law Society (of England and Wales):
    - (i) the Solicitors' Accounts Rules 1998; or
    - (ii) where applicable, the Solicitors Overseas Practice Rules 1990;
  - (b) if the *firm* is regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; and
  - (c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

- (3) If the *firm* in (1) is a *MiFID investment firm* that receives or holds *money* for, or on behalf of a client in the course of, or in connection with its *MiFID business*, it must also comply with the *MiFID client money (minimum implementing) rules* in relation to that business.

#### Long term insurers and friendly societies

7.1.15A

FCA

R

This chapter does not apply to the *permitted activities* of a *long-term insurer* or a *friendly society*, unless it is a *MiFID investment firm* that receives *money* from or holds *money* for or on behalf of a *client* in the course of, or in connection with, its *MiFID business*.

#### Contracts of insurance

7.1.15B

FCA

R

This chapter does not apply to *client money* held by a *firm* which:

- (1) receives or holds *client money* in relation to *contracts of insurance*; but which
- (2) in relation to such *client money* elects to act in accordance with the *insurance client money chapter*.

7.1.15C

FCA

R

A *firm* should make and retain a written record of any election which it makes under ■ CASS 7.1.15B R.

#### Life assurance business

7.1.15D

FCA

G

- (1) A *firm* which receives and holds *client money* in respect of life assurance business in the course of its *designated investment business* that is not *MiFID business* may:
  - (a) under ■ CASS 7.1.3 R (1B) elect to comply with the *client money chapter* in respect of such *client money* and in doing so avoid the need to comply with the *insurance client money chapter* which would otherwise apply to the *firm* in respect of *client money* received in the course of its *insurance mediation activity*; or
  - (b) under ■ CASS 7.1.15B R, elect to comply with the *insurance client money chapter* in respect of such *client money*.
- (2) These options are available to a *firm* irrespective of whether it also receives and holds *client money* in respect of other parts of its *designated investment business*. A *firm* may not however choose to comply with the *insurance client money chapter* in respect of *client money* which it receives and holds in the course of any part of its *designated investment business* which does not involve an *insurance mediation activity*.

#### Trustee firms (other than trustees of unit trust schemes)

7.1.15E

FCA

R

A *trustee firm* which holds *money* in relation to its *designated investment business* which is not *MiFID business* to which this chapter applies, must hold any such *client money* separate from its own *money* at all times.

7.1.15F

FCA

R

Only the *client money rules* listed in the table below apply to a *trustee firm* in connection with *money* that the firm receives, or holds for or on behalf of a client in the course of or in connection with its *designated investment business* which is not *MiFID business*.

Reference	Rule
CASS 7.1.1 R to CASS 7.1.6 G, and CASS 7.1.8 R to CASS 7.1.14 R	Application
CASS 7.1.15E R and CASS 7.1.15F R	Trustee firms (other than trustees of unit trust schemes)
CASS 7.1.16 G	General principle
CASS 7.7.2 R to CASS 7.7.4 G	Requirement
CASS 7.4.1 R to CASS 7.4.6 G	Depositing client money
CASS 7.4.7 R to CASS 7.4.13 G	A firm's selection of credit institution, bank or money market fund
CASS 7.6.6 G to CASS 7.6.16 R	Reconciliation of client money balances

**General purpose**

7.1.16

FCA

G

- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and treatment of *client money*. The *client money rules* provide requirements for *firms* that receive or hold *client money*, in whatever form.
- (2) The *client money rules* also, where relevant, implement the provisions of *MiFID* which regulate the obligations of a *firm* when it holds *client money* in the course of its *MiFID business*.

## 7.2 Definition of client money

### Title transfer collateral arrangements

7.2.3

FCA

R

- (1) Where a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*.

[Note: recital 27 to *MiFID*]

- (2) Excepted from (1) is a transfer of the full ownership of *money*:
- (a) belonging to a *retail client*;
  - (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and
  - (c) which is made to that *firm* or to any other *person* arranging on its behalf.

7.2.3A

FCA

R

- (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's money*.
- (2) The application of (1) is confined to the taking of a transfer of full ownership:
- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* or a *rolling spot forex contract* that is a *future*, and in either case where that contract is entered into with a *firm* acting as *market maker*; and
  - (b) which is made to that *firm* or to any other *person* arranging on its behalf.



7.2.4

FCA

G

A title transfer financial collateral arrangement under the *Financial Collateral Directive* is an example of a type of transfer of *money* to cover obligations where that *money* will not be regarded as *client money*.

7.2.5

FCA

G

Where a *firm* has received full title or full ownership to *money* under a collateral arrangement, the fact that it has also granted a security interest to its *client* to secure its obligation to repay that *money* to the *client* would not result in the *money* being *client money*. This can be compared to a situation in which a *firm* takes a charge or other security interest over *money* held in a *client bank account*, where that *money* would still be *client money* as there would be no absolute transfer of title to the *firm*. However, where a *firm* has received *client money* under a security interest and the security interest includes a "right to use arrangement", under which the *client* agrees to transfer all of its rights to *money* in that account to the *firm* upon the exercise of the right to use, the *money* may cease to be *client money*, but only once the right to use is exercised and the *money* is transferred out of the *client bank account* to the *firm*.

7.2.6

FCA

G

*Firms* are reminded of the *client's best interest rule*, which requires a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* when structuring its business particularly in respect of the effect of that structure on *firms'* obligations under the *client money rules*.

7.2.7

FCA

G

Pursuant to the *client's best interests rule*, a *firm* should ensure that where a *retail client* transfers full ownership of *money* to a *firm*:

- (1) the *client* is notified that full ownership of the *money* has been transferred to the *firm* and, as such, the *client* no longer has a proprietary claim over this *money* and the *firm* can deal with it on its own right;
- (2) the transfer is for the purposes of securing or covering the *client's* obligations;
- (3) an equivalent transfer is made back to the *client* if the provision of collateral by the *client* is no longer necessary; and
- (4) there is a reasonable link between the timing and the amount of the collateral transfer and the obligation that the *client* owes, or is likely to owe, to the *firm*.

#### Money in connection with a "delivery versus payment" transaction

7.2.8

FCA

R

*Money* need not be treated as *client money* in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that either:

- (1) in respect of a *client's* purchase, *money* from a *client* will be due to the *firm* within one *business day* upon the fulfilment of a delivery obligation; or
- (2) in respect of a *client's* sale, *money* is due to the *client* within one *business day* following the *client's* fulfilment of a delivery obligation;



unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *investments* by the *client*.

7.2.8A

FCA

G

The exclusion from the *client money rules* for delivery versus payment transactions under ■ CASS 7.2.8 R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 26 of *MiFID*.

7.2.8B

FCA

R

*Money* need not be treated as *client money* in respect of a delivery versus payment transaction, for the purpose of settling a transaction in relation to *units* in a *regulated collective investment scheme*, if:

- (1) the *authorised fund manager* receives it from a *client* in relation to the *authorised fund manager's* obligation to issue *units*, in an *AUT* or *ACS*, or to arrange for the issue of *units* in an *ICVC*, in accordance with *COLL*, unless the *price* of those *units* has not been determined by the close of business on the next *business day*:
  - (a) following the date of the receipt of the *money* from the *client*; or
  - (b) if the *money* was received by an *appointed representative* of the *authorised fund manager*, in accordance with ■ CASS 7.4.24 G, following the date of receipt at the specified business address of the *authorised fund manager*; or
- (2) the *money* is held in the course of redeeming *units* where the proceeds of that redemption are paid to a *client* within the time specified in *COLL*; when an *authorised fund manager* draws a cheque or other payable order within these time frames the provisions of ■ CASS 7.2.17 R and ■ CASS 7.2.9 R (2) will not apply.

#### Money due and payable to the firm

7.2.9

FCA

R

- (1) *Money* is not *client money* when it becomes properly due and payable to the *firm* for its own account.
- (2) For these purposes, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum from a *client bank account* for reimbursement will become due and payable to the *firm*.

7.2.10

FCA

G

*Money* held as *client money* becomes due and payable to the *firm* or for the *firm's* own account, for example, because the *firm* acted as *principal* in the contract or the *firm*, acting as agent, has itself paid for *securities* in advance of receiving the purchase *money* from its *client*. The circumstances in which it is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

7.2.10A

FCA

G

*Firms* are reminded that, notwithstanding that *money* may be due and payable to them, they have a continuing obligation to segregate *client money* in accordance with the *client money rules*. In particular, in accordance with ■ CASS 7.6.2 R, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out internal reconciliations of *client money* balances, either in accordance with the *standard method of internal client money reconciliation* or a different method which meets the requirements of ■ CASS 7.6.7 R and ■ CASS 7.6.8 R.

7.2.11

FCA

G

When a *client's* obligation or liability, that is secured by that *client's* asset, crystallises, and the *firm* realises the asset in accordance with an agreement entered into between the *client* and the *firm*, the part of the proceeds of the asset to cover such liability that is due and payable to the *firm* is not *client money*. However, any proceeds of sale in excess of the amount owed by the *client* to the *firm* should be paid over to the *client* immediately or be held in accordance with the *client money rules*.

### Commission rebate

7.2.12

FCA

G

When a *firm* has entered into an arrangement under which *commission* is rebated to a *client*, those rebates need not be treated as *client money* until they become due and payable to the *client* in accordance with the terms of the contractual arrangements between the parties.

7.2.13

FCA

G

When *commission* rebate becomes due and payable to the *client*, the *firm* should:

- (1) treat it as *client money*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.2.15 R);

unless the *firm* and the *client* have entered into an arrangement under which the *client* has agreed to transfer full ownership of this *money* to the *firm* as collateral against payment of future professional fees (see ■ CASS 7.2.3 R (Title transfer collateral arrangements)).

### Interest

7.2.14

FCA

R

Unless a *firm* notifies a *retail client* in writing whether or not interest is to be paid on *client money* and, if so, on what terms and at what frequency, it must pay that *client* all interest earned on that *client money*. Any interest due to a *client* will be *client money*.

