

CLIENT ASSETS SOURCEBOOK (AMENDMENT NO 5) INSTRUMENT 2014**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (3) section 137T (General supplementary powers);
 - (4) section 138C (Evidential provisions); and
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as specified within each Annex.

Amendments to the FCA Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Client Assets sourcebook (CASS)	Annex C
Supervision manual (SUP)	Annex D

Notes

- E. In Annex C to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Client Assets Sourcebook (Amendment No 5) Instrument 2014.

By order of the Board of the Financial Conduct Authority
5 June 2014

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 1 July 2014

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

<i>general pool</i>	the discrete pool of <i>client money</i> held for all <i>clients</i> of the <i>firm</i> for whom the <i>firm</i> receives or holds <i>client money</i> in accordance with CASS 7.1.1AR, other than <i>client money</i> received or held in accordance with CASS 7.1.1AR in respect of a <i>sub-pool</i> .
<i>gross-minus-net amount</i>	at any given time, in respect of an <i>omnibus client account</i> maintained by a <i>clearing member firm</i> and the positions recorded therein, an amount equal to the difference between: <ul style="list-style-type: none"> (a) the sum of the margin amounts received from each <i>client</i> in relation to positions held for such <i>client</i> in that <i>omnibus client account</i> and (b) the amount of margin calculated on a net basis in respect of all of the <i>client</i> positions recorded in that <i>omnibus client account</i> and paid by that <i>firm</i> to the <i>authorised central counterparty</i>.
<i>LME</i>	the London Metal Exchange Limited.
<i>LME bond arrangement</i>	an arrangement for the segregation of money held by <i>firms</i> on behalf of US customers for transactions undertaken on the exchange operated by the <i>LME</i> , which is an alternative to complying with condition 2(g) of the <i>Part 30 exemption order</i> , and which has been established in accordance with certain no-action letters issued by the Commodity Futures Trading Commission.
<i>net margined omnibus client account</i>	an <i>omnibus client account</i> maintained by a <i>clearing member firm</i> in respect of which the margining arrangements give rise to a <i>gross-minus-net amount</i> which is held by the <i>clearing member firm</i> as <i>client money</i> .
<i>pool</i>	either a <i>sub-pool</i> or a <i>general pool</i> , as the context requires.
<i>sub-pool</i>	a discrete <i>pool</i> of <i>client money</i> established under CASS 7.19.
<i>sub-pool disclosure</i>	a document prepared by a <i>firm</i> containing the information required by

document CASS 7.19.9R.

Amend the following as shown.

CCP a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer, as defined in article 2(1) of *EMIR*.

clearing house a clearing house through which transactions may be cleared and for the purposes of *CASS 7* and *CASS 7A*, includes an *authorised central counterparty* and a *CCP*.

client money ...

(2A) (in *FEES*, *CASS 6*, *CASS 7*, *CASS 7A* and *CASS 10* and, in so far as it relates to matters covered by *CASS 6*, *CASS 7*, *COBS*, *GENPRU* or *IPRU(INV)*) subject to the *client money rules*, *money* of any currency:

(a) that a *firm* receives or holds for, or on behalf of, a ~~client~~ *client* in the course of, or in connection with, its *MiFID business*; ~~and/or~~

(b) which, in the course of carrying on *designated investment business* that is not *MiFID business*, a *firm* holds ~~in respect of any investment agreement entered into, or to be entered into, with or for a client, or which a firm treats as client money in accordance with the client money rules; or~~

(c) which a *firm* treats as *client money* in accordance with the *client money rules*.

...

client money rules ...

(3) (in *CASS 3*, *CASS 6*, *CASS 7*, *CASS 7A*, *UPRU*, *COBS* and *FEES*) *CASS 7.1* to *7.8* and *CASS 7.19*.

limited assurance engagement a 'limited assurance engagement' as described in the Glossary of terms in ~~the Auditing Practices Board Standards and Guidance for Auditors issued in 2010~~ Financial Reporting Council: Audit and Assurance: Standards and Guidance 2014.

Part 30 Exemption ~~an~~ the order under regulation 30.10 of the General Regulations under the US Commodity Exchange Act, issued by the Commodity Futures

<i>Order</i>	Trading Commission on 15 May 1989 <u>on 10 October 2003 (consolidating and updating relief granted to <i>firms</i> in prior orders)</u> , granting a <i>person authorised under the Act</i> exemption from the registration requirement <u>certain requirements</u> contained in Part 30 of those General Regulations.
<i>port</i>	means , in respect of the assets and positions recorded in a <i>client transaction account</i> that is an <i>individual client account</i> or an <i>omnibus client account</i> at an <i>authorised central counterparty</i> , action taken by that <i>authorised central counterparty</i> to transfer those assets and positions in accordance with article 48 of <i>EMIR</i> to another clearing member designated by the individual <i>client</i> (in the case of an <i>individual client account</i>) or designated by all of the <i>clients</i> for whom the account is held (in the case of an <i>omnibus client account</i>).
<i>reasonable assurance engagement</i>	a 'reasonable assurance engagement' as described in the Glossary of terms in the Auditing Practices Board Standards and Guidance for Auditors issued in 2010 <u>Financial Reporting Council: Audit and Assurance: Standards and Guidance 2014</u> .
<i>standard method of internal client money reconciliation</i>	(a) CASS 7 Annex 1G; <u>or</u> (b) <u>the methods of internal reconciliation of <i>client money</i> balances referred to in CASS 7.16 of the Client Assets Sourcebook (Amendment No 5) Instrument 2014.</u>
<i>trustee firm</i>	a <i>firm</i> which is not an <i>OPS firm</i> and which is acting as a: <ul style="list-style-type: none"> (a) <u>trustee (other than for a trust of <i>client money</i> arising only under CASS 5.3.2R, CASS 5.4 (Non-statutory client money trust), CASS 7.7.2R or CASS 11.6.1R); or</u> ...

Part 2: Comes into force on 1 December 2014

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

<i>acknowledgement letter</i>	(in CASS 7) a <i>client bank account acknowledgement letter</i> (a letter in the form of the template in CASS 7 Annex 2R), a <i>client transaction account acknowledgement letter</i> (a letter in the form of the template in CASS 7 Annex 3R) or an <i>authorised central counterparty acknowledgment letter</i> (a letter in the form of the template in CASS 7 Annex 4R).
<i>alternative approach mandatory prudent segregation</i>	the requirement under CASS 7.4.18BR on a <i>firm</i> using the alternative approach to segregate an amount of <i>money</i> as <i>client money</i> .

<i>alternative approach mandatory prudent segregation record</i>	the record created and maintained by a <i>firm</i> under CASS 7.4.19AR to CASS 7.4.19CR.
<i>authorised central counterparty acknowledgment letter</i>	a letter in the form of the template in CASS 7 Annex 4R.
<i>client transaction account acknowledgement letter</i>	a letter in the form of the template in CASS 7 Annex 3R.
<i>commercial settlement system</i>	a system commercially available to <i>firms</i> that are members or participants, a purpose of which is to facilitate the settlement of transactions using <i>money</i> and/or assets held on one or more <i>settlement accounts</i> .
<i>non-standard method of internal client money reconciliation</i>	a method of internal reconciliation of <i>client money</i> balances that is not a <i>standard method of internal client money reconciliation</i> .
<i>settlement account</i>	an account containing <i>money</i> and/or assets that is held with a <i>central bank</i> , central securities depository, <i>central counterparty</i> or any other institution acting as a <i>settlement agent</i> , which is used to settle transactions between participants or members of a <i>commercial settlement system</i> .

Amend the following definitions as shown.

<i>acknowledgement letter fixed text</i>	(in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is not in square brackets.
	(1) <u>(in CASS 7) the text in the template <i>acknowledgement letters</i> in CASS 7 Annex 2R, CASS 7 Annex 3R and CASS 7 Annex 4R that is not in square brackets.</u>
	(2) <u>(in CASS 11) the text in the <i>template acknowledgement letters</i> in CASS 11 Annex 1R that is not in square brackets.</u>
<i>acknowledgement letter variable text</i>	(in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is in square brackets.
	(1) <u>(in CASS 7) the text in the template <i>acknowledgement letters</i> in CASS 7 Annex 2R, CASS 7 Annex 3R, and CASS 7 Annex 4R that is in square brackets.</u>
	(2) <u>(in CASS 11) the text in the <i>template acknowledgement letters</i> in CASS 11 Annex 1R that is in square brackets.</u>

- client bank account acknowledgement letter* ~~(in CASS 11) a letter in the form of the template in CASS 11 Annex 1R.~~
- (1) (in CASS 7) a letter in the form of the template in CASS 7 Annex 2R.
- (2) (in CASS 11) a letter in the form of the template in CASS 11 Annex 1R.

Part 3: Comes into force on 1 June 2015

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

- aggregate safe custody asset record* a *firm's* internal record or account of all the *safe custody assets* that the *firm* holds for its *clients* (including those *safe custody assets* deposited by the *firm* with third parties under CASS 6.3 and any *physical safe custody assets* held by the *firm*).
- CASS 7 asset management firm* a *firm* subject to the *client money rules* and which falls within either (a) or (b), or both, but not (c):
- (a) a *firm* that was a member of *IMRO* immediately before *commencement*;
- (b) a *firm* for which the most substantial part of its gross income (including *commissions*) from its *MiFID business* or *designated investment business* that is not *MiFID business*, or both, is derived from one or more of the following activities:
- (i) *managing investments* other than *derivatives*;
- (ii) *OPS activity*;
- (iii) acting as the *manager* or *trustee* of an *AUT*;
- (iv) *managing an AIF*;
- (v) acting as the *ACD* or *depository* of an *ICVC*;
- (vi) acting as the *authorised contractual scheme manager* or *depository of an ACS*;
- (vii) *acting as trustee or depository of an AIF*;

- (viii) *acting as trustee or depositary of a UCITS;*
 - (ix) *establishing, operating or winding up a collective investment scheme (other than an AUT, ICVC or ACS);*
 - (x) *establishing, operating or winding up a personal pension scheme;*
 - (xi) *safeguarding and administering investments; and*
 - (xii) *the provision of platform services;*
- (c) a *firm* for which the most substantial part of its gross income is derived from its *safeguarding and administering investments* activities.

CASS 7 loan-based crowdfunding firm

a *firm*:

- (a) that is subject to the *client money rules* in CASS 7; and
- (b) whose *designated investment business* includes *operating an electronic system in relation to lending*.

clearing arrangement mandatory prudent segregation

the requirement under CASS 7.13.73R on a *firm* using the normal approach to segregate an amount of *money* as *client money*.

clearing arrangement mandatory prudent segregation record

the record created and maintained by a *firm* under CASS 7.13.74R and CASS 7.13.75R.

client money requirement

the total amount of *client money* a *firm* is required to have segregated in *client bank accounts* under the *client money rules* (see CASS 7.16.10R).

client money resource

the aggregate balance on the *firm's client bank accounts* (see CASS 7.16.8R).

client-specific safe custody asset record

a *firm's* internal record or account identifying each of the particular *safe custody assets* that the *firm* holds for each particular *client* (including those *safe custody assets* deposited by the *firm* with third parties under CASS 6.3 and any *physical safe custody assets* held by the *firm*).

external client money reconciliation

the *client money* reconciliation described in CASS 7.15.20R.

external custody reconciliation

the *safe custody asset* reconciliation described in CASS 6.6.34R.

<i>firm's equity balance</i>	the sum of <i>money</i> described in CASS 7.16.29R.
<i>individual client balance</i>	for each <i>client</i> , the total amount of all <i>money</i> the <i>firm</i> holds, has received or is obliged to have received or be holding as <i>client money</i> in a <i>client bank account</i> for that <i>client</i> in respect of <i>non-margined transactions</i> , calculated in accordance with CASS 7.16.21R.
<i>individual client balance method</i>	the method of calculating a <i>firm's client money requirement</i> described in CASS 7.16.16R.
<i>internal client money reconciliation</i>	the <i>client money</i> reconciliation described in CASS 7.15.12R.
<i>internal custody reconciliation method</i>	a method for performing an <i>internal custody record check</i> , described in CASS 6.6.17R.
<i>internal custody record check</i>	the <i>safe custody assets</i> record check described in CASS 6.6.10G(2) performed using either the <i>internal custody reconciliation method</i> or the <i>internal system evaluation method</i> .
<i>internal system evaluation method</i>	a method for performing an <i>internal custody record check</i> , described in CASS 6.6.19R.
<i>margined transaction requirement</i>	the total amount of <i>client money</i> a <i>firm</i> is required to segregate in <i>client bank accounts</i> for <i>margined transactions</i> under the <i>client money rules</i> , in accordance with CASS 7.16.32R.
<i>net negative add-back method</i>	the method of calculating a <i>firm's client money requirement</i> described in CASS 7.16.17R.
<i>non-margined transaction</i>	a transaction <i>executed</i> by a <i>firm</i> : <ul style="list-style-type: none"> (a) for, or on behalf of, a <i>client</i> in relation to <i>MiFID business</i> and/or <i>designated investment business</i>; and (b) which is not a <i>margined transaction</i>.
<i>physical asset reconciliation</i>	the <i>safe custody assets</i> reconciliation described in CASS 6.6.24R, using either the <i>total count method</i> or the <i>rolling stock method</i> .
<i>physical safe custody asset</i>	a <i>safe custody asset</i> (or tangible evidence of one) that is in a <i>firm's</i> physical custody and which may also be registered with the relevant issuer or agent of the issuer.
<i>prudent segregation</i>	a <i>firm's</i> segregation of an amount of <i>money</i> as <i>client money</i> under CASS 7.13.41R.
<i>prudent segregation record</i>	the records created and maintained by a <i>firm</i> under CASS 7.13.50R to CASS 7.13.53R.

rolling stock method a method for performing a *physical asset reconciliation*, as described in CASS 6.6.28R.

total count method a method for performing a *physical asset reconciliation*, as described in CASS 6.6.27R.

Amend the following definitions as shown:

alternative approach mandatory prudent segregation the requirement under ~~CASS 7.4.18B~~ 7.13.65R on a *firm* using the alternative approach to segregate an amount of *money* as *client money*.

alternative approach mandatory prudent segregation record the record created and maintained by a *firm* under ~~CASS 7.4.19A~~ 7.13.66R to ~~CASS 7.4.19C~~ 7.13.68R.

client bank account ...

(2) (in CASS 7 and CASS 7A):

(a) an account at a bank which:

(i) ~~holds the money of one or more clients;~~
[deleted]

(ii) is expressly held in the name of the *firm* that is subject to the requirement in CASS 7.13.3R; and

(iii) is a current or a deposit account; or

(b) a money market deposit account of *client money* which is identified as being *client money*; and

(c) in either case, which is a general client bank account, a designated client bank account or a designated client fund account.

client equity balance ~~the amount which a firm would be liable (ignoring any non-cash collateral held) to pay to a client (or the client to the firm) in respect of his margined transactions if each of his open positions was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and his account closed. This refers to cash values and does not include non-cash collateral or other designated investments held in respect of a margined transaction~~ the sum of money as described in CASS 7.16.28R.

client money rules ...

- (3) (in CASS 3, CASS 6, CASS 7, CASS 7A, COBS and FEES) CASS 7.1 to 7.8 and CASS 7.10 to 7.19.

client money segregation requirements

~~CASS 7.4.1R~~ 7.13.3R and ~~CASS 7.4.11R~~ 7.13.12R.

client transaction account

(in relation to a *firm* and ~~an exchange, clearing house, or intermediate broker~~ another person) an account maintained by ~~the that other person, such as an exchange, clearing house, or intermediate broker~~ or OTC counterparty, as the case may be, in respect of transactions in contingent liability investments undertaken by the firm with or for its clients who a firm allows to hold client money under CASS 7.14 (Client money held by a third party), which:

- (a) is in the name of the firm;
- (b) includes in its title the word “client” (or, if the system constraints of the relevant person or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of “client” that has the same meaning); and
- (c) is not a client bank account.

designated client bank account

a *client bank account* with the following characteristics:

...

- (b) the account includes in its title the ~~word~~ words "designated client" (or, if the systems constraints of the approved bank or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of those words that has the same meaning);

...

designated client fund account

a *client bank account* with the following characteristics:

...

- (b) the account includes in its title the ~~word~~ words "designated client fund" (or, if the systems constraints of the approved bank or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of those words that has the same meaning); and

...

<i>general pool</i>	the discrete pool of <i>client money</i> held for all <i>clients</i> of the <i>firm</i> for whom the <i>firm</i> receives or holds <i>client money</i> in accordance with CASS 7.1.1AR <u>7.10.1R</u> other than <i>client money</i> received or held in accordance with CASS 7.1.1AR <u>7.10.1R</u> in respect of a <i>sub-pool</i> .
<i>general client bank account</i>	a <i>client bank account</i> that holds <i>client money</i> of one or more <i>clients</i> , <u>which includes in its title the word “client” (or, if the systems constraints of the approved bank or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of the word “client” that has the same meaning), and which is not:</u> ...
<i>MiFID client money (minimum implementing) rules</i>	CASS 7.3.1R <u>7.12.1R</u> , CASS 7.3.2R <u>7.12.2R</u> , CASS 7.4.1R <u>7.13.3R</u> , CASS 7.4.5R , CASS 7.4.7R <u>7.13.8R</u> , CASS 7.4.8R <u>7.13.10R</u> , CASS 7.4.11R <u>7.13.12R</u> , CASS 7.13.28R , CASS 7.6.1R <u>7.15.2R</u> , CASS 7.6.2R <u>7.15.3R</u> and CASS 7.6.9R <u>7.15.20R</u> .
<i>non-standard method of internal client money reconciliation</i>	a <u>the method of internal reconciliation of <i>client money</i> balances</u> <i>internal client money reconciliation</i> that is not a standard method of internal client money reconciliation <u>described in CASS 7.15.17R.</u>
<i>segregated client</i>	a <i>client</i> whose money must be segregated by the <i>firm</i> under CASS 4.3.3R (Segregation). <u>[deleted]</u>
<i>shortfall</i>	... (3) <u>(in relation to <i>safe custody assets</i>) any amount by which the <i>safe custody assets</i> held by a <i>firm</i> under the <i>custody rules</i> fall short of the <i>firm’s</i> obligations to its <i>clients</i> to hold <i>safe custody assets</i>.</u> ...
<i>standard method of internal client money reconciliation</i>	(a) CASS 7 Annex 1G; <u>[deleted]</u> (b) the methods of internal reconciliation of <i>client money</i> balances <u><i>internal client money reconciliation</i> described referred to in CASS 7.16 of the Client Assets Sourcebook (Amendment No 5) Instrument 2014.</u>
<i>trustee firm</i>	a <i>firm</i> which is not an <i>OPS firm</i> and which is acting as a: (a) trustee (other than for a trust of <i>client money</i> arising only under CASS 5.3.2R, CASS 5.4 (Non-statutory client money trust), CASS 7.7.2R <u>7.17.2R</u> or CASS 11.6.1R); or ...

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: Comes into force on 1 December 2014

6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information

...

6.1.7A G *Firms* subject to either or both the *custody rules* and the *client money rules* are reminded of the information requirements concerning *custody assets* and *client money* in *CASS 9.3* (Prime brokerage agreement disclosure annex) and *CASS 9.4* (Information to clients concerning custody assets and client money).

...

Part 2: Comes into force on 1 June 2015

16 Reporting information to clients

...

16.4 Statements of client designated investments or client money

...

16.4.6 G *Firms* subject to either or both the *custody chapter* and the *client money chapter* are reminded of the reporting obligations to *clients* in *CASS 9.2* (Prime broker's daily report to clients) and *CASS 9.5* (Reporting to clients on request).

...

Annex C

Amendments to the Client Assets sourcebook (CASS)

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

Part 1: Comes into force on 1 July 2014

1 Application and general provisions

...

1.2 General application: who? what?

...

- 1.2.7 G (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. [deleted]~~
- (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). [deleted]~~
- (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. [deleted]~~
- (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). [deleted]~~
- (4) ~~The insurance client money chapter applies in relation to regulated activities, conducted by firms, which fall within the definition of insurance mediation activities. [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.~~

[deleted]

...

1.2.8 G ...

(4) Each provision in the *collateral rules*, *custody chapter*, and the *client money chapter* and CASS 9 (Information to clients) 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.~~

(4A) There is no further modification of the rules in the chapters referred to in (4) for activities carried on for eligible counterparties. Such clients are treated in the same way as other professional clients for the purposes of these rules.

...

...

Application for affiliates

1.2.9A G (1) The fact that a firm's client is an affiliated company for MiFID business does not affect the operation of CASS to the firm in relation to that client.

(2) For business that is not MiFID business, the operation of the custody chapter or the client money chapter may differ if a firm's client is an affiliated company and depending on certain other conditions (see, for example, CASS 6.1.10BR and CASS 7.1.12AR).

...

1.2.11 R ~~Where a firm is subject to two or more of the *client money chapter*, the *insurance client money chapter* and the *debt management 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) A firm must not keep money in respect of which any one of the following chapters applies in the same *client bank account* or *client transaction account* as money in respect of which another of the following chapters applies:

(a) the *client money chapter*;

(b) the *insurance client money chapter*;

(c) the *debt management client money chapter*.

- (2) In accordance with CASS 7.1.15HR, a firm which is subject to the client money chapter and holds money both (i) in its capacity as a trustee firm and (ii) other than in its capacity as a trustee firm must not keep money held in in its capacity as a trustee firm in the same client bank account or client transaction account as money held other than in its capacity as a trustee firm.
- (3) To the extent that the restriction under (1) or (2) applies to a firm, the client bank accounts and client transaction accounts that a firm holds in respect of different chapters or in its different capacities (as the case may be) must be separately designated.

...

- 1.2.13 G A firm may, where permitted by the relevant rules, opt to hold under a single chapter money that would otherwise be held under different chapters (see ~~CASS 5.1.1R(3)~~ and CASS 7.1.3R and CASS 7.1.15BAR). However, making such an election does not remove the requirement under CASS 1.2.11R(1).

1.4 Application: particular activities

...

- 1.4.8 R (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. [deleted]~~
- (2) ~~In the custody chapter, the client money chapter and the mandate rules, 'client' means 'trustee', 'trust', 'trust instrument' or 'beneficiary', as appropriate. [deleted]~~
- 1.4.8A R (1) The application of CASS for a trustee firm acting as a depositary is set out in CASS 1.4.6R and CASS 1.4.7R.
- (2) The application of CASS for a trustee firm that is not acting as a depositary is limited as follows:
- (a) the mandate rules apply;
- (b) for MiFID business, the custody chapter and the client money chapter apply; and
- (c) for business that is not MiFID business, the custody chapter and the client money chapter apply only to trustee firms acting as trustees of personal pension schemes or stakeholder pension schemes, including SIPPs.

- (3) To the extent that CASS applies to a trustee firm, it applies with the following general modification: 'client' means 'relevant trustee', 'trust', or 'beneficiary', as appropriate.

...

3 Collateral

3.1 Application and purpose

...

- 3.1.7A G Firms are reminded of the client's best interests rule which requires a firm to act honestly, fairly and professionally, in accordance with the best interests of its clients, when agreeing to, entering into, exercising its rights under and fulfilling its obligations under an arrangement covered by this chapter, and when structuring its business to include such arrangements.

...

6 Custody rules

6.1 Application

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

...

- (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*; and
- (1E) in respect of any arrangement for a client to transfer full ownership of a safe custody asset to the firm which is:
- (a) in the course of, or in connection with, the firm's designated investment business; and
- (b) for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations,

but the application of the custody rules to a firm under this paragraph is limited to the rules and guidance in CASS 6.1.6R to CASS 6.1.9G.

...

...

- 6.1.10A 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. [deleted]~~

6.1.10B R In respect of a firm's business falling under CASS 6.1.1R(1B), the custody rules do not apply to the firm when it is safeguarding and administering investments 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.

...

6.1.16F R ...

Reference	Rule
...	
<u>CASS 6.3.1R to CASS 6.3.4R</u>	<u>Depositing safe custody assets with third parties</u>
...	..

...

6.1.16H R ~~When a *trustee firm* or *depository* within CASS 6.1.16FR 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 6.3.1R (Depositing assets and arranging for assets to be deposited with third parties) in addition to the custody rules listed in the table in CASS 6.1.16FR. [deleted]~~

...

6.1.16IC G A firm (Firm A) to which another firm acting as trustee or depository of an AIF (Firm B) has delegated safekeeping functions in ~~line~~ accordance with ~~FUND 3.11.25R~~ 3.11.28R (Delegation: safekeeping) will not itself be acting as trustee or depository of an AIF for that AIF. CASS 6.1.16IAR 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.

6.1.16J R Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets:

Reference	Rule
...	