### Discharge of fiduciary duty

7.2.15

FCA

R

*Money* ceases to be *client money* (having regard to ■ CASS 7.2.17 R where applicable) if:

- (1) it is paid to the *client*, or a duly authorised representative of the *client*; or
- (2) it is paid to a third party on the instruction of the *client*, unless it is transferred to a third party in the course of effecting a

transaction, in accordance with ■ CASS 7.5.2 R (Transfer of client money to a third party); or

- (3) it is paid into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
- (4) it is due and payable to the *firm* in accordance with ■ CASS 7.2.9 R (Money due and payable to the firm); or
- (5) it is paid to the *firm* as an excess in the *client bank account* (see ■ CASS 7.6.13 R (2) (Reconciliation discrepancies)); or
- (6) it is paid by an *authorised central counterparty* to a clearing member other than the *firm* in connection with a *porting* arrangement in accordance with ■ CASS 7.2.15A R; or
- (7) it is paid by an *authorised central counterparty* directly to the *client* in accordance with ■ CASS 7.2.15B R.

7.2.15A

FCA

R

*Client money* received or held by the *firm* and placed in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty* ceases to be *client money* for that *firm* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is *ported* by the *authorised central counterparty* in accordance with article 48 of EMIR.

7.2.15B

FCA

R

*Client money* received or held by the *firm* and placed in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty* ceases to be *client money* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is paid directly to the *client* by the *authorised central counterparty* in accordance with the procedure described in article 48(7) of EMIR.

7.2.16

FCA

G

When a *firm* wishes to transfer *client money* balances to a third party in the course of transferring its business to another *firm*, it should do so in a way which it discharges its fiduciary duty to the *client* under this section.

7.2.17

FCA

R

When a *firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.

#### Allocated but unclaimed client money

7.2.18

FCA

G

The purpose of the *rule* on allocated but unclaimed *client money* is to allow a *firm*, in the normal course of its business, to cease to treat as *client money* any balances, allocated to an individual *client*, when those balances remain unclaimed.

7.2.19

FCA

R

A *firm* may cease to treat as *client money* any unclaimed *client money* balance if it can demonstrate that it has taken reasonable steps to trace the *client* concerned and to return the balance.

7.2.20

FCA

A

- (1) Reasonable steps should include:
  - (a) entering into a written agreement, in which the *client* consents to the *firm* releasing, after the period of time specified in (b), any *client money* balances, for or on behalf of that *client*, from *client bank accounts*;
  - (b) determining that there has been no movement on the *client's* balance for a period of at least six years (notwithstanding any payments or receipts of charges, interest or similar items);
  - (c) writing to the *client* at the last known address informing the *client* of the *firm's* intention of no longer treating that balance as *client money*, giving the *client* 28 days to make a claim;
  - (d) making and retaining records of all balances released from *client bank accounts*; and
  - (e) undertaking to make good any valid claim against any released balances.
- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ CASS 7.2.19 R.
- (3) Contravention of (1) may be relied on as tending to establish contravention of ■ CASS 7.2.19 R.

7.2.21

FCA

G

When a *firm* gives an undertaking to make good any valid claim against released balances, it should make arrangements authorised by the *firm's* relevant *controllers* that are legally enforceable by any *person* with a valid claim to such *money*.



**7.3 Organisational requirements: client money**

7.3.1  
FCA

**R**

**Requirement to protect client money**.....  
A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

[Note: article 13(8) of *MiFID*]

7.3.2  
FCA

**R**

**Requirement to have adequate organisational arrangements**.....  
A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the *MiFID implementing Directive*]



## 7.4 Segregation of client money

### Depositing client money

7.4.1  
FCA

**R** A *firm*, on receiving any *client money*, must promptly place this *money* into one or more accounts opened with any of the following:

- (1) a central bank;
- (2) a *BCD credit institution*;
- (3) a bank authorised in a third country;
- (4) a *qualifying money market fund*.

[Note: article 18(1) of the *MiFID implementing Directive*]

7.4.2  
FCA

**G** An account with a central bank, a *BCD credit institution* or a bank authorised in a third country in which *client money* is placed is a *client bank account*.

### Qualifying money market funds

7.4.3  
FCA

**G** Where a *firm* deposits *client money* with a *qualifying money market fund*, the units in that fund should be held in accordance with **■** CASS 6.

[Note: recital 23 to the *MiFID implementing Directive*]

7.4.4  
FCA

**G** A *firm* that places *client money* in a *qualifying money market fund* should ensure that it has the *permissions* required to invest in and hold units in that fund and must comply with the *rules* that are relevant for those activities.

7.4.5  
FCA

**R** A *firm* must give a *client* the right to oppose the placement of his *money* in a *qualifying money market fund*.

[Note: article 18(3) of the *MiFID implementing Directive*]

7.4.6

FCA

G

If a *firm* that intends to place *client money* in a *qualifying money market fund* is subject to the requirement to disclose information before providing services, it should, in compliance with that obligation, notify the *client* that:

- (1) *money* held for that *client* will be held in a *qualifying money market fund*; and
- (2) as a result, the *money* will not be held in accordance with the *client money rules* but in accordance with the *custody rules*.

#### **A firm's selection of a credit institution, bank or money market fund**

7.4.7

FCA

R

A *firm* that does not deposit *client money* with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the *credit institution*, bank or *qualifying money market fund* where the *money* is deposited and the arrangements for the holding of this *money*.

[Note: article 18(3) of the *MiFID implementing Directive*]

7.4.8

FCA

R

When a *firm* makes the selection, appointment and conducts the periodic review of a *credit institution*, a bank or a *qualifying money market fund*, it must take into account:

- (1) the expertise and market reputation of the third party; and
- (2) any legal requirements or market practices related to the holding of *client money* that could adversely affect *clients'* rights.

[Note: article 18(3) of the *MiFID implementing Directive*]

7.4.9

FCA

G

In discharging its obligations when selecting, appointing and reviewing the appointment of a *credit institution*, a bank or a *qualifying money market fund*, a *firm* should also consider, together with any other relevant matters:

- (1) the need for diversification of risks;
- (2) the capital of the *credit institution* or bank;
- (3) the amount of *client money* placed, as a proportion of the *credit institution* or bank's capital and *deposits*, and, in the case of a *qualifying money market fund*, compared to any limit the fund may place on the volume of redemptions in any period;
- (4) the credit rating of the *credit institution* or bank; and
- (5) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the *credit institution* or bank and *affiliated companies*.

7.4.9A

FCA

**R** A *firm* must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that those funds do not at any point in time exceed 20 per cent of the balance on:

- (1) all of its *general client bank accounts* considered in aggregate;
- (2) each of its *designated client bank accounts*; and
- (3) each of its *designated client fund accounts*.

7.4.9B

FCA

**R** For the purpose of **■** CASS 7.4.9A R an entity is a relevant group entity if it is:

- (1) a *BCD credit institution*, a bank authorised in a third country, a *qualifying money market fund*, or the entity operating or managing a *qualifying money market fund*; and
- (2) a member of the same *group* as that *firm*.

7.4.9C

FCA

**G** The *rules* in **■** SUP 16.14 provide that a *firm* must report to the *FCA* in relation to the identity of the entities with which it deposits *client money* and the amounts of *client money* deposited with them. The *FCA* will use that information to monitor compliance with the diversification *rule* in **■** CASS 7.4.9A R.

7.4.10

FCA

**R** A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a *credit institution*, a bank or a *qualifying money market fund*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the third party to hold *client money*.

#### Client bank accounts

7.4.11

FCA

**R** A *firm* must take the necessary steps to ensure that *client money* deposited, in accordance with **■** CASS 7.4.1 R, in a central bank, a *credit institution*, a bank authorised in a third country or a *qualifying money market fund* is held in an account or accounts identified separately from any accounts used to hold *money* belonging to the *firm*.

[Note: article 16(1)(e) of the *MiFID implementing Directive*]

7.4.12

FCA

**G** A *firm* may open one or more *client bank accounts* in the form of a *general client bank account*, a *designated client bank account* or a *designated client fund account* (see **■** CASS 7A.2.1 G (Failure of the authorised firm: primary pooling event)).

7.4.13

FCA

**G** A *designated client fund account* may be used for a *client* only where that *client* has consented to the use of that account and all other *designated client fund accounts* which may be pooled with it. For example, a *client* who consents to the use of bank A and bank B should have his *money* held in a different *designated client fund account* at bank B from a *client* who has consented to the use of banks B and C.



**Payment of client money into a client bank account**

7.4.14

FCA

G

Two approaches that a *firm* can adopt in discharging its obligations under the *client money segregation requirements* are:

- (1) the 'normal approach'; or
- (2) the 'alternative approach'.

7.4.15

FCA

R

**A *firm* that does not adopt the normal approach must first send a written confirmation to the FCA from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to operate another approach effectively.**

7.4.16

FCA

G

The alternative approach would be appropriate for a *firm* that operates in a multi-product, multi-currency environment for which adopting the normal approach would be unduly burdensome and would not achieve the *client* protection objective. Under the alternative approach, *client money* is received into and paid out of a *firm's* own bank accounts; consequently the *firm* should have systems and controls that are capable of monitoring the *client money* flows so that the *firm* can comply with its obligations to perform reconciliations of records and accounts (see ■ CASS 7.6.2 R). A *firm* that adopts the alternative approach will segregate *client money* into a *client bank account* on a daily basis, after having performed a reconciliation of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* to determine what the *client money* requirement was at the close of the previous *business day*.

7.4.17

FCA

G

Under the normal approach, a *firm* that receives *client money* should either:

- (1) pay it promptly, and in any event no later than the next *business day* after receipt, into a *client bank account*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.2.15 R).

7.4.18

FCA

G

Under the alternative approach, a *firm* that receives *client money* should:

- (1) (a) pay any *money* to or on behalf of *clients* out of its own account; and
  - (b) perform a reconciliation of records and accounts required under ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General requirements) and ■ SYSC 6.1.1 R (Compliance), adjust the balance held in its *client bank accounts* and then segregate the *money* in the *client bank account* until the calculation is re-performed on the next *business day*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.2.15 R).

7.4.19

FCA

G

A *firm* that adopts the alternative approach may:

- (1) receive all *client money* into its own bank account;
- (2) choose to operate the alternative approach for some types of business (for example, overseas equities transactions) and operate the normal approach for other types of business (for example, *contingent liability investments*) if the *firm* can demonstrate that its systems and controls are adequate (see ■ CASS 7.4.15 R); and
- (3) use an historic average to account for uncleared cheques (see paragraph 4 of ■ CASS 7 Annex 1 G).

7.4.20

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* should ensure that any *money* other than *client money* deposited in a *client bank account* is promptly paid out of that account unless it is a minimum sum required to open the account, or to keep it open.