CASS 6.1.16JR	Arrangers
<u>CASS 6.1.16KR</u>	<u>Records</u>
...	
CASS 6.1.16KR	Records

- 6.1.16K 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*~~, arrangements are made and retained for a period of 5 years after they are made.

...

6.4 Use of safe custody assets

...

- 6.4.1A G The FCA expects firms which enter into arrangements under CASS 6.4.1R with retail clients to only enter into securities financing transactions and not otherwise use retail client's safe custody assets.

- 6.4.2 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~~ For any transactions involving retail clients carried out under this section the FCA expects that:

...

...

6.5 Records, accounts and reconciliations

...

- 6.5.3 R ~~A~~ Unless otherwise stated, a firm must ensure that the records any record made under this section are the custody rules is retained for a period of five years after they are made starting from the later of:

- (1) the date it was created; and
- (2) (if it has been modified since the date it was created), the date it was most recently modified.

...

- 6.5.5 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: ~~[deleted]~~

...

7 Client money rules

7.1 Application and purpose

7.1.1 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. [deleted]~~

7.1.1A R This chapter 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, its:

- (1) *MiFID business; and/or*
- (2) *designated investment business;*

unless otherwise specified in this section.

7.1.1B G A *firm* is reminded that when CASS 7.1.1AR applies it should treat *client money* in an appropriate manner so that, for example:

- (1) if it holds *client money* in a *client bank account*, that account is held in the *firm's* name in accordance with CASS 7.4.11AR;
- (2) if it allows another *person* to hold *client money* this is effected under CASS 7.5; and
- (3) its internal reconciliations of *client money* carried out in line with CASS 7.6.6G and CASS 7 Annex 1G take into account any *client equity balance* relating to its *margin*ed transaction requirements.

...

- 7.1.3R R ...
- (3) This rule is subject to CASS 1.2.11R.
- 7.1.3A G Firms are reminded that, under CASS 1.2.11R(1), they must not keep money in respect of which the client money chapter applies in the same client bank account or client transaction account as money in respect of which the insurance client money chapter applies.
- ...
- 7.1.15 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); the SRA Accounts Rules 2011;
- (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~~ the Law Society of Scotland Practice Rules 2011; 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~~ *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.
- ...
- 7.1.15B 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. [deleted]~~

7.1.15B R A Provided it complies with CASS 1.2.11R, a firm that receives or holds client money in relation to contracts of insurance may elect to comply with the provisions of the insurance client money chapter, instead of this chapter, in respect of all such money.

7.1.15C R A firm ~~should~~ must make and retain a written record of any election which it makes under ~~CASS 7.1.15BR~~ 7.1.15BAR.

...

Trustee firms (other than trustees of unit trust schemes)

...

7.1.15F R Subject to CASS 7.1.15GR Only 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
...	
<u>CASS 7.1.15ER and CASS 7.1.15FR to CASS 7.1.15LG</u>	<u>Trustee firms (other than trustees of unit trust schemes)</u>
...	
<u>CASS 7.7.2R to CASS 7.7.4G</u>	<u>Requirement</u>
...	
<u>CASS 7.6.6G to CASS 7.6.16R</u>	...
<u>CASS 7.7.2R to CASS 7.7.4G</u>	<u>Requirement</u>
<u>CASS 7 Annex 1G</u>	<u>The standard method of internal client money reconciliation</u>

7.1.15G R (1) A trustee firm to which CASS 7.1.15FR applies may, in addition to the client money rules set out at CASS 7.1.15FR, also elect to comply with:

- (a) all the client money rules in CASS 7.4 (Segregation of client money);
- (b) CASS 7.5 (Transfer of client money to a third party);
- (c) all the client money rules in CASS 7.6 (Records, accounts and reconciliations); or

- (d) CASS 7.8 (Notification and acknowledgement of trust).
- (2) A trustee firm must make 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.
- (3) Where a trustee firm has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and keep that record from the date the decision is made for a period of five years after the date it is to be effective.
- 7.1.15H R A trustee firm to which CASS 7.1.15FR applies and which is otherwise subject to the client money rules must ensure that any client money it holds other than in its capacity as trustee firm is segregated from client money it holds as a trustee firm.
- 7.1.15I G A trustee firm to which CASS 7.1.15FR applies and which is otherwise subject to the client money rules should ensure that in designing its systems and controls it:
- (1) takes into account that the client money distribution rules will only apply in relation to any client money that the firm holds other than in its capacity as trustee firm; and
- (2) has regard to other legislation that may be applicable.
- 7.1.15J R (1) A trustee firm to which CASS 7.1.15FR applies may elect that:
- (1) the applicable provisions of CASS 7.4 (Segregation of client money) and CASS 7.6 (Records, accounts and reconciliations) under CASS 7.1.15FR; and
- (2) and any further provisions it elects to comply with under CASS 7.1.15GR(1);
- will apply separately and concurrently for each distinct trust that the trustee firm acts for.
- (2) A trustee firm must make 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.
- (3) Where a trustee firm has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and must keep that record from the date the decision is

made for a period of five years after the date it is to be effective.

7.1.15K G A trustee firm may wish to make an election under CASS 7.1.15JR if, for example, it acts for a number of distinct trusts which it wishes, or is required, to keep operationally separate. If a firm makes such an election then it should:

(1) establish and maintain adequate internal systems and controls to effectively segregate client money held for one trust from client money held for another trust; and

(2) conduct internal client money reconciliations as set out in CASS 7 Annex 1G and external client money reconciliations under CASS 7.6.9R for each trust.

7.1.15L G The provisions in CASS 7.1.15ER to CASS 7.1.15KG do not affect the general application of the client money rules regarding money that is held by a firm other than in its capacity as a trustee firm.

...

7.2 **Definition Treatment of client money**

...

Interest

7.2.14 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. [deleted]

7.2.14A R A firm must pay a retail client any interest earned on client money held for that client unless it has otherwise notified him in writing.

7.2.14B G (1) The firm may, under the terms of its agreement with the client, pay some, none, or all interest earned to the relevant client.

(2) Where interest is payable on client money by a firm to clients:

(a) such sums are client money and so, if not paid to, or to the order of the clients, are required to be segregated in accordance with CASS 7.4 (Segregation of client money);

(b) the interest should be paid to clients in accordance with the firm's agreement with each client; and

(c) if the firm's agreement with the client is silent as to when interest should be paid to the client the firm should follow CASS 7.4.28G (Allocation of client money receipts);

irrespective of whether the client is a retail client or otherwise.

Discharge of fiduciary duty

- 7.2.15 R *Money ceases to be client money (having regard to CASS 7.2.17R where applicable) if:*
- ...
- (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:~~
- (a) paid to a third party on the instruction of, or with the specific consent of, the client unless it is transferred to a third party in the course of effecting a transaction under CASS 7.5.2R (Transfer of client money to a third party); or
- (b) paid to a third party pursuant to an obligation on the firm where:
- (i) that obligation arises under an enactment; and
- (ii) the obligation under that enactment is applicable to the firm as a result of the nature of the business being undertaken by the firm for its client; or
- (3) subject to CASS 7.2.16AR, it is paid into a bank account of the client (not being an account which is also in the name of the firm); or
- ...
- (9) it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment directly to the indirect clients of the firm ~~firm~~ in accordance with CASS 7.2.15CR(2).
- ...
- 7.2.15D R Client money received or held by the firm for a sub-pool ceases to be client money for that firm to the extent that such client money is transferred by the firm to an authorised central counterparty or a clearing member as a result of porting.
- ...
- 7.2.16 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. [deleted]~~
- 7.2.16A R A firm must not pay client money into a bank account of the client that has

been opened without the consent of that *client*.

.....

7.4 Segregation of client money

...

7.4.-1 R Where a *firm* establishes one or more *sub-pools*, the provisions of CASS 7.4 (Segregation of client money) shall be read as applying separately to the *firm's general pool* and each *sub-pool* in line with CASS 7.19.3R and CASS 7.19.12R.

...

Qualifying money market funds

7.4.3 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*] [deleted]

7.4.3A R Where a *firm* deposits *client money* with a *qualifying money market fund*, the *firm's* holding of those units in that fund will be subject to any applicable requirements of the *custody rules*.

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

...

7.4.6 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*.~~; and
- (3) if it is the case, that the *units* will be held as the *client's safe custody assets* in accordance with the *custody rules*.

...

7.4.9B R For the purposes of CASS 7.4.9AR an entity is a relevant group entity if it is:

- (1) a *CRD credit institution*; ~~or 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) ...

Client bank accounts

...

- 7.4.11A R (1) An account which the *firm* uses to deposit *client money* under CASS 7.4.1R(1) to (3) must be a *client bank account*.
- (2) Each *client bank account* used by a *firm* must be held on terms under which:
- (a) the relevant bank's contractual counterparty is the *firm* that is subject to the requirement under CASS 7.4.1R; and
- (b) unless the *firm* has agreed terms that comply with CASS 7.4.11AR(3), the *firm* is able to make withdrawals of *client money* promptly and, in any event, within one *business day* of a request for withdrawal.

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

- (3) *Firms* may use *client bank accounts* held on terms under which withdrawals are, without exception, prohibited until the expiry of a fixed term or a notice period of a maximum of 30 days.
- (4) Paragraphs (2)(b) and (3) do not apply in respect of *client money* received by a *firm* in its capacity as a *trustee firm*.
- 7.4.11B G CASS 7.4.11AR(2)(b) and (3) do not prevent a *firm* from depositing *client money* on terms under which a withdrawal may be made before the expiry of a fixed term or a notice period (whatever the duration), including where such withdrawal would incur a penalty charge to the *firm*.
- 7.4.11C G CASS 7.4.11AR does not prevent a *firm* from depositing *client money* in overnight money market deposits which are clearly identified as being *client money* (for example, in the *client bank account* acknowledgment letter).
- 7.4.11D G *Firms* are reminded of their obligations under CASS 7.8 (Notification and acknowledgement of trust) for *client bank accounts*. *Firms* should also ensure that *client bank accounts* meet the requirements in the relevant *Glossary* definitions, including regarding the titles given to the accounts.
- 7.4.12 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.2.1G (Failure of the authorised firm: primary pooling event)). The requirements of CASS 7.4.11AR(2) and (3) apply for each type of *client bank account*.

...

Commodity Futures Trading Commission Part 30 exemption order

- 7.4.32 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. [deleted]~~
- 7.4.33 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 7.1.7BR to CASS 7.1.7FR in relation to that business. [deleted]~~
- 7.4.34 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. [deleted]~~
- 7.4.35 R ~~A firm must notify the FCA immediately it arranges the issue of an individual letter of credit under an LME bond arrangement. [deleted]~~
- 7.4.36 G CASS 12 contains provisions which are relevant to a firm conducting business pursuant to the Part 30 exemption order.

...

7.5 Transfer of client money to a third party

- 7.5.1 G ~~This section sets out the requirements a firm must comply with when it transfers~~ allows another person to hold client money, to another person other than under CASS 7.4.1R, 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*. Similarly, this section applies where a firm allows a broker to hold client money in respect of the firm's client's non-margined transactions, again without the firm discharging its fiduciary duty to that client. ~~In these circumstances~~ In all cases, the firm remains responsible for that client's client 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 7.2.15R).
- 7.5.2 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~~ allows that *person* to hold the *client money*:
 - (a) for the purpose of ~~a transaction~~ one or more transactions for a *client* though or with that *person*; or

...
- (2) in the case of a *retail client*, that *client* has been notified that the ~~*client money* may be transferred to *firm*~~ *firm* may allow the other *person* to hold its *client money*.

7.5.2A G *Client money* that a *firm* allows another person to hold under CASS 7.5.2R:

- (1) should only be held for transactions which are likely to occur (and for which the other *person* needs to receive *client money*) or have recently settled (and such that the other *person* has received *client money*); and
- (2) should be recorded in *client transaction accounts* by that other *person*.

7.5.3 G ~~A~~ Apart from *client money* held by a *firm* in an *individual client account* or an *omnibus client account* at an *authorised central counterparty*, 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

7.6.-1 R Where a *firm* establishes one or more *sub-pools*, the provisions of CASS 7.6 (Records, accounts and reconciliations) shall be read as applying separately to the *firm's* general pool and each *sub-pool* in line with CASS 7.19.3R and CASS 7.19.4R.

...

7.6.4 R Unless otherwise stated, A *firm* must ensure that records any record made under ~~CASS 7.6.1R and CASS 7.6.2R~~ are the *client money rules* is retained for a period of five years after they were made starting from the later of:

- (1) the date it was created; and
- (2) (if it has been modified since the date it was created), the date it was most recently modified.

...

7.7 Statutory trust

...

- 7.7.2 R ~~A~~ Subject to CASS 7.7.3R in respect of a trustee firm, a firm receives and holds client money as trustee (or in Scotland as agent) on the following terms:
- (1) ...
 - (2) (a) where a firm maintains only a general pool of client money, subject to (4), for the clients (other than clients which are insurance undertakings when acting as such with respect of to 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;
 - (b) where a firm has established one or more pools of client money, subject to (4):
 - (i) the general pool is held for all the clients of the firm for whom the firm holds client money (other than clients which are insurance undertakings when acting as such with respect to client money received in the course of insurance mediation activity and that was opted in to this chapter) according to their respective interests in it; and
 - (ii) each sub-pool is for the clients of the firm who are beneficiaries of the sub-pool in question in accordance with CASS 7.19.6R(2), 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) if such distribution takes place following the failure of the firm; and
- ...
- 7.7.3 R ~~A trustee firm which is subject to the client money rules by virtue of CASS 7.1.1AR(2);~~ receives and holds client money as trustee (or in Scotland as agent) on the terms in CASS 7.7.2R, subject to its obligations to hold client money as trustee under the relevant instrument of trust.
- (1) ~~must receive and hold client money in accordance with the relevant instrument of trust;~~
 - (2) ~~subject to the relevant instrument of trust, receives and holds client~~

~~money on trust on the terms (or in Scotland on the agency terms) specified in CASS 7.7.2R.~~

- 7.7.4 G If a *trustee firm* holds *client money* ~~in accordance with CASS 7.7.3R(2)~~, the *firm* should follow the provisions in CASS 7.1.15ER ~~and CASS 7.1.15FR~~ to CASS 7.1.15LG.

...

After CASS 7.9 insert the following new sections:

- 7.10** [to follow]
7.11 [to follow]
7.12 [to follow]
7.13 [to follow]
7.14 [to follow]
7.15 [to follow]
7.16 [to follow]
7.17 [to follow]
7.18 [to follow]

After CASS 7.18 insert the following new section. The text is not underlined.

7.19 Clearing member client money sub-pools

- 7.19.1 G (1) Under CASS 7.7.2R(2), a *firm* acts as *trustee* for all *client money* received or held by it for the benefit of the *clients* for whom that *client money* is held, according to their respective interests in it.
- (2) A *firm* that is also a *clearing member* of an *authorised central counterparty* may wish to segregate *client money* specifically for the benefit of a group of *clients* who have chosen to clear positions through a *net margined omnibus client account* maintained by the *firm* with that *authorised central counterparty*, where that segregation might facilitate the *porting* of *client* positions recorded in that *net margined omnibus client account*. To segregate *client money* (that would otherwise be held in the *general pool*) for a specific group of *clients* clearing positions through a particular *net margined omnibus client account*, a *clearing member firm* may, in accordance with these rules, create a *sub-pool* of *client money*.

- (3) Upon the occurrence of a *primary pooling event*, the *client money* for:
- (a) the *general pool*, should be distributed in accordance with CASS 7A to the *clients* for whom the *firm* receives or holds *client money* in that *general pool*; and
 - (b) a *sub-pool*, should either be:
 - (i) transferred to facilitate *porting*; or
 - (ii) distributed to the *clients* who are beneficiaries of that *sub-pool*, according to their respective interests under CASS 7A.2.4R(2)(a).
- (4) All *client money* is received or held by the *firm* as *trustee* for the *clients* of the *firm*. However, a *clearing member* of an *authorised central counterparty* who clears *client* positions through a *net margined omnibus client account* may organise its affairs (with the consent of the relevant *clients*) in such a way that those *clients* need not share in the *general pool* of *client money* following a *primary pooling event*, save to the extent that such *clients* otherwise have an interest in the *general pool*.

- 7.19.2 R Where a *firm* creates a *sub-pool* for a particular *net margined omnibus client account*, it must not clear positions through that *omnibus client account* for *clients* who are not beneficiaries of that *sub-pool*.

Internal controls

- 7.19.3 R A *firm* wishing to establish a *sub-pool* must establish and maintain adequate *internal controls* necessary to comply with the *firm's* obligations under CASS 7 for the *general pool* and each *sub-pool* that it may establish.

Records

- 7.19.4 R Where a *firm* establishes one or more *sub-pools*, CASS 7.6 (Records, accounts and reconciliations) shall be read as applying separately to the *firm's general pool* and each *sub-pool*.
- 7.19.5 G A *firm* that establishes one or more *sub-pools* must establish and maintain adequate internal controls and records in accordance with CASS 7.6 (Records, accounts and reconciliations) to conduct internal and external reconciliations for each *sub-pool* and the *general pool* individually.
- 7.19.6 R
- (1) The records maintained for a *sub-pool* under CASS 7.19.4R must identify all the *client* beneficiaries of that *sub-pool*.
 - (2) The beneficiaries of each *sub-pool* are those *clients*:
 - (a) from whom the *firm* has received a signed *sub-pool disclosure document* in accordance with CASS 7.19.11R;

- (b) for whom the *firm* maintains, previously maintained or is in the process of establishing a *margin*ed transaction(s) in the relevant *net margin*ed omnibus client account at the *authorised central counterparty*; and
 - (c) to whom any *client equity balance* or other *client money* is required to be segregated for the *client* by the *firm* in respect of the *margin*ed transactions under (2)(b) from that *sub-pool*.
- 7.19.7 R (1) For each *sub-pool* that the *firm* establishes, it must maintain a record of:
- (a) the name of the *sub-pool*;
 - (b) the particular *net margin*ed omnibus client account at an *authorised central counterparty* to which the *sub-pool* relates;
 - (c) each *client bank account* and each *client transaction account* (other than the *net margin*ed omnibus client account) maintained for the *sub-pool*, including the unique identifying reference or descriptor under CASS 7.19.13R(2); and
 - (d) the applicable *sub-pool disclosure document* for the *sub-pool*.
- 7.19.8 R The *firm* must maintain an up-to-date list of all the *sub-pools* it has created.
- Sub-pool disclosure document
- 7.19.9 R (1) A *firm* wishing to establish a *sub-pool* must prepare a *sub-pool disclosure document* for each *sub-pool*.
- (2) The *sub-pool disclosure document* for each *sub-pool* must:
- (a) identify the *sub-pool* by name, as stated in its records under CASS 7.19.7R, the *net margin*ed omnibus client account and the *authorised central counterparty* to which the *sub-pool disclosure document* relates;
 - (b) contain a statement that the *client* consents to the *firm* receiving and holding the *client's client money* in the *sub-pool*;
 - (c) contain a statement that, in the event of the *failure* of the *firm*, the *firm* is directed by the *client* to use any *client money* held by the *firm* in the *sub-pool* to facilitate the *porting* of the positions recorded in that *net margin*ed omnibus client account; and
 - (d) a statement reminding the *client* that, in the event of the *failure* of the *firm*, if *porting* is not effected or if *porting* is effected but any money in the *sub-pool* is not used to facilitate *porting*, the *client* beneficiaries of the *sub-pool* will be entitled to a distribution of any *client money* held for that *sub-pool* in

accordance with CASS 7A. However, the *client* beneficiaries will not have a claim on any other *pool of client money*, except to the extent that the *client* is a beneficiary of another *pool*.

- 7.19.10 G In preparing a *sub-pool disclosure document* under CASS 7.19.9R(1), a *firm* may use the template in CASS 7 Annex 6G.
- 7.19.11 R (1) Before receiving or holding *client money* for a *client* for a *sub-pool*, a *firm* must:
- (a) provide to the *client* a copy of the *sub-pool disclosure document* applicable to that *sub-pool*; and
 - (b) obtain a signed copy of that *sub-pool disclosure document* from the *client*.
- (2) A *firm* must provide the beneficiary of a *sub-pool* with a copy of its signed *sub-pool disclosure document* applicable to that *sub-pool* upon the beneficiary's request.

Segregation and operation of sub-pools

- 7.19.12 R Where a *firm* establishes one or more *sub-pools*, CASS 7.4 (Segregation of client money) shall be read as applying separately to the *firm's general pool* and each *sub-pool*.
- 7.19.13 R (1) A *firm* must not hold *client money* for a *sub-pool* in a *client bank account* or a *client transaction account* used for holding *client money* for any other *sub-pool* or the *general pool*.
- (2) A *firm* that establishes a *sub-pool* must ensure that the name of each *client bank account* and each *client transaction account* (other than the *net margined omnibus client account*) maintained for that *sub-pool* includes a unique identifying reference or descriptor that enables the account to be identified with that *sub-pool*.
- (3) Where a *client* of the *firm* is a beneficiary of the *general pool* and wishes to become a beneficiary of a *sub-pool*, the *client* in question shall become a beneficiary of the relevant *sub-pool* when :
- (a) the *firm* has obtained the signed *sub-pool disclosure document* from that *client* in accordance with CASS 7.19.11R(1); and
 - (b) the *firm* has either:
 - (i) transferred the relevant amount of *client money* for that *client* from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for the relevant *sub-pool*; or
 - (ii) if the *firm* is not making a transfer of *client money* from the *general pool*, when it has received that *client's money*

in a *client bank account* maintained for the relevant *sub-pool*.

- (4) Where a *client* of the *firm* is a beneficiary of the *general pool* and wishes to become a beneficiary of a *sub-pool*, the *firm* must ensure that it does not transfer *client money* from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for a *sub-pool* in accordance with CASS 7.19.13R(3)(b)(i), unless the amount of *client money* held for the *general pool* is sufficient, immediately after that transfer, to satisfy the *firm's client money* obligations to the remaining beneficiaries of the *general pool*.
- (5) A *client* of the *firm* who is a beneficiary of a *sub-pool* ceases to be a beneficiary of that *sub-pool* when:
- (a) the *firm* has settled the amount owing to that *client* for all of the *margined transactions* cleared through the related *net margined omnibus client account* and no longer holds any *client money* for that *client* in that *sub-pool*, and so CASS 7.19.6R(2)(b) and (c) no longer apply for that *client*; or
 - (b) the *firm* has complied with (i) or (ii), and in either case (iii):
 - (i) the *firm* has received a written instruction from the *client* stating that the *client* no longer wishes to have its positions cleared through the *net margined omnibus client account* or its *client money* held in that *sub-pool*, or the *firm* has notified the *client* under CASS 7.19.18R that it is making a material change to a *sub-pool*; or
 - (ii) the *firm* has closed or moved that *client's* positions to an account other than the *net margined omnibus client account* referable to that *sub-pool*; and
 - (iii) the *firm* has either transferred the relevant amount of *client money* for that *client* from a *client bank account* maintained for the relevant *sub-pool* to a *client bank account* maintained by the *firm* for the *general pool* (or, if applicable, another *sub-pool*), or transferred the amount owing to that *client* for all of the *margined transactions* cleared through the related *net margined omnibus client account* and no longer holds any *client money* for that *client* in that *sub-pool*.
- (6) In relation to the transfer of *client money* under CASS 7.19.13R(5)(b)(iii), a *firm* must ensure that it does not transfer *client money* from a *client bank account* maintained for a *sub-pool*, unless the amount of *client money* held for the *sub-pool* is sufficient, immediately after that transfer, to satisfy the *firm's client money* obligations to the remaining beneficiaries of that *sub-pool*.

- 7.19.14 R A *firm* that receives *client money* to be credited in part to the *general pool* or one *sub-pool* and in part to another *sub-pool* must:
- (1) take the necessary steps to ensure that the full sum is paid directly into a *client bank account* maintained for the *general pool*; and
 - (2) promptly, and in any event no later than one *business day* after receipt, pay the *money* that is not *client money* for the *general pool* out of that *client bank account* and into a *client bank account* maintained for the appropriate *sub-pool*.
- 7.19.15 G
- (1) If a *primary pooling event* occurs before *client money* is transferred from a *client bank account* maintained for the *general pool* to a *client bank account* maintained for the appropriate *sub-pool* in accordance with CASS 7.19.14R(2), the amount in question will not form part of that *sub-pool*, including for the purposes of CASS 7A.2.4R(1).
 - (2) If a *primary pooling event* occurs before *client money* is transferred from a *client bank account* maintained for a *sub-pool* to a *client bank account* maintained for the *general pool* or another *sub-pool* in accordance with CASS 7.19.13R(5), the amount in question will not form part of the *general pool* or that other *sub-pool*, including for the purposes of CASS 7A.2.4R(1), but will remain part of the original *sub-pool*.
- 7.19.16 R A *client* for whom a *firm* receives or holds *client money* for a *sub-pool* has no claim to or interest in *client money* received or held for the *general pool* or any other *sub-pool* unless:
- (1) that *client* is a beneficiary of that other *sub-pool*; or
 - (2) the *firm* receives or holds *client money* for that *client* for other business which does not relate to any *sub-pool* (and thus the *client* is a beneficiary of the *firm's general pool*).
- 7.19.17 R A *client* for whom a *firm* receives or holds *client money* in more than one *pool* as described in CASS 7.19.16R(1) and/or (2) has an interest in a distribution from each such *pool*, and each interest is separate and distinct.