7.4.21

FCA

R

**If it is prudent to do so to ensure that *client money* is protected, a *firm* may pay into a *client bank account* *money* of its own, and that *money* will then become *client money* for the purposes of this chapter.**

#### Automated transfers

7.4.22

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that receives *client money* in the form of an automated transfer should take reasonable steps to ensure that:

- (1) the *money* is received directly into a *client bank account*; and
- (2) if *money* is received directly into the *firm's* own account, the *money* is transferred into a *client bank account* promptly, and in any event, no later than the next *business day* after receipt.

#### Mixed remittance

7.4.23

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that receives a *mixed remittance* (that is part *client money* and part other *money*) should:

- (1) pay the full sum into a *client bank account* promptly, and in any event, no later than the next *business day* after receipt; and
- (2) pay the *money* that is not *client money* out of the *client bank account* promptly, and in any event, no later than one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

#### Appointed representatives, tied agents, field representatives and other agents

7.4.24

FCA

G

- (1) Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach should establish and maintain procedures to ensure that

*client money* received by its *appointed representatives, tied agents, field representatives* or other agents is:

- (a) paid into a *client bank account* of the *firm* promptly, and in any event, no later than the next *business day* after receipt; or
- (b) forwarded to the *firm*, or in the case of a *field representative* forwarded to a specified business address of the *firm*, so as to ensure that the *money* arrives at the specified business address promptly, and in any event, no later than the close of the third *business day*.

- (2) For the purposes of 1(b), *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* promptly, and in any event, no later than the next *business day* after receipt (*business day* two) in order for it to reach that *firm* or specified business address by the close of the third *business day*. Procedures requiring the *client money* in the form of a cheque to be sent to the *firm* or the specified business address of the *firm* by first class post promptly, and in any event, no later than the next *business day* after receipt, would be in line with 1(b).

7.4.25

FCA

G

The *firm* should ensure that its *appointed representatives, tied agents, field representatives* or other agents keep *client money* separately identifiable from any other *money* (including that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.

7.4.26

FCA

G

A *firm* that operates a number of small branches, but holds or accounts for all *client money* centrally, may treat those small branches in the same way as *appointed representatives* and *tied agents*.

### Client entitlements

7.4.27

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that receives outside the *United Kingdom* a *client* entitlement on behalf of a *client* should pay any part of it which is *client money*:

- (1) to, or in accordance with, the instructions of the *client* concerned; or
- (2) into a *client bank account* promptly, and in any event, no later than five *business days* after the *firm* is notified of its receipt.

7.4.28

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach should allocate a *client* entitlement that is *client money* to the individual *client* promptly and, in any case, no later than ten *business days* after notification of receipt.

### Money due to a client from a firm

7.4.29

FCA

G

Pursuant to the *client money segregation requirements*, a *firm* operating the normal approach that is liable to pay *money* to a *client* should 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*.

**Segregation in different currency**

7.4.30

FCA

R

A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted each *day* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.

7.4.31

FCA

G

The *rule* on segregation of *client money* in a different currency (■ CASS 7.4.30 R) does not apply where the *client* has instructed the *firm* to convert the *money* into and hold it in a different currency.

**Commodity Futures Trading Commission Part 30 exemption order**

7.4.32

FCA

G

United States (US) legislation restricts the ability of non-US firms to trade on behalf of US customers on non-US futures and options exchanges. The relevant US regulator (the CFTC) operates an exemption system for *firms* authorised under the *Act*. The FCA or the PRA sponsors the application from a *firm* for exemption from Part 30 of the General Regulations under the US Commodity Exchange Act in line with this system.

7.4.33

FCA

G

A *firm* with a *Part 30 exemption order* undertakes to the CFTC that it will refuse to allow any US customer to opt not to have his *money* treated as *client money* if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an "eligible contract participant" as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C. In doing so, the *firm* is representing that if available to it, it will not make use of the opt-out arrangements in ■ CASS 7.1.7B R to ■ CASS 7.1.7F R in relation to that business.

7.4.34

FCA

R

A *firm* must not reduce the amount of, or cancel a letter of credit issued under, an LME bond arrangement where this will cause the *firm* to be in breach of its *Part 30 exemption order*.

7.4.35

FCA

R

A *firm* must notify the FCA immediately it arranges the *issue* of an individual letter of *credit* under an LME bond arrangement.

## 7.5 Transfer of client money to a third party

### 7.5.1

FCA

G

This section sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to a *clearing house* in the form of margin for the *firm's* obligations to the *clearing house* that are referable to transactions undertaken by the *firm* for the relevant clients. They may also arise when a *firm* passes *client money* to an *intermediate broker* for *contingent liability investments* in the form of initial or variation margin on behalf of a *client*. In these circumstances, the *firm* remains responsible for that *client's equity balance* held at the *intermediate broker* until the contract is terminated and all of that *client's* positions at that *broker* closed. If a *firm* wishes to discharge itself from its fiduciary duty, it should do so in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (■ CASS 7.2.15 R).

### 7.5.2

FCA

R

A *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold or control *client money*, but only if:

- (1) the *firm* transfers the *client money*:
  - (a) for the purpose of a transaction for a *client* through or with that *person*; or
  - (b) to meet a *client's* obligation to provide collateral for a transaction (for example, an *initial margin* requirement for a *contingent liability investment*); and
- (2) in the case of a *retail client*, that *client* has been notified that the *client money* may be transferred to the other *person*.

### 7.5.3

FCA

G

A *firm* should not hold excess *client money* in its *client transaction accounts* with *intermediate brokers*, *settlement agents* and *OTC counterparties*; it should be held in a *client bank account*. This guidance does not apply to *client money* provided by a *firm* to an *authorised central counterparty* in connection with a *contingent liability investment* undertaken for a *client* and recorded in a *client transaction account* that is an *individual client account* or an *omnibus client account* at that *authorised central counterparty*.

## 7.6 Records, accounts and reconciliations

### Records and accounts

7.6.1  
FCA

**R** A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.

[Note: article 16(1)(a) of the *MiFID implementing Directive*]

7.6.2  
FCA

**R** A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *client money* held for *clients*.

[Note: article 16(1)(b) of the *MiFID implementing Directive*]

### Client entitlements

7.6.3  
FCA

**G** Pursuant to **■** CASS 7.6.2 R (Records and accounts), and where relevant **■** SYSC 4.1.1 R (General requirements) and **■** SYSC 6.1.1 R (Compliance), a *firm* should take reasonable steps to ensure that it is notified promptly of any receipt of *client money* in the form of a *client* entitlement.

### Record keeping

7.6.4  
FCA

**R** A *firm* must ensure that records made under **■** CASS 7.6.1 R and **■** CASS 7.6.2 R are retained for a period of five years after they were made.

7.6.5  
FCA

**G** A *firm* should ensure that it makes proper records, sufficient to show and explain the *firm's* transactions and commitments in respect of its *client money*.

### Internal reconciliations of client money balances

7.6.6  
FCA

**G**

- (1) Carrying out internal reconciliations of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* should be one of the steps a *firm* takes to satisfy its obligations under **■** CASS 7.6.2 R, and where relevant **■** SYSC 4.1.1 R and **■** SYSC 6.1.1 R.

(2) A *firm* should perform such internal reconciliations:

- (a) as often as is necessary; and
  - (b) as soon as reasonably practicable after the date to which the reconciliation relates;
- to ensure the accuracy of the *firm's* records and accounts.

- (3) The *standard method of internal client money reconciliation* sets out a method of reconciliation of client money balances that the FCA believes should be one of the steps that a *firm* takes when carrying out internal reconciliations of *client money*.

### Records

7.6.7

FCA

R

- (1) A *firm* must make records, sufficient to show and explain the method of internal reconciliation of *client money* balances under ■ CASS 7.6.2 R used, and if different from the *standard method of internal client money reconciliation*, to show and explain that:
  - (a) the method of internal reconciliation of *client money* balances used affords an equivalent degree of protection to the *firm's clients* to that afforded by the *standard method of internal client money reconciliation*; and
  - (b) in the event of a *primary pooling event* or a *secondary pooling event*, the method used is adequate to enable the *firm* to comply with the *client money distribution rules*.
- (2) A *firm* must make these records on the date it starts using a method of internal reconciliation of *client money* balances and must keep it for a period of five years after ceasing to use it.

7.6.8

FCA

R

A *firm* that does not use the *standard method of internal client money reconciliation* must first send a written confirmation to the FCA from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively.

### Reconciliations with external records

7.6.9

FCA

R

A *firm* must conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom *client money* is held.

[Note: article 16(1)(c) of the *MiFID implementing Directive*]

### Frequency of external reconciliations

7.6.10

FCA

G

- (1) A *firm* should perform the required reconciliation of *client money* balances with external records:
  - (a) as regularly as is necessary; and
  - (b) as soon as reasonably practicable after the date to which the reconciliation relates;



to ensure the accuracy of its internal accounts and records against those of third parties by whom *client money* is held.

- (2) In determining whether the frequency is adequate, the *firm* should consider the risks which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the *client money* is held.

### Method of external reconciliations

7.6.11  
FCA

G

A method of reconciliation of *client money* balances with external records that the FCA believes is adequate is when a *firm* compares:

- (1) the balance on each *client bank account* as recorded by the *firm* with the balance on that account as set out on the statement or other form of confirmation issued by the bank with which those accounts are held; and
- (2) the balance, currency by currency, on each *client transaction account* as recorded by the *firm*, with the balance on that account as set out in the statement or other form of confirmation issued by the *person* with whom the account is held;

and identifies any discrepancies between them.

7.6.12  
FCA

R

Any *approved collateral* held in accordance with the *client money rules* must be included within this reconciliation.

### Reconciliation discrepancies

7.6.13  
FCA

R

When any discrepancy arises as a result of a *firm's* internal reconciliations, the *firm* must identify the reason for the discrepancy and ensure that:

- (1) any *shortfall* is paid into a *client bank account* by the close of business on the day that the reconciliation is performed; or
- (2) any excess is withdrawn within the same time period (but see ■ CASS 7.4.20 G and ■ CASS 7.4.21 R).

7.6.14  
FCA

R

When any discrepancy arises as a result of the reconciliation between a *firm's* internal records and those of third parties that hold *client money*, the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.