Material changes to sub-pools

- 7.19.18 R Before making a material change to a *sub-pool*, a *firm* must:
- (1) notify the then current beneficiaries of that *sub-pool* in writing, not less than two months before the date on which the *firm* intends the change to take effect; and
 - (2) include in the notification an explanation of the consequences for the beneficiaries of the proposed change and the options available to them, such as the option of a beneficiary of the affected *sub-pool* to cease to be a beneficiary of that *sub-pool* and to become a beneficiary of the

firm's general pool or, if applicable, another *sub-pool*.

- 7.19.19 G A *firm* should keep in mind its obligations under CASS 7.19.11R(1)(b) (before receiving or holding *client money* for a *client* in a *sub-pool*, a *firm* must obtain a signed copy of the *sub-pool disclosure document* from the client) when making a material change to a *sub-pool*. A *firm* is also reminded of the conditions under CASS 7.19.13R(5)(b) (when a *client* of the *firm* who is a beneficiary of a *sub-pool* ceases to be a beneficiary of that *sub-pool*) if a material change proposed to a *sub-pool* results in a *client* ceasing to be a beneficiary of that *sub-pool*.
- 7.19.20 G The *FCA* would normally consider the dissolution of a *sub-pool*, such that the *firm* no longer operates the *sub-pool* or no longer uses the relevant *net margined omnibus client account* or transfers the business to another *authorised central counterparty*, to be examples of material changes to a *sub-pool*.
- 7.19.21 R Before materially changing a *sub-pool*, a *firm* must provide a copy of the notice provided to clients under CASS 7.19.18R to the *FCA* not less than two months before the date on which the *firm* intends the change to take place.

Notifications

- 7.19.22 R A *firm* that wishes to establish a *sub-pool* of *client money* must notify the *FCA* in writing not less than two months before the date on which the *firm* intends to receive or hold *client money* for that *sub-pool*.
- 7.19.23 R Upon request, a *firm* must deliver to the *FCA* a copy of the *sub-pool disclosure document* for any *sub-pool* established by the *firm*.
- 7.19.24 R A *firm* must inform the *FCA* in writing, without delay, if it has not complied, or is unable to comply with the requirements in CASS 7.19.11R or the requirements in CASS 7.19.18R.

Record-keeping

- 7.19.25 R The records maintained under this section, including the *sub-pool disclosure documents*, are a record of the *firm* that must be kept in a *durable medium* for at least five years following the date on which *client money* was last held by the *firm* for a *sub-pool* to which those records or the *sub-pool disclosure document* applied.

After CASS 7 Annex 1G insert the following new annexes.

7 Annex 2 [to follow]

7 Annex 3 [to follow]

7 Annex 4 [to follow]

7 Annex 5 [to follow]

After CASS 7 Annex 5, insert the following new annex (on the next page). The text is not underlined.

7 Annex 6G Sub-pool disclosure document

[letterhead of firm, including full name and address of firm, firm reference number]

[addressee – client participating in specified sub-pool]

[date]

Sub-pool disclosure document (under the rules of the Financial Conduct Authority)

1. The sub-pool to which this sub-pool disclosure document relates is designated in the firm's records as:

[insert name of sub-pool in firm's records]

(for the purposes of this document, the "sub-pool")

2. The net margined omnibus client account relating to the sub-pool is held at *[insert name of authorised CCP]* and is designated as:

[insert the account title, the account unique identifier and (if applicable) any abbreviated name of the account as reflected in the authorised CCP's systems]

(for the purposes of this document, the "omnibus client account").

3. The purpose of this letter is to:

(a) provide you with information relating to the sub-pool [operated or to be operated] by *[insert name of CASS firm]* in relation to the omnibus client account held by the firm at *[insert name of authorised CCP]*;

(b) obtain your consent to holding your money in the sub-pool; and

(c) confirm your direction that upon the failure of *[insert name of CASS firm]*, we are to use any client money held by the firm in the sub-pool to facilitate porting.

4. *[name of CASS firm]* will hold any client money that we receive from you in relation to the cleared transactions that we maintain for you in the omnibus client account in client bank accounts that we open in relation to the sub-pool, or we will allow the CCP to hold this client money in the omnibus client account.

5. In the event of the failure of the *[insert name of CASS firm]*, you hereby direct the *[insert name of CASS firm]* to use any client money held by the *[insert name of CASS firm]* in the sub-pool to facilitate the porting of the positions recorded in the omnibus client account.

6. In the event of the failure of *[insert name of CASS firm]*, if porting is not effected, or if porting is effected but any money in the sub-pool is not used to facilitate porting, you and the other beneficiaries of the sub-pool will be entitled to a distribution from any client money held in respect of this sub-pool, in accordance with the client money distribution rules in CASS 7A. Save to the extent that *[insert name of CASS firm]* holds any other client money for you in the context of any other business or sub-pool, you will not be entitled to a distribution of any other client money held by *[insert name of CASS firm]*.

7. You hereby consent to the firm receiving and holding your money as client money as part of *[sub-pool specified above or specify name of sub-pool]*. Until you sign and return this letter the firm will not hold money for you in the sub-pool and you will not be a beneficiary of the sub-pool.

8. This letter shall be governed by the laws of [England and Wales/Scotland/Northern Ireland /*insert appropriate jurisdiction*].

If you are in agreement with the foregoing terms, please sign and return the enclosed copy of this letter as soon as possible. You should retain a copy of this letter for your records.

[*insert name of CASS firm*]

x _____

Authorised signatory

Print name:

Title:

ACKNOWLEDGED AND AGREED:

[*insert name of client*]

x _____

Authorised signatory

Print name:

Title:

Contact information: [*insert signatory's phone number and email address*]

Date:

Amend the following as shown.

7A Client money distribution

7A.1 Application and purpose

Application

7A.1.1 R ~~This~~ Subject to CASS 7A.1.1AR, 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*~~ *pooling event* occurs.

7A.1.1A R The *client money distribution rules* do not apply to any *client money* held by a *trustee firm* under CASS 7.1.15FR to 7.1.15LG.

7A.1.1B G As a result of CASS 7A.1.1AR, the *client money distribution rules* relating to *primary pooling events* and *secondary pooling events* will not affect any *client money* held by a *firm* in its capacity as *trustee firm*. Instead, the treatment of that *client money* will be determined by the terms of the relevant instrument of trust or by applicable law. However, the *client money distribution rules* do apply to a *firm* for any *client money* that it holds other than in that capacity which is subject to the *client money rules*.

...

7A.2 Primary pooling events

...

7A.2.3A R If a *primary pooling event* occurs in circumstances where the *firm* had, before the *primary pooling event*, reduced its *marginised transaction requirement* by utilising *approved collateral* under CASS 7 Annex 1G paragraph 15, it must immediately liquidate this *approved collateral* and place the proceeds in a *client bank account*.

7A.2.3B R CASS 7A.2.7R (Client money received after the failure of the firm) does not apply to the proceeds under CASS 7A.2.3AR.

7A.2.3C G The proceeds of the assets realised under CASS 7A.2.3AR:

- (1) will form part of the notional pool of *client money* (see CASS 7A.2.4R (Pooling and distribution)); and
- (2) must be distributed in accordance with this chapter.

...

Pooling and distribution

- 7A.2.4 R If a *primary pooling event* occurs, then:
- (1) in respect of the *general pool* or a *sub-pool*, all *client money* held in a *client bank account* or a *client transaction account* of the *firm* relating to that *pool* is treated as ~~pooled (forming a notional pool)~~ a single notional *pool* of *client money* for the beneficiaries of that *pool*, except for *client money* held in a *client transaction account* at an *authorised central counterparty*; or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*;
 - (2) ~~the *firm* must distribute *client money* comprising the notional pool in accordance with CASS 7.7.2R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with CASS 7A.2.5R; and;~~
 - (a) distribute *client money* comprising a notional *pool* in accordance with CASS 7.7.2R, so that each *client* who is a beneficiary of that *pool* receives a sum which is rateable to the *client money* entitlement calculated in accordance with CASS 7A.2.5R; or
 - (b) (where applicable) transfer *client money* comprising a *sub-pool* to effect or facilitate *porting* of positions held for the *clients* who are beneficiaries of that *sub-pool*; and
 - (3) if, in connection with a *regulated clearing arrangement*, *client money* is remitted directly to the *firm* either from an *authorised central counterparty* or from a *clearing member*, then:

...

 - (b) subject to (3)(c) and (d), any such remittance in respect of a *client transaction account* that is an *omnibus client account* must form part of the notional ~~pool~~ *pool* under CASS 7A.2.4R(1) and be subject to distribution in accordance with CASS 7A.2.4R(2)(a); ~~and~~
 - (c) any such remittance in respect of a *client transaction account* that is an *omnibus client account* must be distributed to the relevant *clients* for whom that *omnibus client account* is held if:

...

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

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* or *clearing member* subject to CASS 7.7.2R(4); and

(d) any such remittance in respect of a *client transaction account* that is a *net margined omnibus client account* in respect of which the *firm* maintains a *sub-pool* must form part of such *sub-pool* to be distributed in accordance with CASS 7A.2.4R(2)(a).

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

...

...

(5) The *firm's* obligation to its *client* in respect of *client money* held in a *sub-pool* is discharged to the extent that the *firm* transfers that *client money* to facilitate *porting* in accordance with CASS 7.2.15R(8).

7A.2.5 R ...

(1) When, in respect of a *client* who is a beneficiary of a *pool*, there is a positive *individual client balance* and a negative *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit reducing the *individual client balance* for that *client*.

(2) When, in respect of a *client* who is a beneficiary of a *pool*, there is a negative *individual client balance* and a positive *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *client equity balance* for that *client*.

...

Client money received after failure of the firm

7A.2.7 R *Client money* received by the *firm* after a *primary pooling event* in respect of a *pool* must not be pooled with *client money* held in any *client money* account operated by the *firm* either in respect of that *pool* or any other *pool* at the time of the *primary pooling event*. It must be placed in a *client bank account* that has been opened after that event and must be handled in accordance with the *client money rules*, and returned to the relevant *client*

without delay, except to the extent that:

...

...

7A.3 Secondary pooling events

...

7A.3.4 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.3.6R. The *firm* would be expected to reflect the *shortfall* that arises at the *failed bank* in the *general pool* (where the *firm* maintains only a *general pool*) and, where relevant, in a particular *sub-pool* (where the *firm* maintains both a *general pool* and one or more *sub-pools*) in its records of the entitlement of *clients* and of *money* held with third parties under CASS 7.6 (Records, accounts and reconciliations).

...

7A.3.6 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held for the *general pool* or a particular *sub-pool*, then:

- (1) in relation to every *general client bank account* of the *firm* maintained in respect of that *pool*, the provisions of CASS 7A.3.8R, CASS 7A.3.13R and CASS 7A.3.14R will apply;
- (2) in relation to every *designated client bank account* held by the *firm* with the *failed bank* for the relevant *pool*, the provisions of CASS 7A.3.10R, CASS 7A.3.13R and CASS 7A.3.14R will apply;
- (3) in relation to each *designated client fund account* held by the *firm* with the *failed bank* for the relevant *pool*, the provisions of CASS 7A.3.11R, CASS 7A.3.13R and CASS 7A.3.14R will apply;
- (4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* for the relevant *pool*, is not pooled with any other *client money* held for that *pool* or any other *pool*; and
- (5) any *money* held in a *designated client fund account* in respect of that *pool*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money* held for that *pool* or any other *pool*.

7A.3.7 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* or *designated client fund accounts* are held in respect of a *pool*, then:

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

7A.3.8 R *Money held in each general client bank account and client transaction account of the firm for the general pool or a sub-pool must be treated as pooled and:*

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* or *client transaction accounts* for the relevant *pool*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients of that pool* whose *client money* is held in ~~either a~~ such general client bank account or client transaction account of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client of the relevant pool* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- ...
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts) for that *pool*, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

...

7A.3.10 R For each *client* with a *designated client bank account* maintained by the firm for the general pool or a particular sub-pool and held at the *failed bank*:

- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients of the relevant pool* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed bank*, rateably in accordance with their *client money* entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients of the relevant pool* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;

...

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts) in respect of the relevant *pool*, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

7A.3.11 R *Money held by the firm in each designated client fund account for the general pool or a particular sub-pool with the failed bank must be treated as pooled with any other designated client fund accounts for the general pool or a particular sub-pool as the case may be 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 of the relevant pool* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client of the relevant pool* by the *firm*, in accordance with (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;

...

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts) for the relevant *pool*, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

...

Client money received after the failure of a bank

7A.3.13 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, for either the general pool or a particular sub-pool:

...

- (2) must be, subject to (1), placed in a separate *client bank account relating to the general pool or the particular sub-pool as the case may be* that has been opened after the *secondary pooling event* and either:
- (a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or

(b) returned to the *client* as soon as possible.

...

Failure of an intermediate broker, settlement agent or OTC counterparty: Pooling

- 7A.3.16 R If a *secondary pooling event* occurs as a result of the *failure* of an *intermediate broker, settlement agent* or *OTC counterparty*, then in relation to every *general client bank account* and *client transaction account* of the *firm* relating to the general pool or a particular sub-pool as the case may be, the provisions of CASS 7A.3.17R and CASS 7A.3.18R will apply.
- 7A.3.17 R Money held in each *general client bank account* and *client transaction account* of the *firm* relating to the general pool or a particular sub-pool as the case may be, must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or a *client transaction account* of the *firm* relating to the general pool or the particular sub-pool as the case may be, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement relating to the general pool or the particular sub-pool as the case may be;

...

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

- 7A.3.18 R *Client money* received by the *firm* after the *failure* of an *intermediate broker, settlement agent* or *OTC counterparty*, that would otherwise have been paid into a *client transaction account* at that *intermediate broker, settlement agent* or *OTC counterparty* relating to the general pool or a particular sub-pool as the case may be:

...

- (2) must be, subject to (1), placed in a separate *client bank account* relating to the general pool or the particular sub-pool as the case may be, that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or

(b) returned to the *client* as soon as possible.

...

After CASS 11 insert the following new chapter. The text is not underlined.

12 Commodity Futures Trading Commission Part 30 exemption order

12.1 Application

- 12.1.1 R This chapter applies to a *firm* conducting business pursuant to the *Part 30 exemption order*.
- 12.1.2 G United States ('US') legislation restricts the ability of non-US firms to trade on behalf of customers resident in the US ('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*. Under the *Part 30 exemption order*, eligible *firms* may apply for confirmation of exemptive relief from Part 30 of the General Regulations under the US Commodity Exchange Act. Under this system, both the applicant *firm* and the *FCA* must make certain written representations to the *CFTC*.

12.2 Treatment of client money

- 12.2.1 G Under condition 2(g) of the *Part 30 exemption order*, a *firm* with exemptive relief represents to the *CFTC* that it consents to refuse to allow any US customer the option of not having its *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.
- 12.2.2 G The *FCA* understands that in complying with condition 2(g) of the *Part 30 exemption order*, a *firm* is representing that it will not:
- (1) make use of the opt-out arrangements in CASS 7.1.7CR to CASS 7.1.7GG; or
 - (2) conduct business to which the *client money rules* do not apply because of the exemption for *CRD credit institutions* and *approved banks* in CASS 7.1.8R to CASS 7.1.11AR; or
 - (3) enter into any arrangement relating to the transfer of full ownership of the *client's money* to the *firm* for the purposes set out in CASS 7.2.3R(1);

in relation to business conducted pursuant to the *Part 30 exemption order*.

LME bond arrangements

- 12.2.3 G For *firms* with exemptive relief under the *Part 30 exemption order*, the *CFTC* has issued certain no-action letters which, on the *FCA's* understanding, would allow such *firms* to use an *LME bond arrangement* as an alternative to complying with condition 2(g) of the *Part 30 exemption order*. Under an *LME bond arrangement*, a *firm* may arrange for a binding letter of credit to be issued to cover the 'secured amount' (as defined by section 30.7 of the General Regulations under the US Commodity Exchange Act). The letter of credit must be drawn up in a pre-specified format and may be issued in respect of either:
- (1) an omnibus account in favour of a specified trustee; or
 - (2) a specified *client* who is the named beneficiary.
- 12.2.4 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 the conditions of the *Part 30 exemption order*.
- 12.2.5 R A *firm* must notify the *FCA* immediately if it arranges the issue of a letter of *credit* for a specified *client* who is the named beneficiary under an *LME bond arrangement*.
- 12.2.6 G A *firm's* use of an *LME bond arrangement* does not remove the need for the *firm* to act in accordance with the *client money rules*.

Amend the following as shown.

Transitional Provisions

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
10	CASS 7.2.3R(2)		
<u>10</u> <u>A</u>	<u>CASS</u> <u>7.4.11AR(2)</u>	<u>R</u>	(1) <u>The rule in column (1) applies when a firm enters into a new contract with a bank to provide a client bank account.</u> (2) <u>In relation to an</u>	<u>Indefinitely</u>	<u>1 July 2014</u>

			<p><u>arrangement under which a firm holds a client bank account with a bank that is in place as at the date in column (5), and as soon as it is permitted to do so under that arrangement, the firm must terminate any contract that does not comply with the rule in column (1) and enter into a new contract (in respect of which (1) shall apply). If necessary to comply with the rule in column (1), a firm must move client money into another client bank account under compliant terms.</u></p>		
...					

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

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS 6.5.3R	Default record keeping provision for CASS 6	Refer to the rule concerned	Refer to the rule concerned	Five years from the later of: (1) the date it was created; and (2) if it has been modified since the date in (1), the date it was most recently modified
CASS 7.1.15GR	Trustee firm's election to comply, or to cease to comply, with specific CASS	Relevant provisions, date of election and of any decision to cease to comply	When election made or decision taken to cease to comply	Five years after ceasing to use the election

	7 provisions			
CASS 7.1.15JR	<i>Trustee firm's</i> election to comply, or to cease to comply, with specific CASS 7 provisions	Relevant provisions, date of election and of any decision to cease to comply	When election made or decision taken to cease to comply	Five years after ceasing to use the election
CASS 7.6.4R	Default record keeping provision for CASS 7	Refer to the rule concerned	Refer to the rule concerned	Five years from the later of: (1) the date it was created; and (2) if it has been modified since the date in (1), the date it was most recently modified
CASS 7.19.6R	For each <i>sub-pool</i> established by the <i>firm</i>	All the <i>client</i> beneficiaries of that <i>sub-pool</i>	From the date on which the <i>sub-pool</i> is created	Five years following the date on which <i>client money</i> was last held by the <i>firm</i> in relation to the <i>sub-pool</i> to which the record applied
CASS 7.19.7R	For each <i>sub-pool</i> established by the <i>firm</i>	(a) The name of the <i>sub-pool</i> (b) The identity of the <i>net margined omnibus account</i> to which the <i>sub-pool</i> relates; (c) Each <i>client bank account</i> and each <i>client transaction account</i> maintained for the <i>sub-pool</i> ; (d) the applicable <i>sub-pool disclosure document</i> for	Prior to the date on which the <i>firm</i> intends to receive or hold client money for that <i>sub-pool</i>	Five years following the date on which <i>client money</i> was last held by the <i>firm</i> in relation to the <i>sub-pool</i> to which the record applied

		the <i>sub-pool</i> .		
CASS 7.19.8R	For each <i>sub-pool</i> established by the <i>firm</i>	A list of all the <i>sub-pools</i> the <i>firm</i> has created.	From the date on which a <i>sub-pool</i> is created	Five years following the date on which <i>client money</i> was last held by the <i>firm</i> in relation to a <i>sub-pool</i> to which the record applied
CASS 7.19.9R	For each <i>sub-pool</i> established by the <i>firm</i>	A <i>sub-pool disclosure document</i>	At the time of establishing the relevant <i>sub-pool</i>	Five years following the date on which <i>client money</i> was last held by the <i>firm</i> in relation to a <i>sub-pool</i> to which the <i>sub-pool disclosure document</i> applied

Amend the following as shown:

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS 7.1.15C R	Not specified (<u>see default provision CASS 7.6.4R</u>)

Insert the following new rows in the appropriate numerical position in **Schedule 2 (Notification requirements)**. The new text is not underlined.

Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 7.19.21R	Material change to <i>sub-pool</i>	Fact of proposed change, risks and consequences to beneficiaries	<i>Firm</i> determining that it wishes to make material change to a <i>sub-pool</i>	Not less than two months before the date on which the <i>firm</i> intends the change to take effect

CASS 7.19.22R	Establishment of a <i>sub-pool</i> of <i>client money</i> to FCA	<i>Firm</i> wishes to establish a <i>sub-pool</i> of <i>client money</i>	<i>Firm</i> determining that it wishes to establish a <i>sub-pool</i> of <i>client money</i>	Not less than two months before the date on which the <i>firm</i> intends to receive or hold <i>client money</i> for that <i>sub-pool</i>
CASS 7.19.24R	Non-compliance, or inability to comply with, with the requirements in CASS 7.19.11R or CASS 7.19.18R	The fact that the <i>firm</i> has not complied with, or is unable to comply with, the requirements of CASS 7.19.11R or CASS 7.19.18R (as applicable)	Non-compliance with the applicable requirement	Without delay

In CASS Sch 2.1G amend the following as shown and move to its appropriate numerical position.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 7.4.35R <u>CASS 12.2.5R</u>	<i>LME bond arrangements</i>	Issue of an individual letter of credit issued by the <i>firm</i>	Upon issue of an individual letter of credit under an <i>LME bond arrangement</i>	Immediately

Part 2: Comes into force on 1 December 2014**6 Custody rules****6.1 Application**

...

- 6.1.6B** **R** (1) A firm must ensure that any arrangement relating to the transfer of full ownership of a client's safe custody asset to the firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) is the subject of a written agreement made on a durable medium between the firm and the client.
- (2) Regardless of the form of the agreement in (1) (which may have additional commercial purposes), it must cover the client's agreement to:
- (a) the terms for the arrangement relating to the transfer of the client's full ownership of the safe custody asset to the firm;
- (b) any terms under which the ownership of the safe custody asset is to transfer from the firm back to the client; and
- (c) (to the extent not covered by the terms under (b)), any terms for the termination of:
- (i) the arrangement under (a); or
- (ii) the overall agreement in (1).
- (3) A firm must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.
- 6.1.6C** **G** The terms referred to in CASS 6.1.6BR(2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of the safe custody asset to the firm is not in effect from time to time, or is contingent on some other condition.

...

Delivery versus payment ~~transactions~~ transaction exemption

- 6.1.12** **R** (1) A Subject to (2) and CASS 6.1.12BR and with the written agreement of the relevant client, a firm need not treat this chapter as applying in respect of a delivery versus payment transaction through a ~~commercial settlement system~~ 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~~ the *firm* intends for the asset in question to be due to the *client* within one *business day* following the *client's* fulfilment of its payment obligation to the *firm*; or
- (b) ~~in respect of a *client's* sale, due to the *firm* within one *business day* following the fulfilment of a payment obligation~~ the *firm* intends for the asset in question to be due to the *firm* within one *business day* following the *firm's* fulfilment of its payment obligation to the *client*.

~~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*. If the payment or delivery by the *firm* to the *client* has not occurred by the close of business on the third *business day* following the date on which a *firm* makes use of the exemption under (1), the *firm* must stop using that exemption for the transaction.~~
- (3) If the period referred to in CASS 6.1.12R(2) has expired before such a delivery versus payment transaction through a *commercial settlement system* has settled, a *firm* may, until settlement and provided that doing so is consistent with the *firm's permissions* and it complies with (4), segregate the *firm's own money* as *client money* (in accordance with the *client money rules*) of an amount equivalent to the value at which that *safe custody asset* is reasonably expected to settle instead of holding the *client's safe custody assets* (in accordance with the *custody rules*).
- (4) Where a *firm* intends to segregate money as *client money* instead of the *client's safe custody asset* under (3) it must, before doing so, ensure that this would result in money being held for the relevant *client* in respect of the *shortfall* under CASS 7.7.2R (statutory trust).
- (5) Where a *firm* segregates an amount of *client money* instead of the *client's safe custody assets* under (3) it must also:
 - (a) ensure the money is segregated under CASS 7.4 (Segregation of client money) and recorded as being held for the relevant *client(s)* under CASS 7.6 (Records, accounts and reconciliations);
 - (b) keep a record of the actions the *firm* has taken under this rule which includes a description of the *safe custody asset* in question, identifies the relevant affected *client*, and specifies the amount of money that the *firm* has appropriated as *client*

money to cover the value of the *safe custody asset*; and

- (c) update the record made under (5)(b) when the transaction in question has settled and the *firm* has re-appropriated the *money*.