7.6.15  
FCA

R

While a *firm* is unable to resolve a difference arising from a reconciliation between a *firm's* internal records and those of third parties that hold *client money*, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* or *approved collateral* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record



or set of records is accurate and pay its own *money* into a relevant account.

#### Notification requirements

7.6.16

FCA

R

A *firm* must inform the *FCA* in writing without delay:

- (1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in ■ CASS 7.6.1 R, ■ CASS 7.6.2 R or ■ CASS 7.6.9 R;
- (2) if having carried out a reconciliation it has not complied with, or is unable, in any material respect, to comply with ■ CASS 7.6.13 R to ■ CASS 7.6.15 R.

#### Audit of compliance with the MiFID client money rules

7.6.17

FCA

G

*Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FCA* under ■ SUP 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *client money rules*.

7.6.18

FCA

G

*Firms* that do not adopt the normal approach are reminded that the *firm's* auditor must confirm to the *FCA* in writing that the *firm* has in place systems and controls which are adequate to enable it to operate the alternative approach effectively (see ■ CASS 7.4.15 R).

7.6.19

FCA

G

*Firms* that do not use the *standard method of internal client money reconciliation* are reminded that the *firm's* auditor must confirm to the *FCA* in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see ■ CASS 7.6.8 R).

## 7.7 Statutory trust

### 7.7.1

FCA

G

Section 137B(1) of the Act (Miscellaneous ancillary matters) provides that *rules* may make provision which result in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). This section creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

### Requirement

### 7.7.2

FCA

R

A *firm* receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:

- (1) for the purposes of and on the terms of the *client money rules* and the *client money distribution rules*;
- (2) subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such with respect of *client money* received in the course of *insurance mediation activity* and that was opted in to this chapter) for whom that *money* is held, according to their respective interests in it;
- (3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* with respect of *client money* received in the course of *insurance mediation activity* according to their respective interests in it;
- (4) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
- (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

7.7.3

FCA

R

A *trustee firm* which is subject to the *client money rules* by virtue of

■ CASS 7.1.1 R (4):

- (1) must receive and hold *client money* in accordance with the relevant instrument of trust;
- (2) subject to that, receives and holds *client money* on trust on the terms (or in Scotland on the agency terms) specified in  
■ CASS 7.7.2 R.

7.7.4

FCA

G

If a *trustee firm* holds *client money* in accordance with ■ CASS 7.7.3 R (2), the *firm* should follow the provisions in ■ CASS 7.1.15E R and ■ CASS 7.1.15F R.



## 7.8 Notification and acknowledgement of trust

### Banks

7.8.1

FCA

R

- (1) When a *firm* opens a *client bank account*, the *firm* must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:
  - (a) all *money* standing to the credit of the account is held by the *firm* as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against *money* in that account in respect of any sum owed to it on any other account of the *firm*; and
  - (b) the title of the account sufficiently distinguishes that account from any account containing *money* that belongs to the *firm*, and is in the form requested by the *firm*.
- (2) In the case of a *client bank account* in the *United Kingdom*, if the bank does not provide the required acknowledgement within 20 *business days* after the *firm* dispatched the notice, the *firm* must withdraw all *money* standing to the credit of the account and *deposit* it in a *client bank account* with another bank as soon as possible.

### Exchanges, clearing houses, intermediary brokers or OTC counterparties

7.8.2

FCA

R

- (1) A *firm* which undertakes any *contingent liability investment* for *clients* through an exchange, *clearing house*, *intermediate broker* or *OTC counterparty* must, before the *client transaction account* is opened with the exchange, *clearing house*, *intermediate broker* or *OTC counterparty*:
  - (a) notify the *person* with whom the account is to be opened that the *firm* is under an obligation to keep *client money* separate from the *firm's* own *money*, placing *client money* in a *client bank account*;
  - (b) instruct the *person* with whom the account is to be opened that any *money* paid to it in respect of that transaction is to be credited to the *firm's client transaction account*; and

- (c) require the *person* with whom the account is to be opened to acknowledge in writing that the *firm's client transaction account* is not to be combined with any other account, nor is any right of set-off to be exercised by that *person* against *money* credited to the *client transaction account* in respect of any sum owed to that *person* on any other account.
- (2) If the exchange, *clearing house*, *intermediate broker* or *OTC* counterparty does not provide the required acknowledgement within 20 *business days* of the dispatch of the notice and instruction, the *firm* must cease using the *client transaction account* with that exchange, *clearing house*, *intermediate broker* or *OTC* counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any *money*.



**Annex 1****FCA**

As explained in ■ CASS 7.6.6 G, in complying with its obligations under ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance), a *firm* should carry out internal reconciliations of records and accounts of *client money* the *firm* holds in *client bank accounts* and *client transaction accounts*. This Annex sets out a method of reconciliation that the FCA believes is appropriate for these purposes (the *standard method of internal client money reconciliation*).

1. Each *business day*, a *firm* that adopts the normal approach (see ■ CASS 7.4.17 G) should check whether its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on the previous *business day*, was at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on that day.
2. Each *business day*, a *firm* that adopts the alternative approach (see ■ CASS 7.4.18 G) should ensure that its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on that *business day* is at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on the previous *business day*.
3. No excess or *shortfall* should arise when adopting the alternative approach.
4. If a *firm* is operating the alternative approach and draws a cheque on its own bank account, it will be expected to account for those cheques that have not yet cleared when performing its reconciliations of records and accounts under paragraph 2. An historic average estimate of uncleared cheques may be used to satisfy this obligation (see ■ CASS 7.4.19 G (3)).
5. For the purposes of performing its reconciliations of records and accounts under paragraphs 1 or 2, a *firm* should use the values contained in its accounting records, for example its cash book, rather than values contained in statements received from its banks and other third parties.

**Client money requirement**

6. The *client money* requirement is either:
  - (1) (subject to paragraph 18) the sum of, for all *clients*:
    - (a) the individual *client* balances calculated in accordance with paragraph 7, excluding:
      - (i) individual *client* balances which are negative (that is, debtors); and
      - (ii) *clients' equity balances*; and
    - (b) the total *margined transaction* requirement calculated in accordance with paragraph 14; or
  - (2) the sum of:
    - (a) for each *client bank account*:
      - (i) the amount which the *firm's* records show as held on that account; and

(ii) an amount that offsets each negative net amount which the *firm's* records show attributed to that account for an individual *client*; and

(b) the total *marginised transaction* requirement calculated in accordance with paragraph 14.

**General transactions**

7. The individual *client* balance for each *client* should be calculated in accordance with this table:

Individual client balance calculation	
Free <i>money</i> (no trades) and sale proceeds due to the <i>client</i> :	A
(a) in respect of <i>principal deals</i> when the <i>client</i> has delivered the <i>designated investments</i> ; and	B
(b) in respect of <i>agency deals</i> , when either:	
(i) the sale proceeds have been received by the <i>firm</i> and the <i>client</i> has delivered the <i>designated investments</i> ; or	C1
(ii) the <i>firm</i> holds the <i>designated investments</i> for the <i>client</i> ; and	C2
the cost of purchases:	
(c) in respect of <i>principal deals</i> , paid for by the <i>client</i> but the <i>firm</i> has not delivered the <i>designated investments</i> to the <i>client</i> ; and	D
(d) in respect of <i>agency deals</i> , paid for by the <i>client</i> when either:	
(i) the <i>firm</i> has not remitted the <i>money</i> to, or to the order of, the counterparty; or	E1
(ii) the <i>designated investments</i> have been received by the <i>firm</i> but have not been delivered to the <i>client</i> ;	E2
Less	
<i>money</i> owed by the <i>client</i> in respect of unpaid purchases by or for the <i>client</i> if delivery of those <i>designated investments</i> has been made to the <i>client</i> ; and	F
Proceeds remitted to the <i>client</i> in respect of sales transactions by or for the <i>client</i> if the <i>client</i> has not delivered the <i>designated investments</i> .	G
Individual <i>Client</i> Balance 'X' = (A+B+C1+C2+D+E1+E2)-F-G	X

8. A *firm* should calculate the individual *client* balance using the contract value of any *client* purchases or sales.

9. A *firm* may choose to segregate *designated investments* instead of the value identified in paragraph 7 (except E1) if it ensures that the *designated investments* are held in such a manner that the *firm* cannot use them for its own purposes.

10. Segregation in the context of paragraph 9 can take many forms, including the holding of a *safe custody investment* in a nominee name and the safekeeping of certificates evidencing title in a fire resistant safe. It is not the intention that all the *custody rules* in the *custody chapter* should be applied to *designated investments* held in the course of settlement.

11. In determining the *client money* requirement under paragraph 6, a *firm* need not include *money* held in accordance with ■ CASS 7.2.8 R (Delivery versus payment transaction).

12. In determining the *client money* requirement under paragraph 6, a *firm*:

(1) should include dividends received and interest earned and allocated;



- (2) may deduct outstanding *fees*, calls, rights and interest charges and other amounts owed by the *client* which are due and payable to the *firm* (see ■ CASS 7.2.9 R);
- (3) need not include *client money* in the form of *client* entitlements which are not required to be segregated (see ■ CASS 7.4.27 G) nor include *client money* forwarded to the *firm* by its appointed representatives, *tied agents*, field representatives and other agents, but not received (see ■ CASS 7.4.24 G);
- (4) should take into account any *client money* arising from ■ CASS 7.6.13 R (Reconciliation discrepancies); and
- (5) should include any unallocated *client money*.

### Equity balance

13. A *firm's* equity balance, whether with an exchange, *intermediate broker* or *OTC* counterparty, is the amount which the *firm* would be liable to pay to the exchange, *intermediate broker* or *OTC* counterparty (or vice-versa) in respect of the *firm's margined transactions* if each of the open positions of the *firm's clients* was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the *firm's* account with the exchange, *intermediate broker* or *OTC* counterparty is closed.

### Margined transaction requirement

14. The total *margined transaction* requirement is:

- (1) the sum of each of the *client's equity balances* which are positive;

Less

- (2) the proportion of any individual negative *client equity balance* which is secured by *approved collateral*; and
- (3) the net aggregate of the *firm's* equity balance (negative balances being deducted from positive balances) on transaction accounts for *customers* with exchanges, *clearing houses*, *intermediate brokers* and *OTC* counterparties.