- 6.1.12A G (1) The amount of *client money* a *firm* segregates for the purposes of CASS 6.1.12R(3) may be determined by the previous day's closing mark to market valuation of the relevant *safe custody asset* or, if in relation to a particular *safe custody asset* none is available, the most recent available valuation.
- (2) Where a *firm* is segregating *money* for the purposes of CASS 6.1.12R(3) it should, as regularly as necessary, and having regard to *Principle 10*:
- (a) review the value of the *safe custody asset* in question in line with (1); and
- (b) where the *firm* has found that the value of the *safe custody asset* has changed, adjust the amount of *money* it has appropriated to ensure that these monies are sufficient to cover the latest value of the *safe custody asset*.
- 6.1.12B R A *firm* cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under CASS 6.1.12R in either or both of the following circumstances:
- (1) it is not a direct member or participant of the relevant *commercial settlement system*, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that *commercial settlement system*;
- (2) the transaction in question is being settled by another *person* on behalf of the *firm* through an account held at the relevant *commercial settlement system* by that other *person*.
- 6.1.12C G Where a *firm* does not meet the requirements in CASS 6.1.12R or CASS 6.1.12BR for use of the exemption in CASS 6.1.12R, the *firm* is subject to the *custody rules* in respect of any *safe custody asset* it holds in connection with the delivery versus payment transaction in question.
- 6.1.12D G (1) In line with CASS 6.1.12R, where a *firm* receives a *safe custody asset* from a *client* in respect of a delivery versus payment transaction the *firm* is carrying out through a *commercial settlement system* in respect of a *client's* sale, and the *firm* has not fulfilled its payment obligation to the *client* by close of business on the third *business day* following the date of the *client's* fulfilment of its delivery obligation to the *firm*, the *firm* should consider whether the *custody rules* apply in respect of the *safe custody asset* pursuant to CASS 6.1.1R(1A) to (1D).

(2) Upon settlement of a delivery versus payment transaction a firm is carrying out through a commercial settlement system (including when it is settled within the three business day period referred to in CASS 6.1.12R), in respect of:

(a) a client's purchase, the custody rules apply to the relevant safe custody asset the firm receives upon settlement; and

(b) a client's sale, the client money rules will apply to the relevant money received on settlement.

- 6.1.12E R (1) If a firm makes use of the exemption under CASS 6.1.12R, it must obtain the client's written agreement to the firm's use of this exemption.
- (2) In respect of each client, the written agreement in (1) must be retained during the time that the firm makes use, or intends to make use, of the exemption under CASS 6.1.12R in respect of that client's safe custody assets.

...

Trustees and depositaries (except depositaries of AIFs)

...

6.1.16F R ...

Reference	Rule
...	
CASS 6.3.1R to CASS 6.3.4R 6.3.4BG	Depositing safe custody assets with third parties
...	...

...

Arrangers

6.1.16J R Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets:

Reference	Rule
...	
CASS 6.3.1R(1A) and CASS 6.3.2G	Arranging for assets to be deposited with third parties

CASS 6.3.4AR and CASS 6.3.4BG

Third-party custody agreements

...

6.2 Holding of client assets

...

Allocated but unclaimed safe custody assets

- 6.2.8 G The purpose of CASS 6.2.10R is to set out the requirements a firm must comply with if it chooses to divest itself of a client's unclaimed safe custody assets.
- 6.2.9 G Before acting in accordance with CASS 6.2.10R to CASS 6.2.16G, a firm should consider whether its actions are permitted by law and consistent with the arrangements under which the safe custody assets are held. These provisions relate to a firm's obligations as an authorised person.
- 6.2.10 R A firm may either (i) liquidate an unclaimed safe custody asset it holds for a client, at market value, and pay away the proceeds or (ii) pay away an unclaimed safe custody asset it holds for a client, in either case, to a registered charity of its choice provided:
- (1) this is permitted by law and consistent with the arrangements under which that safe custody asset is held;
 - (2) it has held that safe custody asset for at least 12 years;
 - (3) in the 12 years preceding the divestment of that safe custody asset, it has not received instructions relating to any safe custody assets from or on behalf of the client concerned;
 - (4) it can demonstrate that it has taken reasonable steps to trace the client concerned and return that safe custody asset; and
 - (5) the firm complies with CASS 6.2.14R: the undertaking requirement.
- 6.2.11 E (1) Taking reasonable steps in CASS 6.2.10R(4) includes following this course of conduct:
- (a) determining, as far as reasonably possible, the correct contact details for the relevant client;
 - (b) writing to the client at the last known address either by post or by electronic mail to inform it:
 - (i) of the name of the firm with which the client first deposited the safe custody asset in question;
 - (ii) of the firm's intention to pay the safe custody asset to charity under CASS 6.2.10R if it does not receive

instructions from the *client* within 28 days;

- (c) where the *client* has not responded after the 28 days referred to in (b), attempting to communicate the information set out in (b) to the *client* on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;
- (d) subject to (e) and (f), where the *client* has not responded within 28 days following the most recent communication, writing again to the *client* at the last known address either by post or by electronic mail to inform them that:
 - (i) as the *firm* received no instructions from the *client*, it will in 28 days pay the *safe custody asset* to charity under CASS 6.2.10R; and
 - (ii) an undertaking will be provided by the *firm* or a member of its *group* to pay to the *client* concerned a sum equal to the value of the *safe custody asset* at the time it was liquidated or paid away in the event of the *client* seeking to claim the *safe custody asset* in future;
- (e) if the *firm* has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the *client* is no longer at a particular address, the *firm* should not use that address for the purposes of (d);
- (f) if, after carrying out the steps in (a), (b) and (c), the *firm* has obtained positive confirmation that none of the contact details it holds for the relevant *client* are accurate or, if utilised, the communication is unlikely to reach the *client*, the *firm* does not have to comply with (d); and
- (g) waiting a further 28 days following the most recent communication under this *rule* before divesting itself of the *safe custody asset* under CASS 6.2.10R.

(2) Compliance with (1) may be relied on as tending to establish compliance with CASS 6.2.10R(4).

(3) Contravention of (1) may be relied on as tending to establish contravention of CASS 6.2.10R(4).

6.2.12 G For the purpose of CASS 6.2.11E(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including telephoning the *client*, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.

6.2.13 R Where a *firm* liquidates a *safe custody asset* under CASS 6.2.10R, it must

pay away the proceeds to charity as soon as practicable.

- 6.2.14 R Where a *firm* divests itself of a *client's safe custody asset* under CASS 6.2.10R, it must comply with either (1)(a) or (1)(b) and, in either case, (2).
- (1) (a) The *firm* must unconditionally undertake to pay to the *client* concerned a sum equal to the value of the *safe custody asset* at the time it was liquidated or paid away in the event of the *client* seeking to claim the *safe custody asset* in future.
- (b) The *firm* must ensure that an unconditional undertaking in the terms set out in (1) is made by a member of its *group* and there is suitable information available for relevant *clients* to identify the member of the *group* granting the undertaking.
- (2) Any undertaking under this rule must be:
- (a) authorised by the *firm's governing body* where (1) applies or the *governing body* of the *group* member where (2) applies;
- (b) legally enforceable by any *person* that had a legally enforceable claim to the unclaimed *safe custody asset* in question at the time it was divested by the *firm*, or by an assign or successor in title to such claim; and
- (c) retained by the *firm*, and, where (2) applies, by the *group* member, indefinitely.
- 6.2.15 R (1) If a *firm* pays away a *client's unclaimed safe custody assets* to charity or liquidates a *client's unclaimed safe custody assets* and pays the proceeds to charity under CASS 6.2.10R it must make and retain, or where the *firm* already has such records, retain:
- (a) records of all *safe custody assets* divested under CASS 6.2.10R (including details of the value of each asset at that time and the identity of the *client* to whom the asset was allocated);
- (b) all relevant documentation (including charity receipts); and
- (c) details of the communications the *firm* had or attempted to make with the *client* concerned pursuant to CASS 6.2.10R(4).
- (2) Records in (1) must be retained indefinitely.
- (3) If a member of the *firm's group* has provided an undertaking under CASS 6.2.14R(1)(b), then the records in (1) must be readily accessible to that *group* member.

Costs associated with divesting allocated but unclaimed client assets

- 6.2.16 G Any costs associated with the *firm* divesting itself of *safe custody assets* pursuant to CASS 6.2.10R to CASS 6.2.15R should be paid for from the

firm's own funds, including:

- (1) any costs associated with the firm carrying out the steps in CASS 6.2.10R(4) or CASS 6.2.11E; and
- (2) the cost of any insurance purchased by a firm or the relevant member of its group to cover any legally enforceable claim in respect of the assets divested under CASS 6.2.10R.

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

...

6.3.3 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. [deleted]~~

...

Third-party custody agreements

6.3.4A R A firm must have entered into a written agreement with any person with whom it deposits clients' safe custody assets under CASS 6.3.1R, or with

whom it arranges safeguarding and administration of assets which are clients' safe custody assets. This agreement must, at minimum:

- (1) set out the binding terms of the arrangement between the *firm* and the third party;
- (2) be in force for the duration of that arrangement; and
- (3) clearly set out the custody service(s) that the third party is contracted to provide.

6.3.4B G A *firm* should consider carefully the terms of any agreement entered into with a third party under CASS 6.3.4AR. The following terms are examples of the issues that should be addressed in these agreements (where relevant):

- (1) that the title of the account in the third party's books and records 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 *firm's client's* name;
- (4) the restrictions over the circumstances in which the third party may withdraw assets from the account;
- (5) the procedures and authorities for the passing of instructions to, or by, the *firm*;
- (6) the procedures for the claiming and receiving of dividends, interest payments and other entitlements accruing to the *firm's client*; and
- (7) 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.

...

7 Client money rules

...

7.1.8 R ~~The *client money rules* do not apply to a *CRD credit institution* in relation to deposits within the meaning of the *CRD* held by that *institution*.~~
 [Note: article 13(8) of *MiFID* and article 18(1) of the *MiFID implementing*

~~Directive] [deleted]~~

- 7.1.8A R In relation to the application of the *client money rules* (and any other rule in so far as it relates to matters covered by the *client money rules*) to the firms referred to in (1) and (2), the following is not *client money*:
- (1) any deposits within the meaning of the *CRD* held by a *CRD credit institution*; and
[Note: article 13(8) of *MiFID* and article 18(1) of the *MiFID Implementing Directive*]
- (2) any money held by an *approved bank* that is not a *CRD credit institution* in an account with itself in relation to *designated investment business* carried on for its *clients*.
- 7.1.8B G A firm referred to in CASS 7.1.8AR must comply, as relevant, with CASS 7.1.8BAG to CASS 7.1.10CR.
- 7.1.8BA G The effect of CASS 7.1.8AR is that, unless notified otherwise in accordance with CASS 7.1.8DR or CASS 7.1.10AR, *clients* of *CRD credit institutions* or *approved banks* that are not *CRD credit institutions* should expect that where they pass money to such firms in connection with *designated investment business* these sums will not be held as *client money*.
- 7.1.8C R A firm holding money in either of the ways described in CASS 7.1.8AR must, before providing *designated investment business* services to the *client* in respect of those sums, notify the *client* that:
- (1) the money held for that *client* is held by the firm as banker and not as a trustee under the *client money rules*; and
- (2) if the firm fails, the *client money distribution rules* will not apply to these sums and so the *client* will not be entitled to share in any distribution under the *client money distribution rules*.
- 7.1.8D R A firm holding money in either of the ways described in CASS 7.1.8AR in respect of a *client* and providing the services to it referred to in CASS 7.1.8CR must:
- (1) explain to its *clients* the circumstances, if any, under which it will cease to hold any money in respect of those services as banker and will hold the money as trustee in accordance with the *client money rules*; and
- (2) set out the circumstances in (1), if any, in its terms of business so that they form part of its agreement with the *client*.
- 7.1.9 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. [deleted]~~

7.1.10 G Pursuant to *Principle 10 (Clients' assets)*, a *credit institution* that holds ~~money as a deposit with itself~~ Where a firm receives money that would otherwise be held as client money but for CASS 7.1.8AR:

- (1) it should be able to account to all of its clients for amounts held on their behalf sums held for them at all times; and
- (2) that money should, pursuant to Principle 10, be allocated to the relevant client promptly. This should be done no later than ten business days after the firm has received the money.

~~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.~~

7.1.10A R If a CRD credit institution or an approved bank that is not a CRD credit institution wishes to hold client money for a client (rather than hold the money in either of the ways described in CASS 7.1.8AR) it must, before providing designated investment business services to the client, disclose the following information to the client:

- (1) that the money held for that client in the course of or in connection with the business described under (2) is being held by the firm as client money under the client money rules;
- (2) a description of the relevant business carried on with the client in respect of which the client money rules apply to the firm; and
- (3) that, if the firm fails, the client money distribution rules will apply to money held in relation to the business in question.

7.1.10B G Firms carrying on MiFID business are reminded of their obligation to supply investor compensation scheme information to clients under COBS 6.1.16R (Compensation Information).

7.1.10C R A CRD credit institution or an approved bank that is not a CRD credit institution must, in respect of any client money held in relation to its

designated investment business that is not MiFID business, comply with the obligations referred to in COBS 6.1.16R (Compensation information).

- 7.1.11 G ~~A credit institution is reminded that the exemption for deposits is not an absolute exemption from the client money rules. [deleted]~~
- 7.1.11A R (1) ~~This rule applies to a firm which is an approved bank but not a CRD credit institution. [deleted]~~
- (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. [deleted]~~

7.2 Treatment of client money

...

- 7.2.3B R (1) A firm must ensure that any arrangement relating to the transfer of full ownership of a client's money to the firm for the purposes set out in CASS 7.2.3R(1) and CASS 7.2.3AR(1) is the subject of a written agreement made on a durable medium between the firm and the client.
- (2) Regardless of the form of the written agreement in (1) (which may have additional commercial purposes), it must cover the client's agreement to:
- (a) the terms for the arrangement relating to the transfer of the client's full ownership of money to the firm;
- (b) any terms under which the ownership of money is to transfer from the firm back to the client; and
- (c) (to the extent not covered by the terms under (b)), any terms for the termination of:
- (i) the arrangement under (a); or
- (ii) the overall agreement in (1).
- (3) A firm must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the

agreement is terminated.

- 7.2.3C G The terms referred to in CASS 7.2.3BR(2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of money to the firm is not in effect from time to time, or is contingent on some other condition.

...

~~Money in connection with a “delivery versus payment” transaction~~
Delivery versus payment transaction exemption

- 7.2.8 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. [deleted]~~

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

- 7.2.8AA R (1) Subject to (2) and CASS 7.2.8ABR and with the agreement of the relevant client, money need not be treated as client money in respect of a delivery versus payment transaction through a commercial settlement system if:
- (a) in respect of a client’s purchase, the firm intends for the money from the client to be due to it within one business day following the firm’s fulfilment of its delivery obligation to the client; or
- (b) in respect of a client’s sale, the firm intends for the money in question to be due to the client within one business day following the client’s fulfilment of its delivery obligation to the firm.

- (2) If the payment or delivery by the *firm* to the *client* has not occurred by the close of business on the third *business day* following the date on which the *firm* makes use of the exemption under (1), the *firm* must stop using that exemption for the transaction.

7.2.8AB R A *firm* cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under CASS 7.2.8AAR in either or both of the following circumstances:

- (1) it is not a direct member or participant of the relevant *commercial settlement system*, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that *commercial settlement system*;
- (2) the transaction in question is being settled by another *person* on behalf of the *firm* through an account held at the relevant *commercial settlement system* by that other *person*.

7.2.8AC R Where a *firm* does not meet the requirements in CASS 7.2.8AAR or CASS 7.2.8ABR for the use of the exemption in CASS 7.2.8AAR, the *firm* is subject to the *client money rules* in respect of any *money* it holds in connection with the delivery versus payment transaction in question.

7.2.8AD G (1) In line with CASS 7.2.8AAR, where a *firm* receives *money* from the *client* in fulfilment of the *client's* payment obligation in respect of a delivery versus payment transaction the *firm* is carrying out through a *commercial settlement system* in respect of a *client's* purchase and the *firm* has not fulfilled its delivery obligation to the *client* by close of business on the third *business day* following the date of the *client's* fulfilment of its payment obligation to the *firm*, the *firm* must treat the *client money* in accordance with the *client money rules* until delivery by the *firm* to the *client* occurs.

- (2) Upon settlement of a delivery versus payment transaction a *firm* is carrying out through a *commercial settlement system* (including when it is settled within the three *business day* period referred to in CASS 7.2.8AAR(2)) then, in respect of:

- (a) a *client's* purchase, the *custody rules* apply to the relevant *safe custody asset* the *firm* receives upon settlement; and
- (b) a *client's* sale, the *client money rules* will apply to the relevant *money* received on settlement.

7.2.8AE R (1) If a *firm* makes use of the exemption under CASS 7.2.8AAR, it must obtain the *client's* written agreement to the *firm's* use of the exemption.

- (2) In respect of each *client*, the written agreement in (1) must be retained during the time that the *firm* makes use, or intends to make

use, of the exemption under CASS 7.2.8AAR in respect of that client's monies.

...

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

...

(2) *it is:*

...

(c) transferred in accordance with CASS 7.2.17BR; or

(d) transferred in accordance with CASS 7.2.17DR; or

...

...

(9) *it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment directly to the indirect clients of the firm in accordance with CASS 7.2.15CR(2); or*

(10) it is paid to charity under CASS 7.2.19R or CASS 7.2.25R.

...

Transfer of business

7.2.17A G *A firm may transfer client money to a third party as part of transferring all or part of its business if, in respect of each client with an interest in the client money that is sought to be transferred, it:*

(1) obtains the consent or instruction of that client at the time of the transfer of business (see CASS 7.2.15R(2)(a)); or

(2) complies with CASS 7.2.17BR (see CASS 7.2.15R(2)(c)); or

(3) complies with CASS 7.2.17DR (see CASS 7.2.15R(2)(d)).

7.2.17B R Subject to CASS 7.2.17DR, money ceases to be client money for a firm if:

(1) it is transferred by the firm to another person as part of a transfer of business to that person where the client money relates to the business being transferred;

(2) it is transferred on terms which require the other person to return a client's transferred sums as soon as practicable at the client's request;

- (3) a written agreement between the *firm* and the relevant *clients* provides that:
- (a) the *firm* may transfer the *client's client money* to another *person*; and
- (b) (i) the sums transferred will be held by the *person* to whom they are transferred in accordance with the *client money rules* for the *clients*; or
- (ii) if not held in accordance with (i), the *firm* will exercise all due skill, care and diligence in assessing whether the *person* to whom the *client money* is transferred will apply adequate measures to protect these sums; and
- (4) the *firm* complies with the requirements in (3)(b)(ii) (if applicable).

7.2.17C G In considering how and whether to introduce the written agreement referred to in CASS 7.2.17BR(3), *firms* should have regard to any relevant obligations to *clients*, including requirements under the *Unfair Terms Regulations*.

Transfer of business: de minimis sums

- 7.2.17D R (1) *Client money* belonging to those categories of *clients* set out in (2) and in respect of those amounts set out in (2) ceases to be *client money* of the *firm* if it is transferred by the *firm* to another *person*:
- (a) as part of a transfer of business to that other *person* where these sums relate to the business being transferred; and
- (b) on terms which require the other *person* to return a *client's* transferred sums as soon as practicable at the *client's* request.
- (2) (a) For *retail clients* the amount is £25.
- (b) For all other *clients* the amount is £100.

7.2.17E G For the avoidance of doubt, sums transferred under CASS 7.2.17DR do not, for the purposes of that *rule*, require the instruction or specific consent of each *client* at the time of the transfer or a written agreement as set out in CASS 7.2.17BR(3).

Transfer of business: client notifications

7.2.17F R Where a *firm* transfers *client money* belonging to its *clients* under either or both of CASS 7.2.17BR and CASS 7.2.17DR, it must ensure that those *clients* are notified no later than seven *days* after the transfer takes place:

- (1) whether or not the sums will be held by the person to whom they have been transferred in accordance with the *client money rules* and, if not, how the sums being transferred will be held by that *person*;
- (2) the extent to which the sums transferred will be protected under a compensation scheme; and
- (3) that the *client* may opt to have the *client's* transferred sum returned to it as soon as practicable at the *client's* request.
- 7.2.17G R The *firm* must notify the *FCA* of its intention to effect any transfer of *client money* under either or both of *CASS 7.2.17BR* and *CASS 7.2.17DR* at least seven *days* before it transfers the *client money* in question.
- ...
- 7.2.18 G The purpose of the *CASS 7.2.19R* ~~rule on allocated but unclaimed *client money*~~ is to allow a *firm*, in the normal course of its business, ~~set out the requirements *firms* must comply with in order to cease to treat as *client money* any unclaimed balances~~ balance which is, allocated to an individual *client*, ~~when those balances remain unclaimed.~~
- 7.2.18A G Before acting in accordance with *CASS 7.2.19R* to *CASS 7.2.26R*, a *firm* should consider whether its actions are permitted by law and consistent with the arrangements under which the *client money* is held. For the avoidance of doubt, these provisions relate to a *firm's* obligations as an *authorised person* and to the treatment of *client money* under the *client money rules*.
- 7.2.19 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. A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under *CASS 7.2.15R(10)*, provided:
- (1) this is permitted by law and consistent with the arrangements under which the *client money* is held;
- (2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);
- (3) it can demonstrate that it has taken reasonable steps to trace the *client* concerned and to return the balance; and
- (4) the *firm* complies with *CASS 7.2.22R*.
- 7.2.19A G Where the *client money* balance held by a *firm* is, in aggregate, £100 or less for a *client* other than a *retail client* or, for a *retail client*, £25 or less,

the firm may comply with CASS 7.2.25R instead of CASS 7.2.19R.

- 7.2.20 E (1) Taking Reasonable reasonable steps in CASS 7.2.19R(3) should include includes following this course of conduct:
- (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 determining, as far as reasonably possible, the correct contact details for the relevant client;
 - (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) writing to the client at the last known address either by post or by electronic mail to inform it of the firm's intention to no longer treat the client money balance as client money and to pay the sums concerned to charity if the firm does not receive instructions from the client within 28 days;
 - (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 where the client has not responded after the 28 days referred to in (b), attempting to communicate the information set out in (b) to the client on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;
 - (d) making and retaining records of all balances released from client bank accounts; and subject to (e) and (f), where the client has not responded within 28 days following the most recent communication, writing again to the client at the last known address either by post or by electronic mail to inform them that:
 - (i) as the firm did not receive a claim for the relevant client money balance, it will in 28 days pay the balance to a registered charity; and
 - (ii) an undertaking will be provided by the firm or a member of its group to pay to the client concerned a sum equal to the balance paid away to charity in the event of the client seeking to claim the balance in future;
 - (e) undertaking to make good any valid claim against any released balances, if the firm has carried out the steps in (b) or (c) and in response has received positive confirmation in

writing that the *client* is no longer at a particular address, the *firm* should not use that address for the purposes of (d);

- (f) if, after carrying out the steps in (a), (b) and (c), the *firm* has obtained positive confirmation that none of the contact details it holds for the relevant *client* are accurate or, if utilised, the communication is unlikely to reach the *client*, the *firm* does not have to comply with (d); and
- (g) waiting a further 28 days following the most recent communication under this *rule* before paying the balance to a registered charity.

...