15. To meet a shortfall that has arisen in respect of the requirement in paragraph 6(1)(b) or 6(2)(b), a *firm* may utilise its own *approved collateral* provided it is held on terms specifying when it is to be realised for the benefit of *clients*, it is clearly identifiable from the *firm's* own property and the relevant terms are evidenced in writing by the *firm*. In addition, the proceeds of the sale of that *collateral* should be paid into a *client bank account*.

16. If a *firm's* total *margined transaction* requirement is negative, the *firm* should treat it as zero for the purposes of calculating its *client money* requirement.

17. The terms '*client equity balance*' and '*firm's* equity balance' in paragraph 13 refer to cash values and do not include non-cash *collateral* or other *designated investments* held in respect of a *margined transaction*.

17A. A *firm* with a *Part 30 exemption order* which also operates an LME bond arrangement for the benefit of US-resident investors, should exclude the *client equity balances* for transactions undertaken on the London Metal Exchange on behalf of those US-resident investors from the calculation of the *margined transaction* requirement.

### Reduced client money requirement option

18.

(1) When, in respect of a *client*, there is a positive individual *client* balance and a negative *client equity balance*, a *firm* may offset the credit against the debit and hence have a reduced individual *client* balance in paragraph 7 for that *client*.

(2) When, in respect of a *client*, there is a negative individual *client* balance and a positive *client equity balance*, a *firm* may offset the credit against the debit and hence have a reduced *client equity balance* in paragraph 14 for that *client*.

19. The effect of paragraph 18 is to allow a *firm* to offset, on a *client* by *client* basis, a negative amount with a positive amount arising out of the calculations in paragraphs 7 and 14, and, by so doing, reduce the amount the *firm* is required to segregate.

# Chapter 7A

## Client money distribution



## 7A.1 Application and purpose

### Application

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7A.1.1

FCA

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This chapter (the *client money distribution rules*) applies to a *firm* that holds *client money* which is subject to the *client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

### Purpose

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7A.1.2

FCA

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The *client money distribution rules* seek to facilitate the timely return 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*.

## 7A.2 Primary pooling events

### Failure of the authorised firm: primary pooling event

7A.2.1

FCA

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- (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*.

7A.2.2

FCA

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
- (4) when the *firm* notifies, or is in breach of its duty to notify, the *FCA*, in accordance with ■ CASS 7.6.16 R (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

FCA

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.

#### Pooling and distribution

7A.2.4

FCA

R

If a *primary pooling event* occurs:

- (1) all *client money* held in a *client bank account* or a *client transaction account* of the *firm* is treated as pooled (forming a notional pool) except for *client money* held in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty*;
- (2) the *firm* must distribute *client money* comprising the notional pool in accordance with ■ CASS 7.7.2 R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with ■ CASS 7A.2.5 R; and
- (3) if *client money* is remitted directly to the *firm* from an *authorised central counterparty*, then:
  - (a) any such remittance in respect of a *client transaction account* that is an *individual client account* must be distributed to the relevant *client* subject to ■ CASS 7.7.2 R (4);
  - (b) subject to (3)(c), 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) and be subject to distribution in accordance with ■ CASS 7A.2.4R (2); and
  - (c) any such remittance in respect of a *client transaction account* that is an *omnibus client account* must be distributed to the *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*;

in which case the amount of such remittance must be distributed to each such *client* in accordance with the information provided by the *authorised central counterparty* subject to

■ CASS 7.7.2 R (4).

## 7A.2.4A

FCA

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*.
- (2) Where any balance remitted from an *authorised central counterparty* 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, any *client money* remitted by the *authorised central counterparty* to the *firm* pursuant to ■ CASS 7A.2.4R (3) should not be treated as *client money* received after the failure of the *firm* under ■ CASS 7A.2.7 R.

## 7A.2.5

FCA

R

- (-1) Each *client's client equity balance* must be reduced by:
  - (a) any amount paid by an *authorised central counterparty* to a clearing member other than the *firm* in connection with a *porting arrangement* in accordance with ■ CASS 7.2.15 R (6) in respect of that *client*;
  - (b) any amount paid by an *authorised central counterparty* directly to that *client*, in accordance with ■ CASS 7.2.15 R (7); 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*, there is a positive individual *client balance* and a negative *client equity balance*, the credit must be offset against the debit reducing the individual *client balance* for that *client*.
- (2) When, in respect of a *client*, there is a negative individual *client balance* and a positive *client equity balance*, the credit must be

offset against the debit reducing the *client equity balance* for that *client*.

#### Client money received after the failure of the firm

7A.2.7

FCA

R

*Client money* received by the *firm* after a *primary pooling event* must not be pooled with *client money* held in any *client money* account operated by the *firm* 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.2.5 R, shows that *money* is due from the *client* to the *firm* at the time of the *primary pooling event*.

7A.2.8

FCA

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*.

7A.2.9

FCA

R

If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:

- (1) pay the full sum into the separate *client bank account* opened in accordance with ■ CASS 7A.2.7 R; 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

FCA

G

Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

7A.2.11

FCA

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

FCA

R

A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under ■ CASS 7.4.1 R (1) to ■ CASS 7.4.1 R (3) (Depositing client money) or ■ CASS 7.5.2 R (Transfer of client money to a third party).

7A.3.2

FCA

R

■ CASS 7A.3.6 R to ■ CASS 7A.3.18 R do not apply if, on the *failure* of the third party, 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.

7A.3.3

FCA

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.

### Failure of a bank

7A.3.4

FCA

G

When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with ■ CASS 7A.3.6 R. The *firm* would be expected to reflect the *shortfall* that arises at the *failed* bank in its records of the entitlement of *clients* and of *money* held with third parties.

7A.3.5

FCA

G

The *client money distribution 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

FCA

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, then:

- (1) in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 7A.3.8 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;

- (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.10 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;
- (3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.11 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;
- (4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts*, is not pooled with any other *client money*; and
- (5) any *money* held in a *designated client fund account*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money*.

7A.3.7

FCA

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, then:

- (1) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.10 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply; and
- (2) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.11 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply.

7A.3.8

FCA

R

*Money* held in each *general client bank account* and *client transaction account* of the *firm* 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* of the bank, must be borne by all the *clients* whose *client money* is held in either a *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* by the *firm*, to reflect the requirements in (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 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 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.9

FCA

G

The term "which should have been held" is a reference to the *failed* bank's failure to hold the *client money* at the time of the pooling event.

7A.3.10

FCA

R

For each *client* with a *designated client bank account* held at the *failed* bank:

- (1) any *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* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients* 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* at the *failed* bank 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 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.11

FCA

R

Money held in each *designated client fund account* with the *failed* bank must be treated as pooled with any other *designated client fund accounts* of the *firm* which contain part of the same designated fund and:

- (1) any *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* 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* by the *firm*, in accordance with (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 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 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.12

FCA

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*.

#### Client money received after the failure of a bank

7A.3.13

FCA

R

*Client money* received by the *firm* after the failure of a bank, that would otherwise have been paid into a *client bank account* at that bank:

- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
  - (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

FCA

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

FCA

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

FCA

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*, the provisions of ■ CASS 7A.3.17 R and ■ CASS 7A.3.18 R will apply.

7A.3.17

FCA

R

Money held in each *general client bank account* and *client transaction account* of the *firm* 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*, 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;
- (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 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

**Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty**

7A.3.18

FCA

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*:

- (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* 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.

7A.3.19

FCA

R

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

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On the *failure* of a third party with which *money* is held, a *firm* must notify the *FCA*:

- (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
- (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.

# Chapter 8

# Mandates

## 8.1 Application

### 8.1.1

FCA

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This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm's*:

- (1) *designated investment business* (including *MiFID business*); or
- (2) *insurance mediation activity*, except where it relates to a *reinsurance contract*.

### 8.1.2A

FCA

R

The *mandate rules* do not apply to a *firm*:

- (1) in relation to *client money* that the *firm* is holding in accordance with ■ CASS 5 or ■ CASS 7 (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with ■ CASS 7.5.2 R); or
- (2) in relation to *safe custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets (without arranging), acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS* in accordance with ■ CASS 6; or
- (3) in relation to a *client's* assets that the *firm* is holding or has received under an arrangement to which ■ CASS 3 applies; or
- (4) when it acts as the *operator* of a *regulated collective investment scheme* in relation to property held for or within the *scheme*.

### 8.1.2B

FCA

G

- (1) ■ CASS 8.1.2A R is not an absolute exemption, but it excludes the application of the *mandate rules* in relation to *money* or assets that a *firm* has received, is holding, or is responsible for (as appropriate and in the circumstances described in ■ CASS 8.1.2A R).
- (2) This means that, for example in respect of ■ CASS 8.1.2A R (1), a *firm* holding *client money* in accordance with ■ CASS 5 or ■ CASS 7 does not also need to comply with the *mandate rules* in relation to the *client money* which it actually holds, but the *mandate rules* would apply if the *firm* has a *mandate* under which it can receive a *client's money* from another *person* in the course



of, or in connection with, the activities set out at ■ CASS 8.1.1 R (1) and ■ CASS 8.1.1 R (2).

- (3) Similarly, in respect of ■ CASS 8.1.2A R (4), the *mandate rules* apply to a *firm* that is the *operator* of a *regulated collective investment scheme* if, for example, it has a *mandate* under which it can receive a *client's money* from another *person* for the purposes of investing it in the *scheme*.

8.1.3  
FCA

**G** *Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken (see ■ CASS 1.3).

**Purpose**

8.1.4  
FCA

**G** The *mandate rules* require *firms* to establish and maintain records and *internal controls* to prevent the misuse of a *mandate*.

8.1.4A  
FCA

**G** The *mandate rules* only apply to a *firm* that has a *mandate*, and do not affect the duties of any other *person* to whom the *firm* is able to give the types of instructions referred to in ■ CASS 8.2.1R (4). For example, if a *person* (A) has accepted a *deposit* from a *client*, and a *firm* (B) has a *mandate* in respect of that *client's deposit* held by A, the *mandate rules* only apply to B, and do not affect the duties of A in relation to the *deposit*.