- 7.2.20A G For the purpose of CASS 7.2.20E(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including telephoning the *client*, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.
- 7.2.21 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*. [deleted]~~
- 7.2.22 R (1) Where a *firm* wishes to release a balance allocated to an individual *client* under CASS 7.2.19R it must comply with either (a) or (b) and, in either case, (2):
- (a) the *firm* must unconditionally undertake to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future; or
 - (b) the *firm* must ensure that an unconditional undertaking in the terms set out in (a) is made by a member of its *group* and there is suitable information available for relevant *clients* to identify the member of the *group* granting the undertaking.
- (2) The undertakings in this *rule* must be:
- (a) authorised by the *firm's* governing body where (1)(a) applies or by the governing body of the *group* member where (1)(b) applies;
 - (b) legally enforceable by any *person* who had a legally enforceable claim to the balance in question at the time it was released by the *firm*, or by an assign or successor in title to such claim; and

- (c) retained by the *firm*, and, where (1)(b) applies, by the *group* member, indefinitely.
- 7.2.23 R (1) If a *firm* pays away *client money* under CASS 7.2.19R(4) it must make and retain, or where the *firm* already has such records, retain:
- (a) records of all balances released from *client bank* accounts under CASS 7.2.19R (including details of the amounts and the identity of the *client* to whom the *money* was allocated);
- (b) all relevant documentation (including charity receipts); and
- (c) details of the communications the *firm* had or attempted to make with the *client* concerned pursuant to CASS 7.2.19R(3).
- (2) The records in (1) must be retained indefinitely.
- (3) If a member of the *firm's group* has provided an undertaking under CASS 7.2.22R(2) then the records in (1) must be readily accessible to that *group* member.

De minimis amounts of unclaimed client money

- 7.2.24 G The purpose of CASS 7.2.25R is to allow a *firm* to pay away to charity *client money* balances of (i) £25 or less for *retail clients* or (ii) £100 or less for other *clients* when those balances remain unclaimed. If a *firm* follows this process, the *money* will cease to be *client money* (see CASS 7.2.15R(10)).
- 7.2.25 R A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under CASS 7.2.15R(10), provided:
- (1) the balance in question is (i) for a *retail client*, in aggregate, £25 or less, or (ii) for a *professional client*, in aggregate, £100 or less;
- (2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);
- (3) the *firm* has made at least one attempt to contact the *client* to return the balance using the most up-to-date contact details the *firm* has for the *client*, and the *client* has not responded to such communication within 28 days of the communication having been made; and
- (4) the *firm* makes and/or retains records of all balances released from *client bank* accounts in accordance with this rule. Such records must include the information in CASS 7.2.23(1)(a) and (b).

Costs associated with paying away allocated but unclaimed client money

- 7.2.26 G Any costs associated with the firm ceasing to treat unclaimed client money balances as client money pursuant to CASS 7.2.18G to CASS 7.2.25R should be paid for from the firm's own funds, including:
- (1) any costs associated with the firm carrying out the steps in CASS 7.2.19R(3), CASS 7.2.20E or CASS 7.2.25R(3); and
 - (2) the cost of any insurance purchased by a firm or the relevant member of its group to cover any legally enforceable claim in respect of the client money paid away.

.....

7.4 Segregation of client money

...

- 7.4.11C G CASS 7.4.11AR does not prevent a firm from depositing client money in overnight money market deposits which are clearly identified as being client money (for example in the client bank account ~~acknowledgment letter~~ acknowledgment letter).
- 7.4.11D G ~~Firms are reminded of their obligations under CASS 7.8 (Notification and acknowledgement of trust Acknowledgment letters) for client bank accounts.~~ Firms should also ensure that client bank accounts meet the requirements in the relevant Glossary definitions, including regarding the titles given to the accounts.

...

Payment Approaches for the segregation of client money into a client bank account

- 7.4.14 G ~~Two~~ The two approaches that a firm can adopt in discharging its obligations under ~~the client money segregation requirements~~ this section are:
- (1) the 'normal approach'; or
 - (2) the 'alternative approach'.
- 7.4.15 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. [deleted]~~
- 7.4.16 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 7.6.2R). 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. [deleted]~~

...

The alternative approach to client money segregation

- 7.4.17A G (1) In certain circumstances, use of the normal approach for a particular business line of a firm could lead to significant operational risks to client money protection. These may include a business line under which clients' transactions are complex, numerous, closely related to the firm's proprietary business and/or involve a number of currencies and time zones. In such circumstances, subject to meeting the relevant criteria and fulfilling the relevant notification and audit requirements, a firm may use the alternative approach to segregating client money for that business line.
- (2) Under the alternative approach, client money is received into and paid out of a firm's own bank account. A firm that adopts the alternative approach to segregating client money should, if it is following the standard method of client money reconciliation (see CASS 7 Annex 1 paragraph 2), carry out an internal client money reconciliation on each business day ('T0') and calculate how much money it either needs to withdraw from, or place in from its own bank account or its client bank account as a result of any discrepancy arising between its client money requirement and its client money resource as at the close of business on the previous business day ('T-1').
- (3) The alternative approach mandatory prudent segregation required under CASS 7.4.18BR is designed to address the risks that:
- (a) client money in a firm's own bank account may not be available to be pooled for distribution to clients on the occurrence of a primary pooling event; and
- (b) at the time of a primary pooling event the firm may not have segregated in its client bank account a sufficient amount of client money to meet its client money requirement.
- 7.4.17B R A firm that wishes to adopt the alternative approach for a particular business line must first establish, and document in writing, its reasons for

concluding, that:

- (1) adopting the normal approach would lead to greater operational risks to *client money* protection compared to the alternative approach;
- (2) adopting the alternative approach (including complying with the requirements for *alternative approach mandatory prudent segregation* under CASS 7.4.18BR) would not result in undue operational risk to *client money* protection; and
- (3) the *firm* has systems and controls that are adequate to enable it to operate the alternative approach effectively and in compliance with *Principle 10 (Clients' assets)*.

7.4.17C R A *firm* must retain any documents created under CASS 7.4.17BR in relation to a particular business line for a period of at least five years after the date it ceases to use the alternative approach in connection with that business line.

7.4.17D R At least three *months* before adopting the alternative approach for a particular business line, a *firm* must:

- (1) inform the *FCA* in writing that it intends to adopt the alternative approach for that particular business line; and
- (2) if requested by the *FCA*, make any documents it created under CASS 7.4.17BR available to the *FCA* for inspection.

7.4.17E R (1) In addition to the requirement under CASS 7.4.17DR, before adopting the alternative approach, a *firm* must send a written report to the *FCA* prepared by an independent auditor of the *firm* in line with a *reasonable assurance engagement*, stating the matters set out in (2).

- (2) The written report in (1) must state whether, in the auditor's opinion:
 - (a) the *firm's* systems and controls are suitably designed to enable it to comply with CASS 7.4.18AR to CASS 7.4.18BR; and
 - (b) the *firm's* calculation of its *alternative approach mandatory prudent segregation* amount under CASS 7.4.18BR is suitably designed to enable the *firm* to comply with CASS 7.4.18BR.

7.4.17F R (1) A *firm* that uses the alternative approach must review, at least on an annual basis and with no more than one year between each review, whether its reasons for adopting the alternative approach for a particular business line, as documented under CASS 7.4.17BR, continue to be valid.

- (2) If, following the review in (1), a *firm* finds that its reasons for adopting the alternative approach are no longer valid for a particular business line, it must stop using the alternative approach for that

business line as soon as reasonably practicable, and in any event within six months of the conclusion of its review in (1).

- 7.4.17G R A firm that uses the alternative approach must not materially change how it will calculate and maintain the *alternative approach mandatory prudent segregation* amount under CASS 7.4.18BR unless:
- (1) an auditor of the firm has prepared a report that complies with the requirements in CASS 7.4.17ER(2)(b) in respect of the firm's proposed changes; and
 - (2) the firm provides a copy of the report prepared by the auditor under (a) to the FCA before implementing the change.
- 7.4.17H G A firm is reminded that, under SUP 3.4.2R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.
- 7.4.18 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 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (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 7.2.15R). [deleted]~~
- 7.4.18A R A firm that uses the alternative approach for a particular business line must, on each business day ('T0'):
- (1) receive any money from and pay any money to (or, in either case, on behalf of) clients into and out of its own bank accounts;
 - (2) perform the necessary reconciliations of records and accounts required under CASS 7.6 (Records, accounts and reconciliations);
 - (3) adjust the balances held in its client bank account (by effecting transfers between its own bank account and its client bank account) to address any difference arising between its client money requirement and its client money resource as at the close of business on the previous business day ('T-1'), so that the correct amount reflected in the reconciliations under (2) is segregated in its client bank account; and

- (4) subject to CASS 7.4.18AAR below, keep segregated in its *client bank account* the balance held under (3) until it has performed a reconciliation on the following *business day* ('T+1') and as a result of that reconciliation is undertaking further adjustments under (3).

7.4.18A R During the period between the adjustment in CASS 7.4.18AR(3) and the completion of the next reconciliations in CASS 7.4.18AR(2), a *firm* that uses the alternative approach for a particular business line may:

A

- (1) increase the balance held in its *client bank account* by making intra-day transfers (during T0) from its own *bank account* to its *client bank account* before the completion of the internal *client money* reconciliation under CASS 7.4.18AR(2) (that is expected sometime later on T0) only if:
- (a) the *firm* reasonably expects that the *client money requirement* for the previous *business day* (T-1) will increase above the *client money resource* currently (during T0) held in its *client bank account*; and
- (b) such reasonable expectations are based on the working calculation of the *client money requirement* relating to the previous *business day* (T-1) that the *firm* has already determined on that *business day* (during T0) (as part of the process of completing its internal *client money* reconciliation); or
- (2) decrease the balance held in its *client bank account* by making intra-day transfers (during T0) from its *client bank account* to its own *bank account* before the completion of the internal *client money* reconciliation under CASS 7.4.18AR(2) (that is expected sometime later on T0) only if:
- (a) the *firm* reasonably expects that the *client money requirement* for the previous *business day* (T-1) will decrease below the *client money resource* currently held (during T0) in its *client bank account*; and
- (b) such reasonable expectations are based on the working calculation of the *client money requirement* relating to the previous *business day* (T-1) that the *firm* has already determined on that *business day* (during T0) (as part of the process of completing its internal *client money* reconciliation).

However, in doing so, a *firm* must act prudently and should take appropriate steps to manage the risk of not having segregated an amount that appropriately reflects its actual *client money requirement* at any given time.

- 7.4.18A G It is anticipated that CASS 7.4.18AAR may be used by firms which maintain client bank accounts in a number of different time zones and making adjustments to the balances of those client bank accounts is dependent on meeting cut off times for money transfers in those time zones.
- 7.4.18B R (1) A firm that uses the alternative approach must, in addition to CASS 7.4.18AR, pay an amount (determined in accordance with this rule) of its own money into its client bank account and subsequently retain that money in its client bank account (alternative approach mandatory prudent segregation). The amount segregated by a firm in its client bank account under this rule is client money for the purposes of the client money rules and the client money distribution rules.
- (2) The amount required to be segregated under this rule must be an amount that a firm reasonably determines would be sufficient, at the time it makes the determination, to protect client money against the risk that at any time in the following three months the following categories of client money may not have been fully segregated in its client bank account or may not be (or become) available for pooling under CASS 7A.2.4R(1), were a primary pooling event to occur:
- (a) client money that is received and held by the firm in its own bank account during the period between:
- (i) the firm's adjustment of client bank account balances under CASS 7.4.18AR(3) on a particular business day; and
- (ii) the firm's subsequent adjustments under CASS 7.4.18AR(3) on the following business day; and
- (b) money received and held by the firm in its own bank account which the firm does not initially identify as part of its client money requirement, but which subsequently does become part of its client money requirement;
- with the effect that the firm's alternative approach mandatory prudent segregation under this rule will reduce, as far as possible, any shortfall that might have been produced as a result of (a) or (b) on the occurrence of a primary pooling event.
- (3) (a) Subject to (c), in reaching its determination under (2) of the amount of money that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a firm must take into account the following in respect of each business line for which it uses the alternative approach, and for at least the previous three months:

- (i) the firm's client money requirement over the course of that prior period (excluding any amount that was required to be segregated under this rule during that prior period for the purposes of alternative approach mandatory prudent segregation);
- (ii) the daily adjustment payments that the firm made into its client bank account under CASS 7.4.18AR(3); during that prior period; and
- (iii) the amount of money received by the firm in its own bank account which it did not initially identify as part of its client money requirement, but which subsequently, and during that prior period, became part of its client money requirement;

as shown in its internal records.

- (b) In reaching its determination under (2) a firm must also take into account, but at all times having regard to the requirement under (2), any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business lines may have on:
 - (i) the firm's client money requirement during the forthcoming three months for which the amount of alternative approach mandatory prudent segregation required under this rule is being determined;
 - (ii) the daily adjustment payments that the firm is likely to make into its client bank account under CASS 7.4.18AR(3) in that same period; and
 - (iii) the amount of unidentified receipts of money that the firm is likely to receive into its own bank account and which will subsequently, in that same period, become part of its client money requirement.
- (c) If, at the time of its determination under (2), the firm has not been trading for three months in a business line for which it is using the alternative approach, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to establish a three-month reference period.
- (4) (a) A firm must, at regular intervals that are at least quarterly, repeat and complete the combined process of:

- (i) determining the amount that it is required to segregate for the purposes of *alternative approach mandatory prudent segregation* under (2) and (3);
 - (ii) making necessary adjustments to its records to reflect any changes to its *client money requirement*; and
 - (iii) paying any additional amounts of its own *money* into its *client bank account* to increase the *firm's alternative approach mandatory prudent segregation* or withdrawing any excess amounts from its *client bank account* to decrease the *firm's alternative approach mandatory prudent segregation* after it has adjusted its records under (ii).
- (b) The combined process of (a)(i) to (iii) must take no longer than 10 *business days*.
 - (c) To the extent that a *firm's* compliance with (a)(i) and (ii) results in there being an excess in the *firm's client bank account*, the *firm* may cease to treat that *money* as *client money*.
- (5) A *firm* must ensure that the individual responsible for CASS oversight under CASS 1A.3.1R, CASS 1A.3.1AR or CASS 1A.3.1CR (as appropriate) reviews the adequacy of the amount of the *firm's alternative approach mandatory prudent segregation* maintained under this *rule* at least annually.

7.4.19 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 7.4.15R); and
- (3) use an historic average to account for uncleared cheques (see paragraph 4 of CASS 7 Annex 1G). [deleted]

Alternative approach mandatory prudent segregation record

7.4.19A R A *firm* must create and keep up-to-date records so that any amount of *money* that is, pursuant to CASS 7.4.18BR:

- (1) paid into a *client bank account* and retained as *client money*; or

(2) withdrawn from a *client bank account*;

can be easily ascertained (the *alternative approach mandatory prudent segregation record*).

7.4.19B R The *alternative approach mandatory prudent segregation record* under CASS 7.4.19AR must record:

(1) the date of the first determination under CASS 7.4.18BR(2) and each subsequent review undertaken under CASS 7.4.18BR(4), and the total amount that the *firm* determined was required to be segregated under CASS 7.4.18BR(2) as at that date;

(2) the date of any payment of the *firm's* own money into a *client bank account*, or withdrawal of any excess from a *client bank account* under CASS 7.4.18BR, and for each such occasion:

(a) the amount of the payment or withdrawal;

(b) the fact that the *money* was paid or withdrawn by the *firm* in accordance with CASS 7.4.18BR; and

(c) as at that date, the total amount actually segregated by the *firm* under CASS 7.4.18BR.

7.4.19C R The *alternative approach mandatory prudent segregation record* must be retained for five years after the *firm* ceases to segregate any *money* in accordance with CASS 7.4.18BR.

7.4.19D G Nothing in CASS 7.4.17AG to CASS 7.4.19CR prevents a *firm* from also making use of the prudent segregation rule in CASS 7.4.21R.

...

7.6 Records, accounts and reconciliations

...

Non-standard method of internal client money reconciliation

7.6.6A R (1) Before using a *non-standard method of internal client money reconciliation*, a *firm* must:

(a) establish and document in writing its reasons for concluding that the method of internal *client money* reconciliation it proposes to use will:

(i) (for the normal approach to segregating *client money*) check whether the amount of *client money* recorded in the *firm's* records as being segregated in *client bank accounts* meets the *firm's* obligation to its *clients* under the *client money rules* on a

daily basis; or

- (ii) (for the alternative approach to segregating *client money*) calculate the amount of *client money* to be segregated in *client bank accounts* which meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis;
 - (b) notify the *FCA* of its intentions to use a *non-standard method of internal client money reconciliation*; and
 - (c) send a written report to the *FCA* prepared by an independent auditor of the *firm* in line with a *reasonable assurance engagement* and stating the matters set out in *CASS 7.6.6AR(2)*.
- (2) The written report in (1)(c) must state whether in the auditor's opinion:
- (a) the method of internal *client money* reconciliation which the *firm* will use is suitably designed to enable it to (as applicable):
 - (i) (for the normal approach to segregating *client money*) check whether the amount of *client money* recorded in the *firm's* records as being segregated in *client bank accounts* meets the *firm's* obligation to its *clients* under the *client money rules* on a daily basis; or
 - (ii) (for the alternative approach to segregating *client money*) calculate the amount of *client money* to be segregated in *client bank accounts* which meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis; and
 - (b) the *firm's* systems and controls are suitably designed to enable it to carry out the method of internal *client money* reconciliation the *firm* will use.
- (3) A *firm* using a *non-standard method of internal client money reconciliation* must not materially change its method of undertaking internal reconciliations of *client money* balances unless:
- (a) the *firm* has established and documented in writing its reasons for concluding that the changed methodology will meet the requirements in (1)(a)(i) and (ii), as applicable;
 - (b) an auditor of the *firm* has prepared a report that complies with the requirements in (1)(c) and (2) in respect of the

firm's proposed changes; and

- (c) the firm provides a copy of the report prepared by the auditor under (3)(a) to the FCA before implementing the change.

7.6.6B G A firm is reminded that, under SUP 3.4.2R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.

Records

- 7.6.7 R (1) ~~A firm must make records, sufficient to show and explain the method of internal reconciliation of client money balances under CASS 7.6.2R 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. [deleted]~~
- (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. [deleted]~~
- 7.6.8 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. [deleted]~~

7.8 Notification and acknowledgement of trust Acknowledgment letters

Purpose

- 7.8.-1 G The main purposes of an acknowledgement letter are:
- (1) to put the bank, exchange, clearing house, intermediate broker, OTC counterparty or other person (as the case may be) on notice of a firm's clients' interests in client money that has been deposited with, or has been allowed to be held by, such person;
- (2) to ensure that the client bank account or client transaction account has been opened in the correct form (eg, whether the client bank account is being correctly opened as a general client bank account,

a designated client bank account or a designated client fund account), and is distinguished from any account containing money that belongs to the firm; and

- (3) to ensure that the bank, exchange, clearing house, intermediate broker, OTC counterparty or other person (as the case may be) understands and agrees that it will not have any recourse or right against money standing to the credit of the client bank account or client transaction account, in respect of any sum owed to such person, or to any other third person, on any other account.

Banks Client bank account acknowledgment letters

- 7.8.1 R (1) ~~When a firm opens a~~ For each client bank account, the a firm must give or have given written notice, in accordance with CASS 7.8.5R, complete and sign a client bank account acknowledgement letter clearly identifying the client bank account, and send it to the bank with whom the client bank account is, or will be, opened, requesting the bank to acknowledge to it in writing that: and agree to the terms of the letter by countersigning it and returning it to the firm.
- (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. Subject to CASS 7.8.13R and CASS 7.8.14R, a firm must not hold or receive any client money in or into a client bank account unless it has received a duly countersigned client bank account acknowledgement letter from the relevant bank that has not been inappropriately redrafted (see CASS 7.8.7R) and clearly identifies the client bank account.~~

Exchanges, clearing houses, intermediary brokers or OTC counterparties Client transaction account acknowledgement letters

- 7.8.2 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: This rule does not apply to a firm to which CASS 7.8.3R(1) applies.

- (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. For each client transaction account, a firm must, in accordance with CASS 7.8.5R, complete and sign a client transaction account acknowledgement letter clearly identifying the client transaction account. That letter must be sent to the person with whom the client transaction account is, or will be, opened, requesting such person to acknowledge and agree to the terms of the letter by countersigning it and returning it to the firm.~~
- (3) Subject to CASS 7.8.13R and CASS 7.8.14R, a firm must not allow the relevant person to hold any client money in a client transaction account maintained by that person for the firm unless the firm has received a duly countersigned client transaction account acknowledgement letter from that person that has not been inappropriately redrafted (see CASS 7.8.7R) and that clearly identifies the client transaction account.

Authorised central counterparty acknowledgment letters

- 7.8.3 R (1) A firm which places client money at an authorised central counterparty in connection with a regulated clearing arrangement must, in accordance with CASS 7.8.5R, complete and sign an authorised central counterparty acknowledgement letter clearly identifying the relevant client transaction account. That letter must be sent to the authorised central counterparty with whom the client transaction account is, or will be, opened, requesting such

authorised central counterparty to acknowledge receipt of the letter by countersigning it and returning it to the firm.

- (2) A firm which has complied with CASS 7.8.3R(1) may allow the authorised central counterparty to hold client money on the relevant client transaction account, whether or not the authorised central counterparty has countersigned and returned the authorised central counterparty acknowledgement letter it received from the firm.

Acknowledgement letters in general

- 7.8.4 G In drafting acknowledgement letters under CASS 7.8.1R, CASS 7.8.2R or CASS 7.8.3R, a firm is required to use the relevant template in CASS 7 Annex 2R, CASS 7 Annex 3R or CASS 7 Annex 4R, respectively.
- 7.8.5 R When completing an acknowledgement letter under CASS 7.8.1R(1), CASS 7.8.2R(1) or CASS 7.8.3R(1), a firm:
- (1) must not amend any of the acknowledgement letter fixed text;
- (2) subject to (3), must ensure the acknowledgement letter variable text is removed, included or amended as appropriate; and
- (3) must not amend any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.
- 7.8.6 G CASS 7 Annex 5G contains guidance on using the template acknowledgement letters, including when and how firms should amend the acknowledgement letter variable text that is in square brackets.
- 7.8.7 R (1) If, on countersigning and returning the acknowledgement letter to a firm, the relevant person has also:
- (a) made amendments to any of the acknowledgement letter fixed text; or
- (b) made amendments to any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text;
- the acknowledgement letter will have been inappropriately redrafted for the purposes of CASS 7.8.1R(2) or CASS 7.8.2R(3) (as applicable).
- (2) For the purposes of CASS 7.8.1R(2) or CASS 7.8.2R(3), amendments made to the acknowledgement letter variable text in the acknowledgement letter returned to a firm by the relevant person, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the acknowledgement letter fixed text, have been specifically agreed with the firm and do not cause the acknowledgement letter to be

inaccurate.

- 7.8.8 R A firm must use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* that has been returned to the firm was authorised to countersign the letter on behalf of the relevant person.
- 7.8.9 R (1) A firm must retain each countersigned *client bank account acknowledgement letter* and *client transaction account acknowledgement letter* it receives, from the date of receipt until the expiry of five years from the date on which the last *client bank account* or *client transaction account* to which the *acknowledgement letter* relates is closed.
- (2) A firm must retain a copy of each *authorised central counterparty acknowledgement letter* it sends to an *authorised central counterparty* under CASS 7.8.3R(1) from the date it was sent until the expiry of five years from the date the last *client transaction account* to which the *acknowledgement letter* relates is closed.
- 7.8.10 R A firm must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an *acknowledgement letter* returned to the firm was authorised to countersign the letter on behalf of the relevant person).
- 7.8.11 R (1) This rule applies to:
- (a) any countersigned *client bank account acknowledgement letter* or *client transaction account acknowledgement letter* received by a firm under CASS 7.8.1R(2) or CASS 7.8.2R(3) respectively; and
- (b) any *authorised central counterparty acknowledgement letter* sent by a firm under CASS 7.8.3R(1), whether or not it has been countersigned by the relevant *authorised central counterparty* and received by the firm.
- (2) A firm must, periodically (at least annually and whenever it is aware that something referred to in an *acknowledgement letter* has changed) review each of its *acknowledgement letters* to ensure that they all remain accurate.
- (3) Whenever a firm finds an inaccuracy in an *acknowledgement letter*, it must promptly draw up a replacement *acknowledgement letter* under CASS 7.8.1R, CASS 7.8.2R or CASS 7.8.3R, as applicable, and, if it is an *acknowledgement letter* required to be sent under CASS 7.8.1R or CASS 7.8.2R, ensure that the new *acknowledgement letter* is duly countersigned and returned by the relevant person.
- 7.8.12 G Under CASS 7.8.11R, a firm should draw up and send out a replacement

acknowledgement letter whenever:

- (1) there has been a change in any of the parties' names or addresses as set out in the letter; or
- (2) the firm becomes aware of an error or misspelling in the drafting of the letter.

7.8.13 R If a firm's client bank account or client transaction account is transferred to another person, the firm must promptly draw up a new acknowledgement letter under CASS 7.8.1R, CASS 7.8.2R or CASS 7.8.3R, as applicable, and, if it is an acknowledgement letter required to be sent under CASS 7.8.1R or CASS 7.8.2R, ensure that the new acknowledgement letter is duly countersigned and returned by the relevant person within 20 business days of the firm sending it to that person.