## 8.2 Definition of mandate

### 8.2.1

FCA

R

A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):

- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
- (2) they are in written form at the time they are obtained from the *client*;
- (3) they are retained by the *firm*;
- (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
  - (a) instructions to another *person* in relation to the *client's* money that is credited to an account maintained by that other *person* for the *client*;
  - (b) instructions to another *person* in relation to any money to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client* money for the *client* in accordance with ■ CASS 5 or ■ CASS 7);
  - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments*, acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS);
  - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
- (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

8.2.2

FCA

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**Written form**

A *mandate* can take any written form and need not state that it is a *mandate*. For example it could take the form of a standalone document containing certain information or conferring a certain authority on the *firm*, a specific provision within a document or agreement that also relates to other matters, or a combination of provisions within a number of documents which together meet the conditions in ■ CASS 8.2.1 R.

8.2.3

FCA

G

**Retention by the firm**

- (1) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retains it (for example by not destroying the relevant document):
  - (a) after it uses it to effect those immediate transactions; or
  - (b) because those transactions are not, for whatever reason, effected immediately.
- (2) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

8.2.4

FCA

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**Ability to give instructions to another person**

The instructions referred to at ■ CASS 8.2.1 R (4) are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with ■ CASS 5, ■ CASS 6 or ■ CASS 7 (for example, because of an exemption in those *rules*).

8.2.5

FCA

G

A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1 R (4)(a) could include a direct debit instruction over a *client's bank* account in favour of the *firm*.

8.2.6

FCA

G

A *mandate* in relation to the type of instructions referred to in ■ CASS 8.2.1 R (4)(d) could include written information that sets out the *client's credit card* details.

8.2.7

FCA

G

**Conditions on use of mandate and client's further involvement**

- (1) If a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client* might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.
- (2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in ■ CASS 8.2.1 R (4), but the *firm* cannot, in practice, use those means without the *client's* further involvement, then the condition in

■ CASS 8.2.1 R (5) would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in ■ CASS 8.2.1 R (4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to those instructions.

## 8.3 Records and internal controls

- 8.3.1**  
**FCA** **R** A *firm* that has *mandates* must establish and maintain adequate records and *internal controls* in respect of its use of the *mandates*.
- 8.3.2**  
**FCA** **R** The records and *internal controls* required by **■ CASS 8.3.1 R** must include:
- (1) an up-to-date list of each *mandate* that the *firm* has obtained, including a record of any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
  - (2) a record of each transaction entered into under each *mandate* that the *firm* has;
  - (3) *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
  - (4) the details of the procedures and *internal controls* around the giving of instructions under the *mandates* that the *firm* has (such instructions being those referred to in **■ CASS 8.2.1 R (4)**); and
  - (5) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.
- 8.3.3**  
**FCA** **G** A *firm* should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and criteria to which transactions effected by a *firm* with or for a *client* may be subject.
- (1) The requirements in **■ CASS 8.3.2 R (1)** and **■ CASS 8.3.2 R (3)** apply only in respect of conditions placed around the *firm's* use of a *mandate* itself or around the instructions described in **■ CASS 8.2.1 R (4)**. Examples of these include conditions under which a *mandate* may only be used by the *firm* in connection with transactions up to a certain value, or under which instructions under a *mandate* may only be given by certain personnel within the *firm*.

- 
- (2) The requirements in ■ CASS 8.3.2 R (1) and ■ CASS 8.3.2 R (3) do not apply in respect of criteria which relate to the nature and circumstances of transactions effected by a *firm* with or for a *client*. Examples of those criteria include investment restrictions or exposure limits for a managed portfolio, and required or preferred execution prices or execution venues.

# Chapter 9

## Prime brokerage



## 9.1 Application

9.1.1

FCA

**R** This chapter applies to a *firm*:

- (1) to which ■ CASS 6 (Custody rules) applies; and
- (2) which is a *prime brokerage firm*.



## 9.2 Prime broker's daily report to clients

9.2.1

FCA

R

- (1) A *firm* must make available to each of its *clients* to whom it provides *prime brokerage services* a statement in a *durable medium*:
  - (a) showing the value at the close of each *business day* of the items in (3); and
  - (b) detailing any other matters which that *firm* considers are necessary to ensure that a *client* has up-to-date and accurate information about the amount of *client money* and the value of *safe custody assets* held by that *firm* for it.
- (2) The statement must be made available to those *clients* not later than the close of the next *business day* to which it relates.
- (3) The statement must include:
  - (a) the total value of *safe custody assets* and the total amount of *client money* held by that *prime brokerage firm* for a *client*;
  - (b) the cash value of each of the following:
    - (i) Cash loans made to that *client* and accrued interest;
    - (ii) *securities* to be redelivered by that *client* under open short positions entered into on behalf of that *client*;
    - (iii) current settlement amount to be paid by that *client* under any *futures* contracts;
    - (iv) short sale cash proceeds held by the *firm* in respect of short positions entered into on behalf of that *client*;
    - (v) cash margin held by the *firm* in respect of open *futures* contracts entered into on behalf of that *client*;
    - (vi) mark-to-market close-out exposure of any *OTC* transaction entered into on behalf of that *client* secured by *safe custody assets* or *client money*;
    - (vii) total secured obligations of that *client* against the *prime brokerage firm*; and

(viii) all other *safe custody assets* held for that *client*.

- (c) total collateral held by the *firm* in respect of secured transactions entered into under a *prime brokerage agreement*, including where the *firm* has exercised a right of use in respect of that *client's safe custody assets*;
- (d) the location of all of a *client's safe custody assets*, including assets held with a sub-custodian; and
- (e) a list of all the institutions at which the *firm* holds or may hold *client money*, including money held in *client bank accounts* and *client transaction accounts*.

## 9.2.2

FCA

G

Where a *firm* has entered into an agreement with a *client* under article 91 (Reporting obligations for prime brokers) of the *AIFMD level 2 regulation*, and to the extent that the *firm* makes available to the *client* the same statements as specified by that article that it is required to provide to the relevant *depository*, the *FCA* will treat the obligations under ■ CASS 9.2.1 R as satisfied by the *firm*.

## 9.3 Prime brokerage agreement disclosure annex

### 9.3.1

FCA

R

- (1) A *firm* must ensure that every *prime brokerage agreement* that includes its right to use *safe custody assets* for its own account includes a disclosure annex.
- (2) A *firm* must ensure that the disclosure annex sets out a summary of the key provisions within the *prime brokerage agreement* permitting the use of *safe custody assets*, including:
  - (a) the contractual limit, if any, on the *safe custody assets* which a *prime brokerage firm* is permitted to use;
  - (b) all related contractual definitions upon which that limit is based;
  - (c) a list of numbered references to the provisions within that *prime brokerage agreement* which permit the *firm* to use the *safe custody assets*; and
  - (d) a statement of the key risks to that *client's safe custody assets* if they are used by the *firm*, including but not limited to the risks to the *safe custody assets* on the *failure* of the *firm*.
- (3) A *firm* must ensure that it sends to the *client* in question an updated disclosure annex if the terms of the *prime brokerage agreement* are amended after completion of that agreement such that the original disclosure annex no longer accurately records the key provisions of the amended agreement.

### 9.3.2

FCA

G

- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *client's* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.
- (2) Subject to paragraph (3), a *prime brokerage firm* should not enter into "right to use arrangements" for a *client's safe custody assets* unless:
  - (a) in the case of a *CASS small firm* or a *firm* to which ■ CASS 1A.3.1CR applies, the person in that *firm* to whom the responsibilities set out in ■ CASS 1A.3.1R or in ■ CASS 1A.3.1C R (2) respectively have been allocated; or

- (b) in the case of any other *firm*, the *person* who carries out the CASS *operational oversight function*; and
- (c) those of that *firm's* managers who are responsible for those *safe custody assets*;

are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10* which include (where applicable):

- (i) the daily reporting obligation in ■ CASS 9.2.1 R; and
  - (ii) the record-keeping obligations in ■ CASS 6.3.6 R (3)(b)(i).
- (3) Paragraph (2) does not apply where the *prime brokerage firm* is also *acting as trustee or depository of an AIF* which is an *unauthorised AIF* and exercises a right of reuse for a *safe custody asset* of that *unauthorised AIF* under ■ FUND 3.11.24 R (Reuse of assets).

# Chapter 10

## CASS resolution pack

## 10.1 Application, purpose and general provisions

### Application

10.1.1  
FCA

R

- (1) Subject to (2) this chapter applies to a *firm* when it:
- holds *financial instruments*, is *safeguarding and administering investments*, is *acting as trustee or depositary of an AIF* or is *acting as trustee or depositary of a UCITS*, in accordance with ■ CASS 6; and/or
  - holds *client money* in accordance with ■ CASS 7.
- (2) This chapter does not apply to a *firm* to which ■ CASS 6 applies merely because it is a *firm* which *arranges safeguarding and administration of assets*.

### Purpose

10.1.2  
FCA

G

The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of *client money* and *safe custody assets* held by the *firm* to that *firm's clients*.

### General provisions

10.1.3  
FCA

R

A *firm* falling within ■ CASS 10.1.1 R must maintain and be able to retrieve, in the manner described in this chapter, a *CASS resolution pack*.

10.1.4  
FCA

G

A *firm* is required to maintain a *CASS resolution pack* at all times when ■ CASS 10.1.1 R applies to it.

10.1.5  
FCA

G

- (1) The *rules* in this chapter specify the types of documents and records that must be maintained in a *firm's CASS resolution pack* and the retrieval period for the pack. The *firm* should maintain the component documents of the *CASS resolution pack* in order for them to be retrieved in accordance with ■ CASS 10.1.7 R, and should not use the retrieval period to start producing these documents.

- (2) The contents of the documents that constitute the *CASS resolution pack* will change from time to time (for example, because daily reconciliations must be included in the pack).
- (3) A *firm* is only required to retrieve the *CASS resolution pack* in the circumstances prescribed in ■ CASS 10.1.7 R.

## 10.1.6

FCA

R

For the purpose of this chapter, a *firm* will be treated as satisfying a *rule* in this chapter requiring it to include a document in its *CASS resolution pack* if a member of that *firm's group* includes that document in its own *CASS resolution pack*, provided that:

- (1) that *group* member is subject to the same *rule*; and
- (2) the *firm* is still able to comply with ■ CASS 10.1.7 R.

## 10.1.7

FCA

R

In relation to each document in a *firm's CASS resolution pack* a *firm* must:

- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and
- (2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FCA* request.

## 10.1.8

FCA

R

Where documents are held by members of a *firm's group* in accordance with ■ CASS 10.1.6 R, the *firm* must have adequate arrangements in place with its *group* members which allow for delivery of the documents within the timeframe referred to in ■ CASS 10.1.7 R.