7.8.14 R If a firm opens a client bank account after a primary pooling event, the firm must:

- (1) promptly draw up and send out a new acknowledgement letter under CASS 7.8.1R;
- (2) not hold or receive any client money in or into the client bank account unless it has sent the acknowledgement letter to the relevant person; and
- (3) if the firm has not received a duly countersigned acknowledgement letter that has not been inappropriately redrafted (see CASS 7.8.7R) within 20 business days of the firm sending the acknowledgement letter, 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.

...

After CASS 7 Annex 1G insert the following new annexes. The text is not underlined.

7 Annex 2R Client bank account acknowledgment letter template

[letterhead of firm subject to CASS 7.8.1R, including full name and address of firm]
[name and address of bank]

[date]

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

We refer to the following [current/deposit account[s]] [and/or] [money market deposit[s]] which [*name of CASS firm*], regulated by the Financial Conduct Authority (Firm Reference Number [*FRN*]), (“us”, “we” or “our”) [has opened or will open] [and/or] [has deposited or will deposit] with [*name of bank*] (“you” or “your”):

[insert the account title[s], the account unique identifier[s] (for example, as relevant, sort code and account number, deposit number or reference code) and (if applicable) any abbreviated name of the account[s] as reflected in the bank’s systems]

([collectively,] the “Client Bank Account[s]”).

In relation to [each of] the Client Bank Account[s] identified above you acknowledge that we have notified you that:

- (a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;
- (b) we have opened, or will open, the Client Bank Account for the purpose of depositing money with you on behalf of our clients; and
- (c) we hold all money standing to the credit of the Client Bank Account in our capacity as trustee under the laws applicable to us.

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

- (d) you do not have any recourse or right against money in the Client Bank Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Bank Account with any other account and any right of set-off or counterclaim against money in the Client Bank Account;
- (e) you will title, or have titled, the Client Bank Account as stated above and that such title is different to the title of any other account containing money that belongs to us or to any third party; and
- (f) you are required to release on demand all money standing to the credit of the Client Bank Account upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy (or similar procedure), in any relevant jurisdiction, except for:

- (1) any properly incurred charges or liabilities owed to you on, and arising from the operation of, the Client Bank Account; and
- (2) until the fixed term expires, any amounts held for the time being under a fixed term deposit arrangement which cannot be terminated before the expiry of the fixed term,

provided that you have a contractual right to retain such money under (1) or (2) and that this right is notwithstanding paragraphs (a) to (c) above and without breach of your agreement to paragraph (d) above.

We acknowledge that:

- (g) you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Client Bank Account[s].

You and we agree that:

- (h) the terms of this letter shall remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;
- (i) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter;
- (j) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement shall prevail;
- (k) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;
- (l) this letter shall be governed by the laws of [*insert appropriate jurisdiction*] [*firms may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction*]; and
- (m) the courts of [*insert same jurisdiction as previous*] shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [*name of CASS firm*]

x _____

Authorised Signatory

[Signed by [*name of third party administrator*] on behalf of [*CASS firm*]]

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [*name of bank*]

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: [*insert signatory's phone number and email address*]

Date:

7 Annex 3R Client transaction account acknowledgment letter template

[letterhead of firm subject to CASS 7.8.2R, including full name and address of firm]
[name and address of counterparty]

[date]

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

We refer to the following transaction account[s] which *[name of CASS firm]*, regulated by the Financial Conduct Authority (Firm Reference Number *[FRN]*), (“us”, “we” or “our”) has opened or will open with *[name of counterparty]* (“you” or “your”):

[insert the account title[s], the account unique identifier[s] (for example, as relevant, account number, reference code or pool ID) and (if applicable) any abbreviated name of the account[s] as reflected in the counterparty’s systems]

(*[collectively,]* the “Client Transaction Account[s]”).

In relation to *[each of]* the Client Transaction Account[s] identified above you acknowledge that we have notified you that:

- (a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;
- (b) we have opened, or will open, the Client Transaction Account for the purpose of placing money with you on behalf of our clients in connection with carrying out one or more transactions with or through you; and
- (c) you are instructed to promptly credit to this Client Transaction Account any money you receive in respect of any transaction that we have notified to you as being carried out on behalf of our clients.

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

- (d) all money standing to the credit of the Client Transaction Account is payable to us in our capacity as trustee under the laws applicable to us[, except where, in accordance with your default management procedures in respect of a default by us, you transfer money credited to the Client Transaction Account to anyone other than us in accordance with articles 4(4) or 4(5) of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012];
- (e) you do not have any recourse or right against money credited to the Client Transaction Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Transaction Account with any other account and any right of set-off or counterclaim against money in the Client Transaction Account; and
- (f) you will title, or have titled, the Client Transaction Account as stated above and that such title is different to the title of any other account containing money that is payable to us in a capacity other than as trustee or that is payable to any third party.

You and we agree that:

- (g) the terms of this letter shall remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;
- (h) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Transaction Account[s], to the extent that such previous agreement is inconsistent with this letter;
- (i) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Transaction Account[s], this letter agreement shall prevail;
- (j) no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;
- (k) this letter shall be governed by the laws of *[insert appropriate jurisdiction]* *[firms may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction]*; and
- (l) the courts of *[insert same jurisdiction as previous]* shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to permit you to hold any money belonging to our clients on the Client Transaction Account[s] until you have acknowledged and agreed to the terms of this letter.

For and on behalf of *[name of CASS firm]*

x_____

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of *[name of counterparty]*

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: *[insert signatory's phone number and email address]*

Date:

7 Annex 4R Authorised central counterparty acknowledgment letter template

[letterhead of firm subject to CASS 7.8.3R, including full name and address of firm]
[name and address of authorised central counterparty]
[date]

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

We refer to the following transaction account[s] which *[name of CASS firm]*, regulated by the Financial Conduct Authority (Firm Reference Number *[FRN]*), (“us”, “we” or “our”) has opened or will open with *[name of authorised Central counterparty]* (“you” or “your”):

[insert the account title[s], the account unique identifier[s] (for example, as relevant, account number, reference code or pool ID) and (if applicable) any abbreviated name of the account[s] as reflected in the authorised central counterparty’s systems]

(*[collectively,]* the “Client Transaction Account[s]”).

In relation to *[each of]* the Client Transaction Account[s] identified above we are writing to put you on notice that:

- (a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;
- (b) we have opened, or will open, the Client Transaction Account for the purpose of placing money with you on behalf of our clients in connection with carrying out one or more transactions with or through you;
- (c) you are instructed to promptly credit to this Client Transaction Account any money you receive in respect of any transaction that we have notified to you as being carried out on behalf of our clients;
- (d) all money standing to the credit of the Client Transaction Account is payable to us in our capacity as trustee under the laws applicable to us, except where, as a part of your default management process in respect of a default by us, you transfer money credited to the Client Transaction Account to anyone other than us in accordance with article 48 of Regulation (EU) No 648/2012 of 4 July 2012;
- (e) you do not have any recourse or right against money credited to the Client Transaction Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Transaction Account with any other account and any right of set-off or counterclaim against money in the Client Transaction Account; and
- (f) we understand the title of the Client Transaction Account is, or will be, as stated above and that such title is different to the title of any other account containing money that is payable to us in a capacity other than as trustee or is payable to any third party.

[Please confirm your receipt of this letter by signing and returning the enclosed copy of this letter as soon as possible.]

For and on behalf of [*name of CASS firm*]

x_____

Authorised Signatory

Print Name:

Title:

[RECEIPT CONFIRMED:

For and on behalf of [*name of authorised central counterparty*]

x_____

Authorised Signatory

Print Name:

Title:

Contact Information: [*insert signatory's phone number and email address*]

Date:]

7 Annex 5G Guidance notes for acknowledgement letters (CASS 7.8)

Introduction

- 1 This annex contains *guidance* on the use of the templates for *acknowledgment letters* in CASS 7 Annex 2R, CASS 7 Annex 3R and CASS 7 Annex 4R.
- 2 Unless stated otherwise, a reference to ‘counterparty’ in this annex is:
 - (a) in the context of a *client bank account acknowledgment letter* (and CASS 7 Annex 2R), to the relevant *bank*;
 - (b) in the context of a *client transaction account acknowledgment letter* (and CASS 7 Annex 3R), to the relevant exchange, *clearing house, intermediate broker, OTC counterparty* or other *person* (as the case may be); and
 - (c) in the context of an *authorised central counterparty acknowledgment letter* (and CASS 7 Annex 4R), to the relevant *authorised central counterparty*.

General

- 3 Under CASS 7.8.1R(2) and CASS 7.8.2R(3), *firms* are required to have in place a duly signed and countersigned *acknowledgment letter* for a *client bank account* or *client transaction account* (respectively) before they are allowed to hold or receive *client money* in or into the *client bank account*, or allow the relevant *person* to hold any *client money* on the *client transaction account* (respectively).
- 4 However, a *firm* may place *client money* at an *authorised central counterparty* in connection with a *regulated clearing arrangement* if it has provided the relevant *authorised central counterparty* with a signed and completed *authorised central counterparty acknowledgment letter* (see CASS 7.8.3R).
- 5 For each *client bank account* or *client transaction account*, a *firm* is required to complete, sign and send to the counterparty an *acknowledgment letter* identifying that account and in the form set out in CASS 7 Annex 2R (Client bank account acknowledgment letter template), CASS 7 Annex 3R (Client transaction account acknowledgment letter template) or CASS 7 Annex 4R (Authorised central counterparty acknowledgment letter), as appropriate.
- 6 When completing an *acknowledgment letter* using the appropriate template, a *firm* is reminded that it must not amend any of the text which is not in square brackets (*acknowledgment letter fixed text*). A *firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the necessary wording, in either case as appropriate. The notes below give further guidance on this.

Clear identification of relevant accounts

- 7 A *firm* is reminded that for each *client bank account* or *client transaction account* it

needs to have in place an *acknowledgment letter*. Accordingly, it is important that it is clear to which account or accounts each *acknowledgement letter* relates. As a result, the templates in *CASS 7 Annex 2R*, *CASS 7 Annex 3R* and *CASS 7 Annex 4R* require that the *acknowledgment letter* include the full title and at least one unique identifier, such as a sort code and account number, deposit number, reference code or pool ID, for each *client bank account* or *client transaction account* to which the letter relates.

- 8 The title and unique identifiers included in an *acknowledgment letter* for a *client bank account* or *client transaction account* should be the same as those reflected in both the records of the *firm* and the relevant counterparty, as appropriate, for that account. Where a counterparty's systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:
- (a) the account may continue to be appropriately identified in accordance with the requirements of *CASS 7* (eg, 'designated' may be shortened to 'des', 'designated fund' may be shortened to 'des fnd', 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct', etc); and
 - (b) when completing an *acknowledgment letter*, such letter must include both the long and short versions of the account title.
- 9 A *firm* should ensure that all relevant account information is contained in the space provided in the body of the *acknowledgment letter*. Nothing should be appended to an *acknowledgement letter*.
- 10 In the space provided in the template letters for setting out the account title and unique identifiers for each relevant account/deposit, a *firm* may include the required information in the format of the following table:

Full account title	Unique identifier	Title reflected in [<i>name of bank</i>] systems
[<i>Investment Firm Client Bank Account</i>]	[00-00-00 12345678]	[<i>INV FIRM CLIENT A/C</i>]

- 11 Where an *acknowledgment letter* is intended to cover a range of *client bank accounts* or *client transaction accounts*, some of which may not exist as at the date the *acknowledgment letter* is countersigned by the relevant *person* (or, in the case of an *authorised central counterparty acknowledgment letter*, the date it is sent by the *firm* to the relevant *authorised central counterparty*), a *firm* should set out in the space provided in the body of the *acknowledgment letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (eg, with the word 'client' in their title); and (b) which possess a common unique identifier

or which may be clearly identified by a range of unique identifiers (eg, all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in CASS 7 Annex 2R which allows a *firm* to include the account title and a unique identifier for each relevant account, a *firm* should include a statement to the following effect:

Any account open at present or to be opened in the future which contains the term ['client']*[insert appropriate abbreviation of the term 'client' as agreed and to be reflected in the Bank's systems]* in its title and which may be identified with [the following *[insert common unique identifier]*][an account number from and including [XXXX1111] to and including [ZZZZ9999]]*[clearly identify range of unique identifiers]*.

Signature and countersignatures

- 12 A *firm* should ensure that each *acknowledgment letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or its counterparty may require more than one signatory).
- 13 An *acknowledgment letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in CASS 7.8. However, where electronic signatures are used, a *firm* should consider whether, under CASS 7.4.7R and taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the letter.

Completing an acknowledgment letter

- 14 A *firm* should use at least the same level of care and diligence when completing an *acknowledgment letter* as it would in managing its own commercial agreements.
- 15 A *firm* should ensure that each *acknowledgment letter* is legible (eg, any handwritten details should be easy to read), produced on the *firm's* own letter-headed paper, dated and addressed to the correct legal entity (eg, where the counterparty belongs to a group of companies).
- 16 A *firm* should also ensure each *acknowledgment letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).
- 17 A *firm* should similarly ensure that no square brackets remain in the text of each *acknowledgment letter* (ie, after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the templates in CASS 7 Annex 2R, CASS 7 Annex 3R and CASS 7 Annex 4R) and that each page of the *acknowledgment letter* is numbered.
- 18 A *firm* should complete an *acknowledgment letter* so that no part of the letter can

be easily altered (eg, the letter should be signed in ink rather than pencil).

- 19 In respect of a *client bank account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (l) and (m) of the template in CASS 7 Annex 2R) or a *client transaction account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (k) and (l) of the template in CASS 7 Annex 3R), the letter should reflect a *firm's* agreement with its counterparty that the laws of a particular jurisdiction will govern the *acknowledgment letter* and that the courts of that same jurisdiction will have non-exclusive jurisdiction to settle any disputes arising out of, or in connection with, the *acknowledgment letter*, its subject matter or formation.
- 20 If a *firm* does not, in any *client bank account acknowledgement letter* or *client transaction account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:
- (a) the law and the jurisdiction under which either the *firm* or the relevant counterparty are organised; and
 - (b) that specified in the underlying agreement/s (eg, banking, custody or clearing services agreement) with the relevant counterparty;

then the *firm* should consider whether it is at risk of breaching either CASS 7.8.5R(3) or, in the case of a *client bank account acknowledgement letter*, CASS 7.4.7R.

- 21 The *FCA* recognises that some *firms* and their counterparties may wish to clarify through additional words in the governing law provision (see paragraph (l) of the template in CASS 7 Annex 2R and paragraph (k) of the template in CASS 7 Annex 3R) that they are agreeing that the substantive law of the governing jurisdiction shall apply and that their intention is that a court should not decide to apply the substantive provisions of some other law instead of the parties' chosen governing law (a 'renvoi'). Where this is the case *firms* are permitted to insert additional text that seeks to provide increased legal certainty in the space provided. There is no restriction as to what additional words may be used (eg, additional words such as "*without regard to the principles of choice of law*") may be appropriate in the circumstances), but a *firm* should at all times have regard to the need to comply with CASS 7.8.5R(3). However, for the majority of *firms* the *FCA* does not expect additional wording for the governing law provision to be necessary. This is likely to be the case where only a court that is subject to 'Rome I' (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008) is likely to accept jurisdiction over a dispute arising out of or in connection with the relevant *acknowledgement letter*.

Authorised signatories

- 22 A *firm* is required, under CASS 7.8.8R, to use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant counterparty.
- 23 If an individual that has countersigned an *acknowledgement letter* does not provide

the *firm* with sufficient evidence of his/her authority to do so then the *firm* is expected to make appropriate enquires to satisfy itself of that individual's authority.

- 24 Evidence of an individual's authority to countersign an *acknowledgment letter* may include a copy of the counterparty's list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *acknowledgment letter*.
- 25 A *firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *acknowledgment letter* as the *firm* would seek when managing its own commercial arrangements.

Third party administrators

- 26 If a *firm* uses a third party administrator ('TPA') to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgment letter*, the text "[Signed by [Name of Third Party Administrator] on behalf of [CASS Firm]]" should be inserted to confirm that the *acknowledgment letter* was signed by the TPA on behalf of the *firm*.
- 27 In these circumstances, the *firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgment letter* on the *firm's* behalf. A *firm* should also ensure that the *acknowledgment letter* continues to be drafted on letter-headed paper belonging to the *firm*.

Designated client bank accounts and designated client fund accounts

- 28 A *firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that (i) all *client bank accounts* include the term 'client' in their title; and (ii) all *designated client bank accounts* or *designated client fund accounts* include, as appropriate, the terms 'designated' or 'designated fund' in their title, or in each case an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition.
- 29 All references to the term "Client Bank Account[s]" in a *client bank account acknowledgment letter* should also be made consistently in either the singular or plural, as appropriate.

Indirect clearing arrangements

- 30 For use with *client transaction accounts* maintained with a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement*, the square-bracketed text in paragraph (d) of the template letter in CASS 7 Annex 3R should remain in the letter.
- 31 All references to the term "Client Transaction Account[s]" in a *client transaction account acknowledgment letter* should be made consistently in either the singular or plural, as appropriate.

Direct clearing arrangements

32 For use with *client transaction accounts* maintained with an *authorised central counterparty* in respect of a *regulated clearing arrangement*, a *firm* may identify whether each account is an *omnibus client account* or an *individual client account* in the space provided in the body of the template letter in CASS 7 Annex 4R. For example, if using the table mentioned in paragraph 10 above, a *firm* may include an additional column in which for each account it includes the reference “Individual Client Account” or “Omnibus Client Account”, as appropriate.

33 All references to the term “Client Transaction Account[s]” in an *authorised central counterparty acknowledgment letter* should be made consistently in either the singular or plural, as appropriate.

Money market deposits

34 The *client bank account acknowledgment letter* in CASS 7 Annex 2R may be used with money market deposits identified as being *client money*.

35 A *firm* should ensure that *client money* placed in a money market deposit is clearly identified as *client money* (see CASS 7.4.11CG).

36 Before a *firm* places *client money* in a money market deposit, it must have a *client bank account acknowledgment letter* for that deposit. If the unique identifier which will be associated with a money market deposit consisting of *client money* is unable to be included in a *client bank account acknowledgment letter* before it is duly countersigned and returned to the *firm*, a *firm* should set out in the body of the letter: (a) the title and other account information for the *client bank account* from which the deposits will be placed with the bank; and (b) how the *firm* will notify the bank that a money market deposit placed with it consists of *client money* (eg, by the inclusion of the words ‘Client Money Deposit’). For example, in the space provided in the template letter in CASS 7 Annex 2R which allows a *firm* to include the account title and a unique identifier for each relevant account/deposit, a *firm* should include a statement to the following effect:

[[CASS Firm] money market deposits placed from [title of relevant [client bank account], [sort code], [account number]] and identified with the reference ‘[Client Money Deposit]’ as being client money)]

37 A *firm* which operates the alternative approach to *client money* segregation (see CASS 7.4.18AR) might not make deposits of *client money* in a money market deposit from another *client bank account*. In these circumstances, the *firm* need only include in the body of the letter how the *firm* will notify the bank that a money market deposit placed with it consists of *client money*. For example, the relevant space in the template letter in CASS 7 Annex 2R may set out that:

[[CASS firm] money market deposits identified with the reference ‘[Client Money Deposit]’ as being client money]

Amend the following as shown.

7A Client money distribution

...

7A.2 Primary pooling events

...

7A.2.7A G If a firm opens a client bank account after a primary pooling event, it must comply with CASS 7.8.14R regarding acknowledgement letters.

...

9 ~~Prime brokerage~~ Information to clients

After CASS 9.3 insert the following new section. The text is not underlined.

9.4 Information to clients concerning custody assets and client money

9.4.1 G *Firms* are reminded that, under COBS 6.1.7R, a *firm* that holds *client designated investments* or *client money* must provide its *clients* with specific information about how the *firm* holds those *client designated investments* and *client money* and how certain arrangements might give rise to specific consequences or risks for those *client designated investments* and *client money*.

9.4.2 R A *firm* that holds *custody assets* or *client money* must:

- (1) provide the information in COBS 6.1.7R for any *custody assets* the *firm* may hold for a *client*, including any *custody assets* which are not *designated investments*; and
- (2) provide the information in COBS 6.1.7R and in (1) to each of its *clients*.

9.4.3 G A *firm* should provide the information required in CASS 9.4.2R to any client for whom it holds *custody assets* or *client money*, including a *retail client*, a *professional client* and an *eligible counterparty*.

9.4.4 G (1) *Firms* are reminded of their obligation, under COBS 4.2.1R, to be fair, clear and not misleading in their communications with *clients*.

(2) *Firms* are also reminded of the requirements in respect of communications made to *retail clients* under COBS 4.5.

...

Transitional Provisions and Schedules

TP 1 Transitional Provisions

TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: date in force	Handbook provisions: coming into force
...					
<u>7A</u>	<u>CASS 6.1.6BR</u>	<u>R</u>	<u>Firms need not comply with this rule in respect of any arrangement relating to the transfer of full ownership of a client's safe custody asset to the firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) that existed before 1 December 2014, unless and until the arrangement is materially amended on or after that date. Firms must comply with this rule in respect of any arrangement for such purposes that is entered into on or after 1 December 2014.</u>	<u>From 1 December 2014 to 1 June 2015</u>	<u>1 December 2014</u>
<u>7B</u>	<u>CASS 6.1.12R to CASS 6.1.12CR</u>	<u>R</u>	<u>(1) Firms need not comply with these rules in respect of a business relationship with a particular client consisting of the provision of either or both MiFID business and designated investment business services that</u>	<u>From 1 December 2014 to 1 June 2015</u>	<u>1 December 2014</u>

			<p><u>existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. Firms must comply with these rules in respect of any such relationship that is entered into on or after 1 December 2014.</u></p> <p><u>(2) Where the rules in column (2) are disapplied by (1), CASS 6.1.12R to CASS 6.1.16G will continue to apply as they were in force as at 30 November 2014.</u></p>		
<u>7C</u>	<u>CASS 6.3.4BR</u>	<u>R</u>	<p><u>Firms need not comply with this rule in respect of arrangements with third parties with whom it deposits clients' safe custody assets or arranges safeguarding and administration of assets which are clients' safe custody assets that were entered into before 1 December 2014, unless and until they are materially amended on or after that date. Firms must comply with this rule in respect of any arrangements with such third parties that are entered into on or after 1 December 2014.</u></p>	<u>From 1 December 2014 to 1 June 2015</u>	<u>1 December 2014</u>
<u>9A</u>	<u>CASS 7.1.8CR to CASS 7.1.8DR and CASS 7.1.10A to CASS 7.1.10CR</u>	<u>R</u>	<p><u>Firms need not comply with these rules in respect of a business relationship with a particular client that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on</u></p>	<u>From 1 December 2014 to 1 June 2015</u>	<u>1 December 2014</u>

			or after that date. <i>Firms</i> must comply with this <i>rule</i> in respect of any such relationship that is entered into on or after 1 December 2014.		
<u>9B</u>	<u>CASS 7.2.3BR</u>	<u>R</u>	<i>Firms</i> need not comply with this <i>rule</i> in respect of any arrangement relating to the transfer of full ownership of a <i>client's</i> money to the <i>firm</i> for the purposes set out in CASS 7.2.3R(1) and CASS 7.2.3AR(1) that existed before 1 December 2014, unless and until the arrangement is materially amended on or after that date. <i>Firms</i> must comply with this <i>rule</i> in respect of any arrangement for such purposes that is entered into on or after 1 December 2014.	From 1 December 2014 to 1 June 2015	1 December 2014
<u>10B</u>	<u>CASS 7.2.8AAR to CASS 7.2.8ER</u>	<u>R</u>	(1) These <i>rules</i> do not apply in respect of a business relationship with a particular <i>client</i> that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. <i>Firms</i> must comply with this <i>rule</i> in respect of any such relationship that is entered into on or after 1 December 2014. (2) Where the <i>rules</i> in column (2) are disapplied by (1), CASS 7.2.8R to CASS 7.2.11G will continue to apply as they were in force as at 30 November 2014.	From 1 December 2014 to 1 June 2015	1 December 2014