## 10.1.9

FCA

A

- (1) For the purpose of ■ CASS 10.1.7 R, the following documents and records should be retrievable immediately:
  - (a) the document identifying the institutions referred to in ■ CASS 10.2.1R (2);
  - (b) the document identifying individuals pursuant to ■ CASS 10.2.1R (4);
  - (c) any written notification or trust acknowledgement letters referred to in ■ CASS 10.2.1R (5);
  - (d) the most recent internal reconciliations relating to *safe custody assets* referred to in ■ CASS 10.3.1R (3);
  - (e) the most recent external reconciliations relating to *safe custody assets* referred to in ■ CASS 10.3.1R (5);

- (f) the most recent internal reconciliations relating to *client money* referred to in ■ CASS 10.3.1R (7); and
- (g) the most recent external reconciliations relating to *client money* referred to in ■ CASS 10.3.1R (9).

- (2) Where a *firm* is reliant on the continued operation of certain systems for the provision of component documents in its CASS *resolution pack*, it should have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.
- (3) Contravention of (1) or (2) may be relied upon as tending to establish contravention of ■ CASS 10.1.7 R.

10.1.10  
FCA

**G** Where a *firm* anticipates that it might be the subject of an *insolvency order*, it is likely to have sought advice from an external adviser. The *firm* should make the CASS *resolution pack* available promptly, on request, to such an adviser.

10.1.11  
FCA

- R** (1) A *firm* must ensure that it reviews the content of its CASS *resolution pack* on an ongoing basis to ensure that it remains accurate
- (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in ■ CASS 10.2.1 R, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.

10.1.12  
FCA

**G** For the purpose of ■ CASS 10.1.11R (2), an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to ■ CASS 10.2.1R (2).

10.1.13  
FCA

**G** A *firm* may hold in electronic form any document in its CASS *resolution pack* provided that it continues to be able to comply with ■ CASS 10.1.7 R and ■ CASS 10.1.11 R in respect of that document.

10.1.14  
FCA

**R** The individual to whom responsibility for CASS operational oversight has been allocated under ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or, as the case may be, ■ CASS 1A.3.1C R (2), must report at least annually to the *firm's governing body* in respect of compliance with the *rules* in this chapter.

10.1.15  
FCA

**G** Individuals allocated functions relating to CASS operational oversight pursuant to ■ CASS 1A.3.1 R, ■ CASS 1A.3.1A R or, as the case may be, ■ CASS 1A.3.1C R (2), are reminded that their responsibilities include compliance with the provisions in this chapter.



10.1.16

FCA

R

A *firm* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, ■ CASS 10.1.3 R.

10

PAGE  
5

## 10.2 Core content requirements

10.2.1

FCA

R

A *firm* must include within its *CASS resolution pack*:

- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS resolution pack*;
- (2) a document which identifies the institutions the *firm* has appointed (including through an *appointed representative, tied agent, field representative* or other agent):
  - (a) in the case of *client money*, for the placement of *money* in accordance with ■ CASS 7.4.1 R or to hold or control *client money* in accordance with ■ CASS 7.5.2 R; and
  - (b) in the case of *safe custody assets*, for the deposit of those assets in accordance with ■ CASS 6.3.1 R;
- (3) a document which identifies each *appointed representative, tied agent, field representative* or other agent of the *firm* which receives *client money* or *safe custody assets* in its capacity as the *firm's* agent;
- (4) a document which identifies:
  - (a) each *senior manager* and *director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* by ■ CASS 6 or ■ CASS 7; and
  - (b) the individual to whom responsibility for *CASS operational oversight* has been allocated under ■ CASS 1A.3.1 R or, as the case may be, to whom the *CASS operational oversight function* has been allocated under ■ CASS 1A.3.1A R;
- (5) for each institution identified in ■ CASS 10.2.1R (2), a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the *firm* that relates to

the holding of *client money* or *safe custody assets* including any written notification or trust acknowledgement letters sent or received pursuant to ■ CASS 7.8;

- (6) a document which:
- (a) identifies each member of the *firm's group* involved in operational functions related to any obligations imposed on the *firm* under ■ CASS 6 or ■ CASS 7, including in the case of a member that is a *nominee company*, identification as such; and
  - (b) identifies each third party which the *firm* uses for the performance of operational functions related to any of the obligations imposed on the *firm* by ■ CASS 6 or ■ CASS 7; and
  - (c) for each *group* member identified in (a), the type of entity (such as branch, subsidiary and or *nominee company*) the *group* member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;
- (7) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between the *firm* and each third party identified in (6)(b);
- (8) where the *firm* relies on a third party identified in (6)(b), a document which describes how to:
- (a) gain access to relevant information held by that third party; and
  - (b) effect a transfer of any of the *client money* or *safe custody assets* held by the *firm*, but controlled by that third party; and
- (9) a copy of the *firm's* manual in which are recorded its procedures for the management, recording and transfer of the *client money* and *safe custody assets* that it holds.

## 10.2.2

FCA

G

For the purpose of ■ CASS 10.2.1R (4), examples of individuals within the *firm* who are critical or important to the performance of operational functions include:

- (1) those necessary to carry out both internal and external *client money* and *safe custody asset* reconciliations; and
- (2) those in charge of client documentation for business involving *client money* and *safe custody assets*.

10.2.3

FCA

**R** For the purpose of ■ CASS 10.2.1R (2), a *firm* must ensure that the document records:

- (1) the full name of the individual institution in question;
- (2) the postal and email address and telephone number of that institution; and
- (3) the numbers of all accounts opened by that *firm* with that institution.

## 10.3 Existing records forming part of the CASS resolution pack

### 10.3.1

FCA

R

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

- (1) ■ CASS 6.3.1R (4) (safe custody assets: appropriateness of the firm's selection of a third party);
- (2) ■ CASS 6.4.3 R (firm's use of safe custody assets);
- (3) ■ CASS 6.5.1 R (*safe custody assets* held for each client), including internal reconciliations carried out pursuant to ■ CASS 6.5.2 R as explained in the *guidance* at ■ CASS 6.5.4 G;
- (4) ■ CASS 6.5.2A R (client agreements: firm's right to use);
- (5) ■ CASS 6.5.6 R (Reconciliations with external records);
- (6) ■ CASS 7.4.10 R (client money: appropriateness of the firm's selection of a third party);
- (7) ■ CASS 7.6.1 R (client money held for each client), including internal reconciliations carried out pursuant to ■ CASS 7.6.2 R as explained in the *guidance* at ■ CASS 7.6.6 G;
- (8) ■ CASS 7.6.7 R and ■ CASS 7.6.8 R (method of internal reconciliation of *client money* balances);
- (9) ■ CASS 7.6.9 R (Reconciliations with external records);
- (10) ■ COBS 3.8.2 R (2)(a) and ■ COBS 3.8.2 R (2)(c) (client categorisation);  
and
- (11) ■ COBS 8.1.4 R (retail and professional client agreements).

### 10.3.2

FCA

G

■ CASS 10.3.1 R does not change the record keeping requirements of the *rules* referred to therein.



## Client Assets

### CASS TP 1 Transitional Provisions

FCA

(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
2	Every <i>rule</i> in the <i>Handbook</i>	R	Expired		
		G	Expired		
3	CASS 5.1 to CASS 5.6	R	Apply in relation to <i>money</i> (and where appropriate <i>designated investments</i> ) held by a <i>firm</i> on 14 January 2005 (being <i>money</i> or <i>designated investments</i> to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such <i>money</i> (or <i>designated investments</i> ) relate to business carried on before 14 January 2005 and which would, if conducted on or after 14 January 2005, be an <i>insurance mediation activity</i> .	Indefinitely	14 January 2005
8A	CASS 6.3.5 R to CASS 6.3.8R	R	The <i>rules</i> listed in column (2) do not apply in relation to agreements executed before 1 April 2012.	1 April 2012 until 30 September 2012	1 April 2012
		G	Notwithstanding the operation of <i>CASS TP 1.1R(8A)</i> , a <i>firm</i> should as soon as reasonably practicable modify its agreement with that third party so as to meet the requirements of CASS 6.3.5 R to CASS 6.3.8 R.		





# Client Assets

## Schedule 1

### Sch 1.1 G

**FCA**

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

### Sch 1.2 G

**FCA**

It is not a complete statement of those requirements and should not be relied on as if it were.

### Sch 1.3 G

**FCA**

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 1A.3.3 R	Allocation of the <i>CASS</i> oversight responsibilities in CASS 1A.3.1 R, of the <i>CASS operational oversight function</i> , or of the responsibilities in CASS 1A.3.1C R (2), as relevant	The <i>person</i> to whom the <i>CASS</i> oversight responsibilities have been allocated, subject to the provisions of CASS 1A.3.3 R, to whom the <i>CASS operational oversight function</i> has been allocated in accordance with CASS 1A.3.1A R, or to whom the responsibilities in CASS 1A.3.1C R (2) have been allocated	Upon allocation	5 years (from the date the record was made)
CASS 1.4.12 R and, where applicable, CASS 1.4.13 R	For a <i>firm</i> which carries on <i>auction regulation bidding</i> , election (under CASS 1.4.9 R) to comply with <i>CASS</i> in respect of this activity and, where applicable, decision to discontinue use of that opt in	Record of this election or, where applicable, the decision to discontinue use of the opt in, including the date on which either is to be effective	Upon making the election or, where applicable, upon taking the decision to discontinue use of the opt in	5 years from the date on which the opt in ceases to be used

[deleted]