<u>10C</u>	<u>CASS 7.4.17BR to CASS 7.4.19CR</u>	<u>R</u>	<p><u>(1) Firms that are operating the alternative approach for any business line on 30 November 2014, having previously sent a written confirmation to the FCA under CASS 7.4.15R, need not comply with the rules in column (1) for such business line during the period in column (5) and may continue to segregate client money during that period for such business line on the basis set out in that confirmation to the FCA, unless and until during the period in column (5) they start complying with CASS 7.4.18AR to CASS 7.4.19CR for such business line having already complied with CASS 7.4.17BR to CASS 7.4.17ER.</u></p> <p><u>(2) In circumstances where the rules in column (2) are disapplied by (1), CASS 7.4.16G to CASS 7.4.19G will continue to apply as they were in force as at 30 November 2014.</u></p>	<u>From 1 December 2014 to 31 May 2015</u>	<u>1 December 2014</u>
<u>10D</u>	<u>CASS 7.6.6AR</u>	<u>R</u>	<p><u>(1) A firm operating an internal reconciliation of client money balances that is not a standard method of internal client money reconciliation as at 30 November 2014 need not comply with this rule, except to the extent referred to in (3).</u></p> <p><u>(2) Where a firm does not comply with the rule in column (2) in accordance</u></p>	<u>From 1 December 2014 to 31 May 2015</u>	<u>1 December 2014</u>

			<p>with (1), <u>CASS 7.6.7R and CASS 7.6.8R will continue to apply to that firm as they were in force as at 30 November 2014.</u></p> <p><u>(3)(a) In order for a firm within (1) to operate an internal reconciliation that is not a standard method of internal client money reconciliation on 1 June 2015 it must, before that date, have complied with CASS 7.6.6AR(1)(b) and (c).</u></p> <p><u>(3)(b) A firm within paragraph (1) that materially changes its internal reconciliation method that is not a standard method of internal client money reconciliation on or after 1 December 2014 must, notwithstanding (1), comply with the rule in column (2) from the date it makes these material changes.</u></p> <p><u>(4) In order for any firm not within (1) to operate an internal reconciliation that is not a standard method of internal client money reconciliation on 1 December 2014 it must, before that date, have complied with CASS 7.6.6AR(1)(b) and (c).</u></p>		
<u>10E</u>	<u>The changes to CASS 7.8 in Part 2 of Annex C of the Client Assets Sourcebook (Amendment No 5) Instrument 2014</u>	<u>R</u>	<u>(1) Where the conditions in (2) are met in respect of a firm's client bank account or client transaction account, the changes effected by the provisions in the Annex listed in column (2) do not apply to the firm in</u>	<u>From 1 December 2014 to 1 June 2015</u>	<u>1 December 2014</u>

			<p>respect of the <i>client bank account</i> or <i>client transaction account</i> and therefore the provisions in <u>CASS 7.8.1R</u> and <u>CASS 7.8.2R</u> amended by that <u>Annex</u> will continue to apply as they were in force as at 31 November 2014.</p> <p>(2) The conditions are: (a) <u>the <i>client bank account</i> or <i>client transaction account</i> was opened by the <i>firm</i> before 1 December 2014;</u> (b) <u>the <i>firm</i> complied with <u>CASS 7.8.1R</u> or <u>CASS 7.8.2R</u> (as appropriate) in respect of the <i>client bank account</i> or <i>client transaction account</i> before 1 December 2014;</u> and (c) <u>the <i>client bank account</i> or <i>client transaction account</i> is not transferred to another <i>person</i> during the period in column (5).</u></p>		
<u>12A</u>	<u>CASS 9.4R</u>	<u>R</u>	<p><u><i>Firms</i> need not comply with this <i>rule</i> in respect of a business relationship with a particular <i>client</i> consisting of the provision of either or both <i>MiFID business</i> and <i>designated investment business</i> services that existed before 1 December 2014, unless and until the terms governing the relationship are materially amended on or after that date. <i>Firms</i> must comply with this <i>rule</i> in respect of any such relationship that is entered into on or after 1 December 2014.</u></p>	<p><u>From 1 December 2014 to 1 June 2015</u></p>	<p><u>1 December 2014</u></p>

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

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 6.1.6BR(3)	Written agreement regarding any arrangement relating to the transfer of full ownership of a <i>client's safe custody asset</i> to the <i>firm</i> for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1)	The agreement	When agreement made	Five years from date agreement terminated
CASS 6.1.12R(4)	<i>Firm's</i> segregation of <i>money as client money</i> under this rule	Description of <i>safe custody asset</i> in question, identity of relevant <i>client</i> , amount of <i>money</i> segregated	Maintain up to date	Not specified (see default provision CASS 6.5.3R)
CASS 6.1.12ER	<i>Client's</i> agreement to <i>firm's</i> use of exemption in CASS 6.1.12R	<i>Client's</i> written agreement	At the time of <i>client's</i> agreement	During the time the <i>firm</i> makes use or intends to make use of the exemption in CASS 6.1.12R in respect of that <i>client's safe custody assets</i>
CASS 6.2.15R	<i>Safe custody assets</i> divested by the <i>firm</i> under CASS 6.2.10R	Details of asset divested, relevant documentation and the <i>firm's</i> attempts to	When asset divested	Indefinite

		contact the <i>client</i> concerned		
CASS 7.2.8ADR	<i>Client's</i> agreement to <i>firm's</i> use of exemption in CASS 7.2.8R	<i>Client's</i> written agreement	At the time of <i>client's</i> agreement	During the time the <i>firm</i> makes use or intends to make use of the exemption in CASS 7.2.8R in respect of that <i>client's</i> monies
CASS 7.2.23R	<i>Client money</i> paid to charity by the <i>firm</i> under CASS 7.2.19R	Details of balances released, relevant documentation and the <i>firm's</i> attempts to contact the <i>client</i> concerned	When balance released	Indefinite
CASS 7.2.25R(4)	<i>Client money</i> paid to charity by the <i>firm</i> under CASS 7.2.25R	Details of balances released and relevant documentation	When balance released	Not specified (see default provision CASS 7.6.4R)
CASS 7.4.17BR	<i>Firm's</i> adoption of the alternative approach	Reasons for concluding that the normal approach would lead to greater risk to <i>client money</i> , adopting the alternative approach would not result in undue risk to <i>client money</i> , the alternative approach is appropriate for use by the particular business line, and the <i>firm</i> has adequate systems and controls	Before adopting alternative approach	Five years after it ceases to use the alternative approach in connection with that business line

CASS 7.4.19AR to CASS 7.4.1CR	Alternative approach <i>alternative approach</i> mandatory <i>prudent segregation record</i>	Details of <i>money</i> segregated under CASS 7.4.18BR required by these rules	Maintain up to date	Five years (after the firm ceases to retain <i>money</i> as <i>client money</i> under CASS 7.4.18BR)
CASS 7.8.9R(1)	<i>Acknowledgment letters</i>	Countersigned <i>acknowledgment letter</i>	From date of receipt	Five years from closure of last account to which the <i>acknowledgment letter</i> relates
CASS 7.8.9R(2)	<i>Acknowledgment letters</i>	Copy of <i>acknowledgment letter</i> sent to <i>authorised central counterparty</i> under CASS 7.8.3R(1)	From date <i>firm</i> sends the letter	Five years from closure of last account to which the <i>acknowledgment letter</i> relates
CASS 7.8.10R	<i>Acknowledgment letters</i>	Any other documentation or evidence the <i>firm</i> believes necessary to demonstrate compliance with CASS 7.8	None specified	None specified (see default provision CASS 7.6.4R)

Insert the following new rows in the appropriate numerical position in **Schedule 2 (Notification requirements)**. The new text is not underlined.

Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 7.2.17GR	The <i>firm's</i> intention to transfer <i>client money</i> under CASS 7.2.17BR and/or 7.2.17DR	That intention	Forming the intention	Not less than seven days before the transfer of the <i>client money</i> in question

CASS 7.4.17DR	<i>Firm's intention to adopt the alternative approach for a particular business line</i>	<i>Firm's intention to adopt the alternative approach for a particular business line</i>	At least three months prior to adopting the alternative approach for that business line	At least three months prior to adopting the alternative approach for that business line
CASS 7.6.6AR	<i>Firm's intention to use a non-standard method of internal client money reconciliation</i>	<i>Firm's intention to use a non-standard method of internal client money reconciliation</i>	Forming the intention	Before using a <i>non-standard method of internal client money reconciliation</i>

Part 3: Comes into force on 1 June 2015

[*Editor's Note:* Some of the amendments set out in this Part amend provisions set out in Parts 1 and 2 of this Annex.]

Application for affiliates

1.2.9A G ...

- (2) For business that is not *MiFID business*, the operation of the *custody chapter* or the *client money chapter* may differ if a *firm's client* is an *affiliated company* and depending on certain other conditions (see, for example, CASS 6.1.10BR and ~~CASS 7.1.12AR~~ 7.10.26R).

...

1.2.11 R (1) ...

- (2) In accordance with ~~CASS 7.1.15HR~~ 7.10.36R, a *firm* which is subject to the *client money chapter* and holds *money* both (i) in its capacity as a *trustee firm* and (ii) other than in its capacity as a *trustee firm* must not keep *money* held in in its capacity as a *trustee firm* in the same *client bank account* or *client transaction account* as *money* held other than in its capacity as a *trustee firm*.

...

...

- 1.2.13 G A *firm* may opt to hold under a single chapter *money* that would otherwise be held under different chapters (see ~~CASS 7.1.3R~~ 7.10.3R and ~~CASS 7.1.15BAR~~ 7.10.30R). However, making such an election does not remove the requirement under CASS 1.2.11R(1).

3 Collateral

3.2 Requirements

...

Application

- 3.2.4 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) or CASS 9.5 (Reporting to clients on request) 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.

...

6 Custody rules

6.1 Application

...

Termination of title transfer collateral arrangements

- 6.1.8A R (1) If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate an arrangement relating to the transfer of full ownership of its *safe custody asset* to a *firm* for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication which also records the date the communication was received.
- (2) A *firm* must keep a *client's* written communication, or a written record of the *client's* communication in (1), for five years, starting from the date the communication was received by the *firm*.
- (3) (a) If a *firm* agrees to the termination of an arrangement relating to the transfer of full ownership of a *client's safe custody asset* to the *firm*, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's safe custody*

asset will be held under the custody rules by the firm thereafter.

(b) If a firm does not agree to terminate an arrangement relating to the transfer of full ownership of a client's safe custody asset to the firm, it must notify the client of its disagreement in writing.

(4) A firm must keep a written record of any notification it makes to a client under (3) for a period of five years, starting from the date the notification was made.

6.1.8B G CASS 6.1.8AR(3)(a) refers only to a firm's agreement to terminate an existing arrangement relating to the transfer of full ownership of a client's safe custody asset to the firm. Such agreement by a firm does not necessarily need to amount to the termination of its entire agreement with the client.

6.1.8C G When a firm notifies a client under CASS 6.1.8AR(3)(a) of when the termination of an arrangement relating to the transfer of full ownership of the safe custody asset to a firm is to take effect, it should take into account:

(1) any relevant terms relating to such a termination that have been agreed with the client; and

(2) the period of time it reasonably requires to return the safe custody asset to the client or to update the registration under CASS 6.2 (Holding of client assets) and update its records under CASS 6.6 (Records, accounts and reconciliations).

6.1.8D R If an arrangement relating to the transfer of full ownership of safe custody assets to a firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1) is terminated, then the exemption at CASS 6.1.6R(1) no longer applies.

6.1.8E G (1) Following the termination of an arrangement relating to the transfer of full ownership of safe custody assets to a firm for the purposes set out in CASS 6.1.6R(1) and CASS 6.1.6AR(1), where a firm does not immediately return the safe custody assets to the client the firm should consider whether the custody rules apply in respect of the safe custody assets pursuant to CASS 6.1.1R(1A) to (1C).

(2) Where the custody rules apply to a firm for safe custody assets in these circumstances then the firm is required to comply with those rules and should, for example, update the registration under CASS 6.2 (Holding of client assets), update its records under CASS 6.6 (Records, accounts and reconciliations) and treat any shortfall in accordance with CASS 6.6.54R (in each case as appropriate).

...

6.1.12 R ...

(4) Where a *firm* intends to segregate *money* as *client money* instead of the *client's safe custody asset* under (3) it must, before doing so, ensure that this would result in *money* being held for the relevant *client* in respect of the *shortfall* under ~~CASS 7.7.2R~~ 7.12.2R (statutory trust).

(5)

... (a) ensure the *money* is segregated under ~~CASS 7.4~~ 7.13 (Segregation of client money) and recorded as being held for the relevant *client(s)* under ~~CASS 7.6~~ 7.15 (Records, accounts and reconciliations);

6.1.16F R ...

Reference	Rule
...	
CASS 6.2.3R and CASS 6.2.6G <u>CASS 6.2.3BG</u>	Registration and recording of legal title
...	
CASS 6.5 <u>6.6</u>	Records, accounts and reconciliations

...

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

Reference	Rule
...	
CASS 6.2.3R, CASS 6.2.4R <u>6.2.3BG to CASS 6.2.6G</u>	Registration and recording of legal title
...	
CASS 6.3.1R(1A) and CASS 6.3.1R(4)	Arranging registration
CASS 6.5.1R, CASS 6.5.2AR, CASS 6.5.3R, CASS 6.5.13R(1A) and CASS 6.5.14G <u>CASS 6.6.2R, CASS 6.6.4R, CASS 6.6.6R,</u>	Records, accounts and reconciliations

<u>CASS 6.6.7R, CASS 6.6.57R(2) and CASS 6.6.58G</u>	
--	--

- (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* set out in (1), also comply with the *custody rules* in the table below:

Reference	Rule
...	
CASS 6.5.4 G(1A) to CASS 6.5.4G(4), CASS 6.5.5R, CASS 6.5.7AG, CASS 6.5.8AG, CASS 6.5.9G and CASS 6.5.15G <u>CASS 6.6.8R, CASS 6.6.11R to CASS 6.6.32G, CASS 6.6.41G, CASS 6.6.43G and CASS 6.6.47G.</u>	Records, accounts and reconciliations

...

- 6.1.16J R Only the *custody rules* in the table below apply to a *firm* when *arranging safeguarding and administration of assets*:

Reference	Rule
...	
CASS 6.3.1R(1A) and CASS 6.3.2G	Arranging for assets to be deposited with third parties
...	

...

Registration and recording of legal title

- 6.2.3 R ~~To the extent practicable, a 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*;~~

...

- (3) any other third party, if the *firm* is not a *trustee firm* but is prevented from registering or recording legal title in the way set out in (1) or (2) and provided that:

...

- (4) the *firm*, if either:
- (a) it is not a *trustee firm* but is prevented from registering or recording legal title in the way set out in (1), (2) or (3) and provided that:
- (i) 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*,
(ii) or obtained prior written consent if a *retail client*; or
- (b) it is a *trustee firm* and is prevented from registering or recording legal title in the way set out in (1) or (2).

...

- 6.2.3B G A *firm*, when complying with CASS 6.2.3R(3) or CASS 6.2.3R(4)(a), will be expected to demonstrate that adequate investigations have been made of the jurisdiction concerned by reference to local sources, which may include an appropriate legal opinion.
- 6.2.4 R A *firm* must accept the same level of responsibility to its *client* for any *nominee company* controlled by the *firm*, or any *nominee company* controlled by an *affiliated company* of the *firm*, with respect of any requirements of the *custody rules*.
- 6.2.5 R A *firm* may only register or record legal title to its own *applicable assets asset* in the same name as that in which legal title to a *client's safe custody asset* is registered or recorded if the *firm's applicable asset* is separately identified from the *client's safe custody asset* in the *firm's* records, and either or both of the conditions in (1) and (2) are met:
- (1) ~~the *firm's applicable assets* are separately identified in the *firm's* records from the *safe custody assets*; or~~ The *firm's* holding of its own *applicable asset* arises incidentally to:
- (a) *designated investment business* it carries on for the account of any *client*; or
- (b) steps taken by the *firm* to comply with an applicable *custody rule*;
- and, in the case of either (a) or (b), the situation where registration or

recording of legal title of the *firm's applicable asset* is in the same name as the *client's safe custody asset* under this rule remains in place only to the extent that it is reasonably necessary.

- (2) The registration or recording of legal title of the *firm's own applicable asset* in the same name as the *client's safe custody asset* is only as a result of the law or market practice of a jurisdiction outside of the *United Kingdom* the *firm* registers or records a *safe custody asset* in accordance with CASS 6.2.3R(4).

6.2.6 G ~~A *firm* when complying with CASS 6.2.3R(3) or CASS 6.2.3R(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.~~

- (1) Consistent with a *firm's* requirements to protect *clients' safe custody assets* and have adequate organisation arrangements in place (CASS 6.2.1R and CASS 6.2.2R), before a *firm* registers or records legal title to its own *applicable asset* in the same name as that in which legal title to a *client's safe custody asset* is registered or recorded under CASS 6.2.5R, it should consider whether there are any means to avoid doing so.

- (2) Examples of where the conditions under CASS 6.2.5R(1) might be met include in the course of a *firm*:

- (a) correcting a dealing error that relates to a transaction for the account of a *client*; or
- (b) maintaining a small balance of the *firm's* own *applicable assets* for purely operational or compliance purposes (eg, as a float to cover potential custody *shortfalls*) in an amount that is proportionate to the total amount of *safe custody assets* held for *clients*; or
- (c) allocating *safe custody assets* to *clients* following settlement of a bulk order; or
- (d) facilitating a *client* transaction that involves fractional entitlements; or
- (e) making good a *shortfall*.

...

Depositing safe custody assets with third parties

6.3.1 R ...

- (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. [deleted]~~

- (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. [deleted]~~

...

- (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. [deleted]~~

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

6.3.2 G In discharging its obligations under ~~this section~~ CASS 6.3.1R, a firm should also consider, as appropriate, 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;~~

...

- (3) ~~current industry standard reports, for example Financial Reporting and Auditing Group (FRAG) 21 report “Assurance reports on internal controls of services organisations made available to third parties” made in line with Technical Release AAF 01/06 of The Institute of Chartered Accountants in England and Wales or its equivalent;~~

...

- (5) ~~the credit rating credit-worthiness of the third party; and~~
- (6) ~~any other activities undertaken by the third party and, if relevant, any affiliated company; and~~
- (7) ~~whether the third party has the appropriate regulatory permissions.~~

6.3.2A R (1) A firm must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under CASS 6.3.1R. The firm must make the record on the date it makes the selection or appointment and must keep it from that date until five years after the firm ceases to use the third party to

hold safe custody assets belonging to clients.

- (2) A firm must make a record of each periodic review of its selection and appointment of a third party that it conducts under CASS 6.3.1R, its considerations and conclusions. The firm must make the record on the date it completes the review and must keep it from that date until five years after the firm ceases to use the third party to hold safe custody assets belonging to clients.

6.3.3 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. [deleted]~~

6.3.4 R (1) A Subject to (2), 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.

...

6.3.4A-1 R A firm must take the necessary steps to ensure that any client's safe custody assets deposited with a third party 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.

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

...

CASS 6.5 (Records, accounts and reconciliations) is deleted in its entirety. The deleted text is not shown.

After CASS 6.5 (deleted) insert the following new section. The text is not underlined

6.6 Records, accounts and reconciliations

Records and accounts

- 6.6.1 G This section sets out the requirements a *firm* must meet when keeping records and accounts of the *safe custody assets* it holds for *clients*.
- 6.6.2 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*]
- 6.6.3 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*]
- 6.6.4 R A *firm* must maintain a *client-specific safe custody asset record*.
- 6.6.5 G The requirements in CASS 6.6.2R to CASS 6.6.4R are for a *firm* to keep internal records and accounts of *clients' safe custody assets*. Therefore, any records falling under those requirements should be maintained by the *firm*, and should be separate to any records the *firm* may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, *clients' safe custody assets*.

Right to use agreements

- 6.6.6 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 (see CASS 6.4.1R), including in the case of a *prime brokerage agreement* the disclosure annex referred to in CASS 9.3.1R.

General record-keeping

- 6.6.7 R Unless otherwise stated, a *firm* must ensure that any record made under the *custody rules* is retained for a period of five years starting from the later of:
- (1) the date it was created; and
 - (2) (if it has been modified since the date it was created), the date it was most recently modified.
- 6.6.8 R For each *internal custody record check*, each *physical asset reconciliation* and each *external custody reconciliation* carried out by a firm, it must make a record including:
- (1) the date it carried out the relevant process;
 - (2) the actions the firm took in carrying out the relevant process; and
 - (3) a list of any discrepancies the *firm* identified and the actions the *firm* took to resolve those discrepancies.

Policies and procedures

- 6.6.9 G *Firms* are reminded that they must, under SYSC 6.1.1R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* in this chapter. This should include, for example, establishing and maintaining policies and procedures concerning:
- (1) the frequency and method of the checks and reconciliations the *firm* is required to carry out under this section;
 - (2) the frequency with which the *firm* is required to review its arrangements in compliance with this chapter; and
 - (3) the resolution of discrepancies and the treatment of *shortfalls* under this section.

Internal custody record checks

- 6.6.10 G (1) An *internal custody record check* is one of the steps a *firm* takes to satisfy its obligations under:
- (a) *Principle 10* (Clients' assets);
 - (b) CASS 6.2.2R (Requirement to have adequate organisational arrangements);
 - (c) CASS 6.6.2R to CASS 6.6.4R (Records and accounts); and
 - (d) where relevant, SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (Compliance).
- (2) An *internal custody record check* is a check as to whether the *firm's* records and accounts of the *safe custody assets* held by the *firm*

(including, for example, those deposited with third parties under CASS 6.3 (Depositing safe custody assets with third parties)) correspond with the *firm's* obligations to its *clients* to hold those *safe custody assets*.

- 6.6.11 R (1) A *firm* must perform an *internal custody record check*:
- (a) subject to (2), as regularly as is necessary but without allowing more than one month to pass between each *internal custody record check*; and
 - (b) as soon as reasonably practicable after the date to which the *internal custody record check* relates.
- (2) A *firm* that holds no *safe custody assets* other than *physical safe custody assets* must perform an *internal custody record check* as regularly as necessary but, in any case, no less often than its *physical asset reconciliations* under CASS 6.6.22R.
- 6.6.12 G CASS 6.6.44R sets out the matters which a *firm* must have regard to when determining the frequency at which to undertake an *internal custody record check*.
- 6.6.13 R A *firm* must perform an *internal custody record check* using either the *internal custody reconciliation method* or the *internal system evaluation method*. It must not use a combination of these methods.
- 6.6.14 R A *firm* must only use its internal records (for example, its depot and *client-specific* ledgers for *safe custody assets* or other internal accounting records) in order to perform an *internal custody record check*.
- 6.6.15 G CASS 6.6.14R means that a *firm* must not base its *internal custody record checks* on any records that the *firm* may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, *clients' safe custody assets*.

The internal custody reconciliation method for internal custody record checks

- 6.6.16 R A *firm* may only use the *internal custody reconciliation method* if:
- (1) it separately maintains an *aggregate safe custody asset record* and a *client-specific safe custody asset record*; and
 - (2) its *aggregate safe custody asset record* and its *client-specific safe custody asset record* are capable of being compared.
- 6.6.17 R The *internal custody reconciliation method* requires a *firm* to perform a comparison between its *aggregate safe custody asset record* and its *client-specific safe custody asset record*, as at the date of the *internal custody record check*.

The internal system evaluation method for internal custody record checks

- 6.6.18 G (1) The *internal system evaluation method* is available to any *firm*, including one that is not able to use the *internal custody reconciliation method* because it does not meet the requirements at CASS 6.6.16R(1) and (2).
- (2) The purpose of the *internal system evaluation method* is to detect weaknesses in a *firm's* systems and controls and any recordkeeping discrepancies. However, this method is not designed to substitute a *firm's* other measures for ensuring compliance with the *custody rules*, such as monitoring the accuracy of its records (see also CASS 6.2.2R and CASS 6.6.3R).
- 6.6.19 R The *internal system evaluation method* requires a *firm* to:
- (1) establish a process that evaluates:
- (a) the completeness and accuracy of the *firm's* internal records and accounts of *safe custody assets* held by the *firm* for *clients*, in particular whether sufficient information is being completely and accurately recorded by the *firm* to enable it to:
- (i) comply with CASS 6.6.4R; and
- (ii) readily determine the total of all the *safe custody assets* that the *firm* holds for its *clients*; and
- (b) whether the *firm's* systems and controls correctly identify and resolve all discrepancies in its internal records and accounts of *safe custody assets* held by the *firm* for *clients*;
- (2) run the evaluation process established under (1) on the date of each *internal custody record check*; and
- (3) promptly investigate and, without undue delay, resolve any causes of discrepancies that the evaluation process reveals.
- 6.6.20 G The evaluation process under CASS 6.6.19R(1) should verify that the *firm's* systems and controls correctly identify and resolve at least the following types or causes of discrepancies:
- (1) items in the *firm's* records and accounts that might be erroneously overstating or understating the *safe custody assets* held by a *firm* (for example, 'test' entries and 'balancing' entries);
- (2) negative balances;
- (3) processing errors;

- (4) journal entry errors (eg, omissions and unauthorised system entries); and
- (5) IT errors (eg, software issues that could lead to inaccurate records).