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
				[deleted]
				[deleted]
				[deleted]
				[deleted]
				[deleted]
				[deleted]
CASS 5.1.1 R (4)	Record of election of compliance with specified <i>CASS</i> rules	Record of compliance with specified <i>CASS</i> rules	Not specified	Not specified
CASS 5.2.3 R (2)	Holding <i>client money</i> as agent	The terms of the agreement	Not specified	Six years
CASS 5.4.4 R (2)	Adequacy of systems and controls	Written confirmation of adequate systems and controls from its auditor	Not specified	Not specified
CASS 5.5.84 R	<i>Client money</i> calculation	Whether the <i>firm</i> calculates its <i>client money</i> requirements according to CASS 5.5.84 R or CASS 5.5.84 R	Not specified	Not specified
CASS 5.5.84 R	Transactions and commitments for <i>client money</i>	Explanation of the <i>firm's</i> transactions and commitments for <i>client money</i>	Not specified	Three years
CASS 5.8.3 R (1)	Client's title to a <i>contract of insurance</i>	Identity of such <i>documents</i> and/or property and dates received and delivered to <i>client</i>	Not specified	Three years
CASS 6.1.16C R (3)	A <i>personal investment firm</i> that temporarily holds a <i>client's designated investments</i> which is not in the course of <i>MiFID business</i>	Client details and any actions taken by the <i>firm</i>		5 years (from the making of the record)
CASS 6.1.16K R	Client custody assets which the <i>firm</i> has arranged for another to hold or receive	Full details	On receipt	5 years
				[deleted]
CASS 6.3.1R (4)	Appropriateness of a <i>firm's</i> selection of a third party	Grounds upon which a <i>firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>safe custody assets</i> belonging to <i>clients</i>	Date of the selection	5 years (from the date the <i>firm</i> ceases to use the third party to hold <i>safe custody assets</i> belonging to <i>clients</i> )

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 6.4.3 R	Details of <i>clients</i> and <i>safe custody assets</i> used for the <i>firm's</i> own account or the account of another <i>client</i> of the <i>firm</i>	Details of the <i>client</i> on whose instructions the use of the <i>safe custody assets</i> has been effected and the number of <i>safe custody assets</i> used belonging to each <i>client</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 6.5.1 R	<i>Safe custody assets</i> held for each <i>client</i> and the <i>firm's</i> own <i>applicable assets</i>	All that is necessary to enable the <i>firm</i> to distinguish <i>safe custody assets</i> held for one <i>client</i> from <i>safe custody assets</i> held for any other <i>client</i> , and from the <i>firm's</i> own <i>applicable assets</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 6.5.2 R	<i>Safe custody assets</i> held for <i>clients</i>	Accurate records which ensure their correspondence to the <i>safe custody assets</i> held for <i>clients</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 6.5.2A R	<i>Client</i> agreements that include a <i>firm's</i> right to use <i>safe custody assets</i> for its own account	A copy of every executed <i>client</i> agreement that includes a <i>firm's</i> right to use <i>safe custody assets</i> for its own account	Maintain up-to-date records	5 years (from the date the record was made)
CASS 7.1.3 R (2)	Record of election to comply with the <i>client money chapter</i>	Record of election to comply with the <i>client money chapter</i> , including the date from which the election is to be effective	Date of the election	5 years (from the date the <i>firm</i> ceases to use the election)
CASS 7.1.15C R	Record of election in relation to CASS 7.1.15C R	Record of election in relation to CASS 7.1.15C R	Date of election	Not specified
CASS 7.4.10 R	Appropriateness of a <i>firm's</i> selection of a third party	Grounds upon which a <i>firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>client money</i>	Date of the selection	5 years (from the <i>firm</i> ceases to use the third party to hold <i>client money</i> )
CASS 7.6.1 R	<i>Client money</i> held for each <i>client</i> and the <i>firm's</i> own <i>money</i>	All that is necessary to enable the <i>firm</i> to distinguish <i>client money</i> held for one <i>client</i> from <i>client money</i> held for any other <i>client</i> , and from the <i>firm's</i> own <i>money</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 7.6.2 R	<i>Client money</i> held for each <i>client</i>	Accurate records to ensure the correspondence between the records and accounts of the entitlement of each <i>client</i> for	Maintain up to date records	5 years (from the date the record was made)

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		whom the <i>firm</i> holds <i>client money</i> with the records and accounts of the <i>client money</i> the <i>firm</i> holds in <i>client bank accounts</i> and <i>client transaction accounts</i>		
CASS 7.6.7 R	Internal reconciliation of <i>client money</i> balances	Explanation of method of internal reconciliation of <i>client money</i> balances used by the <i>firm</i> , and if different from the <i>standard method of internal client money reconciliation</i> , an explanation as to how the method used affords equivalent degree of protection to <i>clients</i> , and how it enables the <i>firm</i> to comply with the <i>client money distribution rules</i>	Date the <i>firm</i> starts using the method	5 years (from the date the <i>firm</i> ceases to use the method)
CASS 7A.3.8 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7A.3.10 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7A.3.11 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7A.3.17 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed intermediate broker, <i>settlement agent</i> or OTC counterparty	Maintain up to date records	Until <i>client</i> is repaid
CASS 8.3.1 R	Adequate records and internal controls in respect of the <i>firm's</i> use of <i>mandates</i> (see CASS 8.3.2 R (1) to CASS 8.3.2 R (5) )	Up to date list of <i>firm's mandates</i> and any conditions regarding the use of <i>mandates</i> , all transactions entered into, details of procedures and <i>internal controls</i> for giving and receiving of instructions under <i>mandates</i> , and important <i>client</i> documents held by the <i>firm</i>	Maintain current full details	Not specified

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Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 10.1.3 R	<i>A firm's CASS resolution pack</i>	The documents to which CASS 10.2 and CASS 10.3 refer	From the date on which a <i>firm</i> becomes subject to CASS 10.1.3 R	None is specified



## Client Assets

Schedule 2  
Notification requirements

## Sch 2.1 G

FCA

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 1A.2.5 R	Election to be treated as a <i>CASS medium firm</i> or a <i>CASS large firm</i>	The fact of that election	The fact of that election	To be made at least one week before the election is intended to take effect
CASS 1A.2.8 R (1) - (3)				[deleted]
CASS 1A.2.8 R (4)				[deleted]
CASS 1A.2.8A R				[deleted]
CASS 1A.2.9 R (1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9 R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9 R.	The need to comply with CASS 1A.2.9 R (1)-(3)	By the fifteenth <i>business day</i> of January unless contrary provision is made in CASS 1A.2.9 R
CASS 1A.2.9 R (4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The need to comply with CASS 1A.2.9 R (4)	At the same time the <i>firm</i> makes the notification under CASS 1A.2.9 R (1), (2) or (3)
CASS 1A.3.2 R				[deleted]
				[deleted]
				[deleted]
				[deleted]
				[deleted]
				[deleted]
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Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
				[deleted]
				[deleted]
CASS 5.5.84 R	Failure of <i>bank, broker or settlement agent</i>	Full details including whether it intends to make good any <i>shortfall</i> that may have arisen in the amounts involved	As soon as the <i>firm</i> becomes aware	Immediately
CASS 5.5.84 R	Inability to perform the calculation required by CASS 5.5.84 R	Inability to perform the calculation	Inability to perform the calculation	Immediately
CASS 5.5.84 R	Inability to make good any <i>shortfall</i> identified by CASS 5.5.84 R	Inability to make good any <i>shortfall</i> in <i>client money</i>	Inability to make good any <i>shortfall</i>	Immediately
CASS 5.5.84 R	Inability to comply with the requirements in CASS 5.5.84 R; CASS 5.5.84 R; CASS 5.5.84 R; CASS 5.5.84 R	Inability to comply with the requirements of the <i>rules</i> listed	Inability to comply with the requirements of the <i>rules</i> listed	As soon as reasonably practicable
CASS 6.5.13R (1)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.1 R (Records and accounts), CASS 6.5.2 R (Records and accounts, including internal reconciliations) or CASS 6.5.6R (Reconciliations with external records)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 6.5.13 R (1A)	Non-compliance or material inability to comply with the requirements in CASS 6.5.1 R (Records and accounts) and/or articles 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation	The fact that the <i>firm</i> has not complied or is materially unable to comply with the requirements and the reasons for that	Non-compliance or material inability to comply with the requirement	Without delay
CASS 6.5.13R (2)	Non-compliance or inability, in any mate-	The fact that the <i>firm</i> has not complied or	Non-compliance or inability, in any mate-	Without delay



Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 7.4.35 R	rial respect, to comply with the requirements in CASS 6.5.10R (Reconciliation discrepancies)  LME bond arrangements	is unable, in any material respect, to comply with the requirements and the reasons for that  Issue of an individual letter of credit issued by the <i>firm</i>	rial respect, to comply with the requirements  Upon issue of an individual letter of credit under an LME bond arrangement	Immediately
CASS 7.6.16 R (1)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.1R (Records and accounts), CASS 7.6.2R (Records and accounts, including internal reconciliations) or CASS 7.6.9R (Reconciliations with external records)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 7.6.16 R (2)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.13R to CASS 7.6.15R (Reconciliation discrepancies)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 7A.3.19 R (1)	Failure of a third party with which <i>money</i> is held - i.e.: bank, <i>intermediate broker</i> , <i>settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i>	Full details	<i>Firm</i> becomes aware of the <i>failure</i> of the entity	As soon as the <i>firm</i> becomes aware
CASS 7A.3.19 R (2)	<i>Failure</i> of a third party with which money is held - i.e.: bank, <i>intermediate broker</i> , <i>settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i>	Intentions regarding making good any <i>shortfall</i> that has arisen or may arise, and of the amounts involved	<i>Failure</i> of third party with which <i>client money</i> is held	As soon as reasonably practical

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Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 10.1.16 R	If a <i>firm</i> has not complied with, or is unable to comply with, CASS 10.1.3 R	The fact of that <i>firm's</i> non-compliance or inability to comply with the <i>rule</i> in CASS 10.1.3 R	Non-compliance or inability to comply with CASS 10.1.3 R	Immediately (as per CASS 10.1.16 R)

## Client Assets

### Schedule 3 Fees and other required payments

#### Sch 3.1 G

FCA

There are no requirements for fees or other payments in *CASS*.



## Client Assets

### Schedule 5 Rights of actions for damages

#### Sch 5.1 G

**FCA**

1. The table below sets out the *rules* in *CASS* contravention of which by an *authorised person* may be actionable under Section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention
2. If a 'Yes' appears in the column headed 'For private person?', the *rule* may be actionable by a 'private person' under Section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A 'Yes' in the column headed 'Removed' indicates that the *FCA* has removed the right of action under Section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. The column headed 'For other person?' indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

#### Sch 5.2 G

**FCA**

Chapter / Appendix	Section / Annex	Paragraph	Right of action under Section 138D		
			For private person?	Removed?	For other person?
All <i>rules</i> in <i>CASS</i> with the status letter "E"			No	No	No
All other <i>rule</i> in <i>CASS</i> .			Yes	No	No



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## Client Assets

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

##### FCA

As a result of section 138A of the *Act* (Modification or waiver of rules), the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particular rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.