Physical asset reconciliations

- 6.6.21 G (1) A *physical asset reconciliation* is a separate process to the *internal custody record check*. Firms that hold *physical safe custody assets* for *clients* are required to perform both processes.
- (2) The purpose of a *physical asset reconciliation* is to check that a *firm's* internal records and accounts of the *physical safe custody assets* kept by the *firm* for *clients* are accurate and complete, and to ensure any discrepancies are investigated and resolved.
- 6.6.22 R A *firm* that holds *physical safe custody assets* must perform a *physical asset reconciliation* for all the *physical safe custody assets* it holds for *clients*:
- (1) as regularly as is necessary but without allowing more than six months to pass between each *physical asset reconciliation*; and
- (2) as soon as reasonably practicable after the date to which the *physical asset reconciliation* relates.
- 6.6.23 G CASS 6.6.44R sets out the matters which a *firm* must have regard to when determining the frequency at which to undertake a *physical asset reconciliation*.
- 6.6.24 R When performing a *physical asset reconciliation* a *firm* must:
- (1) count all the *physical safe custody assets* held by the *firm* for *clients* as at the date to which the *physical asset reconciliation* relates; and
- (2) compare the count in (1) against what the *firm's* internal records and accounts state as being in the *firm's* possession as at the same date.
- 6.6.25 R A *firm* must perform each *physical asset reconciliation* under CASS 6.6.24R using the *total count method* or the *rolling stock method*.
- 6.6.26 G Regardless of the method used, a *firm* should ensure that all *safe custody assets* held by the *firm* as *physical safe custody assets* for *clients* are subject to a *physical asset reconciliation* at the frequency required under CASS 6.6.22R.
- 6.6.27 R If a *firm* completes a *physical asset reconciliation* in a single stage, such that the *firm*:
- (1) performs a single count under CASS 6.6.24R(1) which encompasses all the *physical safe custody assets* held by the *firm* for *clients* as at the date to which the *physical asset reconciliation* relates; and

- (2) compares that count against the *firm's* internal records and accounts in accordance with CASS 6.6.24R(2),

then the *firm* will have used the *total count method* for that *physical asset reconciliation*.

- 6.6.28 R If a *firm* completes a *physical asset reconciliation* in two or more stages, such that the *firm*:
- (1) performs two or more counts under CASS 6.6.24R(1) (each on a separate occasion and relating to a different stock line or group of stock lines forming part of the *firm's* overall holdings of *physical safe custody assets*) which, once all of the counts are complete, encompass all the *physical safe custody assets* held by the *firm* for *clients*; and
- (2) compares each of those counts against the *firm's* internal records and accounts in accordance with CASS 6.6.24R(2),
- then the *firm* will have used the *rolling stock method* for that *physical asset reconciliation*.
- 6.6.29 G (1) The *rolling stock method* allows a *firm* to perform its *physical asset reconciliation* in several stages, with each stage referring to a line of stock or group of stock lines in a *designated investment* selected by a *firm* (for example, all the *shares* with an *issuer* whose name begins with the letter 'A' or all the stock lines held in connection with a particular business line).
- (2) Where a *firm* uses the *rolling stock method* to perform a *physical asset reconciliation*, all the stages in that *physical asset reconciliation* must be completed in time to ensure the *firm* complies with CASS 6.6.22R.
- 6.6.30 R (1) If a *firm* wishes to use the *rolling stock method* to perform a *physical asset reconciliation* it must first establish and document in writing its reasons for concluding that the way in which it will carry out its *physical asset reconciliation* is adequately designed to mitigate the risk of the *firm's* records being manipulated or falsified.
- (2) A *firm* must retain any documents created under (1) for a period of at least five years after the date it ceases to use the *rolling stock method* to perform its *physical asset reconciliation*.
- 6.6.31 G The documents under CASS 6.6.30R(1) should, for example, cover the systems and controls the *firm* will have in place to mitigate the risk of 'teeming and lading' in respect of all the *physical safe custody assets* held by the *firm* for *clients* and across all the *firm's* business lines.
- 6.6.32 G To meet the requirement to have adequate organisational arrangements under CASS 6.2.2R, a *firm* should consider performing 'spot checks' as to

whether title to an appropriate sample of *physical safe custody assets* that it holds is registered correctly under CASS 6.2.3R (Registration and recording of legal title).

External custody reconciliations

- 6.6.33 G The purpose of an *external custody reconciliation* is to ensure the completeness and accuracy of a *firm's* internal records and accounts of *safe custody assets* held by the *firm* for *clients* against those of relevant third parties.
- 6.6.34 R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts of *safe custody assets* held by the *firm* for *clients* and those of any third parties by whom those *safe custody assets* are held.
- [Note: article 16(1)(c) of the *MiFID implementing Directive*]
- 6.6.35 R In CASS 6.6.34R, the third parties whose records and accounts a *firm* is required to reconcile its own internal records and accounts with must include:
- (1) the third parties with which the *firm* has deposited *clients' safe custody assets*; and
 - (2) where the *firm* has not deposited a *client's safe custody asset* with a third party, the third parties responsible for the registration of legal title to that *safe custody asset*.
- 6.6.36 G Examples of the sorts of third parties referred to at CASS 6.6.35R(2) include central securities depositories, *operators of collective investment schemes*, and administrators of offshore funds.
- 6.6.37 R A *firm* must conduct *external custody reconciliations*:
- (1) as regularly as necessary but with no more than one month between each *external custody reconciliation*; and
 - (2) as soon as reasonably practicable after the date to which the *external custody reconciliation* relates.
- 6.6.38 G CASS 6.6.44R sets out the matters which a *firm* must consider when determining the frequency at which to undertake an *external custody reconciliation*.
- 6.6.39 G Where a *firm* holds *clients' safe custody assets* electronically with a central securities depository which is able to provide adequate information to the *firm* on its holdings on a daily basis, it is best practice under CASS 6.6.37R(1) for the *firm* to conduct an *external custody reconciliation* each *business day* in respect of those assets.
- 6.6.40 G Where a *firm* deposits *safe custody assets* belonging to a *client* with a third party, in complying with the requirements of CASS 6.6.34R, the *firm* should

seek to ensure that the third party provides the *firm* with adequate information (for example, in the form of a statement) as at a date specified by the *firm* which details the description and amounts of all the *safe custody assets* credited to the relevant account(s) and that this information is provided in sufficient time to allow the *firm* to carry out its *external custody reconciliations* under CASS 6.6.37R.

- 6.6.41 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 provides the *firm* with adequate information (for example, in the form of 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(s) and that this information is provided 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*.
- 6.6.42 G *External custody reconciliations* must be performed for each *safe custody asset* held by the *firm* for its *clients*, except for *physical safe custody assets*. A reconciliation of transactions involving *safe custody assets*, rather than of the *safe custody assets* themselves, will not satisfy the requirement under CASS 6.6.34R.
- 6.6.43 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 having regard to the frequency, number and value of transactions which the *firm* undertakes in respect of *safe custody assets*, but with no more than one month between each reconciliation; and
 - (2) as soon as reasonably practicable after the date to which the reconciliation relates;

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

Frequency of checks and reconciliations under this section

- 6.6.44 R When determining the frequency at which it will undertake its *internal custody record checks* under CASS 6.6.11R, *physical asset reconciliations* under CASS 6.6.22R, and *external custody reconciliations* under CASS 6.6.37R, a *firm* must have regard to:
- (1) the frequency, number and value of transactions which the *firm* undertakes in respect of *clients' safe custody assets*; and
 - (2) the risks to which *clients' safe custody assets* are exposed, such as

the nature, volume and complexity of the *firm's* business and where and with whom *safe custody assets* are held.

- 6.6.45 R (1) A *firm* must make and retain records sufficient to show and explain any decision it has taken under CASS 6.6.44R when determining the frequency of its *internal record custody checks, physical asset reconciliations* and *external custody reconciliations*. Subject to (2), such records must be retained indefinitely.
- (2) If any decision under CASS 6.6.44R is superseded by a subsequent decision under that *rule* then the record of that earlier decision retained in accordance with (1) need only be retained for a further period of five years from the subsequent decision.
- 6.6.46 R (1) Subject to (3), a *firm* must review the frequency at which it conducts *internal custody record checks, physical asset reconciliations* and *external custody reconciliations* at least annually to ensure that it continues to comply with CASS 6.6.11R, CASS 6.6.22R and CASS 6.6.37R, respectively, and has given due consideration to the matters in CASS 6.6.44R.
- (2) For each review a *firm* undertakes under (1), it must record the date and the actions it took in reviewing the frequency of its *internal custody record checks, physical asset reconciliations* and *external custody reconciliations*.
- (3) A *firm* need not carry out a review under (1) in respect of its *internal custody record checks, physical asset reconciliations* or *external custody reconciliations*, if it already conducts the particular process in respect of all relevant *safe custody assets* each *business day*.

Independence of person performing checks and reconciliations

- 6.6.47 G Whenever possible, a *firm* should ensure that checks and 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 checked and/or reconciled.

Resolution of discrepancies

- 6.6.48 G In this section, a discrepancy should not be considered to be resolved until it is fully investigated and corrected, and any associated *shortfall* is made good by way of the *firm* ensuring that:
- (1) it is holding (under the *custody rules*) each of the *safe custody assets* that the *firm* ought to be holding for each of its *clients*; and
- (2) its own records, and the records of any relevant other *person* (such as a third party with whom the *firm* deposited the *safe custody assets*) accurately correspond to the position under (1).

- 6.6.49 R When a *firm* identifies a discrepancy as a result of carrying out an *internal custody record check*, *physical asset reconciliation* or *external custody reconciliation*, the *firm* must promptly investigate the reason for the discrepancy and resolve it without undue delay and must take appropriate steps under CASS 6.6.54R for the treatment of any *shortfalls* until that discrepancy is resolved.
- 6.6.50 R When a *firm* identifies a discrepancy outside of its processes for an *internal custody record check*, *physical asset reconciliation* or *external custody reconciliation*, the *firm* must take all reasonable steps both to investigate the reason for the discrepancy and to resolve it. It must also take appropriate steps under CASS 6.6.54R for the treatment of *shortfalls* until that discrepancy is resolved.
- 6.6.51 G Where the discrepancy identified under CASS 6.6.49R or CASS 6.6.50R has arisen as a result of a breach of the *custody rules*, the *firm* should ensure it takes sufficient steps to avoid a reoccurrence of that breach (see *Principle 10* (Clients' assets), CASS 6.6.3R and, as applicable, SYSC 4.1.1R(1) and SYSC 6.1.1R).
- 6.6.52 G Items recorded or held within a suspense or error account fall within the scope of discrepancies in this section.
- 6.6.53 G Items recorded in a *firm's* records and accounts that are no longer recorded by relevant third parties (such as 'liquidated stocks') also fall within the scope of discrepancies in this section.

Treatment of shortfalls

- 6.6.54 R (1) This *rule* applies where a *firm* identifies a discrepancy as a result of, or that reveals, a *shortfall*, which the *firm* has not yet resolved.
- (2) Subject to (3), until the discrepancy is resolved a *firm* must do one of the following:
- (a) appropriate a sufficient number of its own *applicable assets* to cover the value of the *shortfall* and hold them for the relevant *clients* under the *custody rules* in such a way that the *applicable assets*, or the proceeds of their liquidation, will be available for distribution for the benefit of the relevant *clients* in the event of the *firm's failure* and, in doing so:
- (i) ensure that the *applicable assets* are clearly identifiable as separate from the *firm's* own property and are recorded by the *firm* in its *client-specific safe custody asset record* as being held for the relevant *client*;
- (ii) keep a record of the actions the *firm* has taken under this *rule* which includes a description of the *shortfall*, identifies the relevant affected *clients*, and

lists the *applicable assets* that the *firm* has appropriated to cover the *shortfall*; and

- (iii) update the record made under (ii) whenever the discrepancy is resolved and the *firm* has re-appropriated the *applicable assets*; or
- (b) (provided that doing so is consistent with the *firm's permissions* and would result in *money* being held for the relevant *client*) in respect of the *shortfall* under CASS 7.7.2R (statutory trust) appropriate a sufficient amount of its own *money* to cover the value of the *shortfall*, hold it for the relevant *client* as *client money* under the *client money rules* and, in doing so:
- (i) ensure the *money* is segregated under CASS 7.13 (Segregation of client money) and recorded as being held for the relevant *client* under CASS 7.15 (Records, accounts and reconciliations);
 - (ii) keep a record of the actions the *firm* has taken under this *rule* which includes a description of the *shortfall*, identifies the relevant affected *clients*, and specifies the amount of *money* that the *firm* has appropriated to cover the *shortfall*; and
 - (iii) update the record made under (ii) whenever the discrepancy is resolved and the *firm* has re-appropriated the *money*; or
- (c) appropriate a number of *applicable assets* in accordance with (a) and an amount of *money* in accordance with (b) which, in aggregate, are sufficient to cover the value of the *shortfall*.
- (3) If the *firm*, where justified, concludes that another *person* is responsible for the discrepancy then, regardless of any dispute with that other *person* or whether the discrepancy is due to a timing difference between the accounting systems of that other *person* and that of the *firm*, the *firm* must take all reasonable steps to resolve the situation without undue delay with the other *person*. Until the discrepancy is resolved the *firm* must consider whether it would be appropriate to notify the affected *client* of the situation, and may take steps under (2) for the treatment of *shortfalls* until that discrepancy is resolved.

- 6.6.55 G In considering whether it should notify affected *clients* under CASS 6.6.54R (3), a *firm* should have regard to its obligations under the *client's best interests rule* to act honestly, fairly and professionally in accordance with the best interests of its *clients*, and to *Principle 7* (communications with clients).

- 6.6.56 G (1) The value of a *shortfall* for the purposes of CASS 6.6.54R may be determined by the previous day's closing mark to market valuation or, if in relation to a particular *safe custody asset* none is available, the most recently available valuation.
- (2) Where a *firm* is taking the measures under CASS 6.6.54R(2) in respect of a particular *shortfall* it should, as regularly as necessary, and having regard to *Principle 10*:
- (a) review the value of the *shortfall* in line with (1); and
- (b) where the *firm* has found that the value of the *shortfall* has changed, adjust either or both the number of own *applicable assets* and the amount of *money* it has appropriated to ensure that in aggregate the assets and monies set aside are sufficient to cover the changed value of the *shortfall*.

Notification requirements

- 6.6.57 R A *firm* must inform the *FCA* in writing without delay if:
- (1) its internal records and accounts of the *safe custody assets* held by the *firm* for *clients* are materially out of date, or materially inaccurate or invalid, so that the *firm* is no longer able to comply with the requirements in CASS 6.6.2R to CASS 6.6.4R; or
- (2) 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 6.6.2R or in article 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*; or
- (3) it will be unable, or materially fails, to take the steps required under CASS 6.6.54R for the treatment of *shortfalls*; or
- (4) it will be unable, or materially fails, to conduct an *internal custody record check* in compliance with CASS 6.6.11R to CASS 6.6.19R; or
- (5) it will be unable, or materially fails, to conduct a *physical asset reconciliation* in compliance with CASS 6.6.22R to CASS 6.6.30R; or
- (6) it will be unable, or materially fails, to conduct an *external custody reconciliation* in compliance with CASS 6.6.34R to CASS 6.6.37R.

Annual audit of compliance with the custody rules

- 6.6.58 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*.

...

CASS 7.1 to CASS 7.8 and CASS 7 Annex 1 are deleted in their entirety. The deleted text is not shown.

After CASS 7.9 [deleted] insert the following new sections. The text is not underlined.

7 Client money rules

7.10 Application and purpose

7.10.1 R This chapter 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, its:

- (1) *MiFID business*; and/or
- (2) *designated investment business*;

unless otherwise specified in this section.

7.10.2 G A *firm* is reminded that when CASS 7.10.1R applies it should treat *client money* in an appropriate manner so that, for example:

- (1) if it holds *client money* in a *client bank account* that account is held in the *firm's* name in accordance with CASS 7.13.13R;
- (2) if it allows another *person* to hold *client money* this is effected under CASS 7.14; and
- (3) its *internal client money reconciliation* takes into account any *client equity balance* relating to its *margined transaction requirements*.

Opt-in to the client money rules

7.10.3 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*.

- (2) 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*.

(3) 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.

(4) This *rule* is subject to CASS 1.2.11R.

- 7.10.4 G *Firms* are reminded that, under CASS 1.2.11R, they must not keep *money* in respect of which the *client money chapter* applies in the same *client bank account* or *client transaction account* as *money* for which the *insurance client money chapter* applies.
- 7.10.5 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*.
- 7.10.6 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.
- 7.10.7 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

- 7.10.8 R CASS 7.10.9G to CASS 7.10.15G 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 7.10.3R(1) .

Professional client opt-out

- 7.10.9 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*).
- 7.10.10 R Subject to CASS 7.10.12R, *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

- 7.10.11 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.
- 7.10.12 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 7.10.10R (1) to (3).
- 7.10.13 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 7.10.10R or CASS 7.10.12R, elect to segregate *client money* in connection with *securities* transactions and not segregate (by complying with CASS 7.10.10R or CASS 7.10.12R) *money* in connection with contingent liability investments for the same *client*.
- 7.10.14 R When a *firm* transfers *client money* to another *person*, the *firm* must not enter into an agreement under CASS 7.10.10R or CASS 7.10.12R with that other person in relation to that *client money* or represent to that other person that the *money* is not *client money*.
- 7.10.15 G CASS 7.10.14R prevents a *firm*, when passing *client money* to another *person* under CASS 7.14.2R (Transfer of *client money* to a third party), from making use of the 'opt out' provisions under CASS 7.10.10R or CASS 7.10.12R.

Credit institutions and approved banks

- 7.10.16 R In relation to the application of the *client money rules* (and any other *rule* in so far as it relates to matters covered by the *client money rules*) to the *firms* referred to in (1) and (2), the following is not *client money*:
- (1) any deposits within the meaning of the *CRD* held by a *CRD credit*

institution; and

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

- (2) any *money* held by an *approved bank* that is not a *CRD credit institution* in an account with itself in relation to *designated investment business* carried on for its *clients*.

- 7.10.17 G A *firm* referred to in CASS 7.10.16R must comply, as relevant, with CASS 7.10.18G to CASS 7.10.24R.
- 7.10.18 G The effect of CASS 7.10.16R is that, unless notified otherwise in accordance with CASS 7.10.20R or CASS 7.10.22R, *clients* of *CRD credit institutions* or *approved banks* that are not *CRD credit institutions* should expect that where they pass *money* to such *firms* in connection with *designated investment business* these sums will not be held as *client money*.
- 7.10.19 R A *firm* holding *money* in either of the ways described in CASS 7.10.16R must, before providing *designated investment business* services to the *client* in respect of those sums, notify the *client* that:
- (1) the *money* held for that *client* is held by the *firm* as banker and not as a trustee under the *client money rules*; and
- (2) if the *firm fails*, the *client money distribution rules* will not apply to these sums and so the *client* will not be entitled to share in any distribution under the *client money distribution rules*.
- 7.10.20 R A *firm* holding *money* in either of the ways described in CASS 7.10.16R in respect of a *client* and providing the services to it referred to in CASS 7.10.19R must:
- (1) explain to its *clients* the circumstances, if any, under which it will cease to hold any *money* in respect of those services as banker and will hold the *money* as trustee in accordance with the *client money rules*; and
- (2) set out the circumstances in (1), if any, in its terms of business so that they form part of its agreement with the *client*.
- 7.10.21 G Where a *firm* receives *money* that would otherwise be held as *client money* but for CASS 7.10.16R:
- (1) it should be able to account to all of its *clients* for sums held for them at all times; and
- (2) that *money* should, pursuant to *Principle 10*, be allocated to the relevant *client* promptly. This should be done no later than ten *business days* after the *firm* has received the *money*.
- 7.10.22 R If a *CRD credit institution* or an *approved bank* that is not a *CRD credit*

institution wishes to hold *client money* for a *client* (rather than hold the *money* in either of the ways described in CASS 7.10.16R) it must, before providing *designated investment business* services to the *client*, disclose the following information to the *client*:

- (1) that the *money* held for that *client* in the course of or in connection with the business described under (2) is being held by the *firm* as *client money* under the *client money rules*;
- (2) a description of the relevant business carried on with the *client* in respect of which the *client money rules* apply to the *firm*; and
- (3) that, if the *firm fails*, the *client money distribution rules* will apply to *money* held in relation to the business in question.

7.10.23 G *Firms* carrying on *MiFID business* are reminded of their obligation to supply investor compensation scheme information to *clients* under COBS 6.1.16R (Compensation Information).

7.10.24 R A *CRD credit institution* or an *approved bank* that is not a *CRD credit institution* must, in respect of any *client money* held in relation to its *designated investment business* that is not *MiFID business*, comply with the obligations referred to in COBS 6.1.16R (Compensation information).

Affiliated companies: MiFID business

7.10.25 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

7.10.26 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

- 7.10.27 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

- 7.10.28 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), the SRA Accounts Rules 2011;
 - (b) if the *firm* is regulated by the Law Society of Scotland, the Law Society of Scotland Practice Rules 2011; 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

- 7.10.29 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

- 7.10.30 R (1) Provided it complies with CASS 1.2.11R, a *firm* that receives or holds *client money* in relation to *contracts of insurance* may elect to comply with the provisions of the *insurance client money chapter*, instead of this chapter, in respect of all such *money*.
- (2) This *rule* is subject to CASS 1.2.11R.

- 7.10.31 R A *firm* must make and retain a written record of any election which it makes under CASS 7.10.30R.

Life assurance business

- 7.10.32 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 7.10.3R (2) 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 7.10.30R, 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

- 7.10.33 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.
- 7.10.34 R Subject to CASS 7.10.35R 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 7.10.1R to CASS 7.10.6G, and CASS 7.10.16R to CASS 7.10.27R	Application
CASS 7.10.33R to CASS 7.10.40G	Trustee firms
CASS 7.10.41G	General purpose
CASS 7.13.3R to CASS 7.13.4G	Depositing client money
CASS 7.13.8R to CASS 7.13.11G	Selection, appointment and review of third parties
CASS 7.13.12R to CASS 7.13.19G	Client bank accounts
CASS 7.13.20R to CASS 7.13.25G	Diversification of client money

CASS 7.13.26R to CASS 7.13.29G	Qualifying money market funds
CASS 7.15.5R(3), CASS 7.15.7R and CASS 7.15.12R to CASS 7.15.34R	Reconciliation of client money balances
CASS 7.16	The standard methods of internal client money reconciliation
CASS 7.17.2R to CASS 7.17.4G	Requirement

- 7.10.35 R (1) A *trustee firm* to which CASS 7.10.34R applies may, in addition to the *client money rules* set out at CASS 7.10.34R, also elect to comply with:
- (a) all the *client money rules* in CASS 7.13 (Segregation of client money);
 - (b) CASS 7.14 (Client money held by a third party);
 - (c) all the *client money rules* in CASS 7.15 (Records, accounts and reconciliations); or
 - (d) CASS 7.18 (Acknowledgement letters).
- (2) A *trustee firm* must make 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.
- (3) Where a *trustee firm* has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and keep that record from the date the decision is made for a period of five years after the date it is to be effective.
- 7.10.36 R A *trustee firm* to which CASS 7.10.34R applies and which is otherwise subject to the *client money rules* must ensure that any *client money* it holds other than in its capacity as *trustee firm* is segregated from *client money* it holds as a *trustee firm*.
- 7.10.37 G A *trustee firm* to which CASS 7.10.34R applies and which is otherwise subject to the *client money rules* should ensure that in designing its systems and controls it:
- (1) takes into account that the *client money distribution rules* will only apply in relation to any *client money* that the *firm* holds other than in its capacity as *trustee firm*; and
 - (2) has regard to other legislation that may be applicable.

- 7.10.38 R (1) A *trustee firm* to which CASS 7.10.34R applies may elect that:
- (a) the applicable provisions of CASS 7.13 (Segregation of client money) and CASS 7.15 (Records, accounts and reconciliations) under CASS 7.10.34R; and
 - (b) and any further provisions it elects to comply with under CASS 7.10.35R(1);
- will apply separately and concurrently for each distinct trust that the *trustee firm* acts for.
- (2) A *trustee firm* must make 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.
- (3) Where a *trustee firm* has made an election under (1) which it subsequently decides to cease to use, it must make a written record of this decision, including the date from which the decision is to be effective, and must keep that record from the date the decision is made for a period of five years after the date it is to be effective.
- 7.10.39 G A *trustee firm* may wish to make an election under CASS 7.10.38R if, for example, it acts for a number of distinct trusts which it wishes, or is required, to keep operationally separate. If a *firm* makes such an election then it should:
- (1) establish and maintain adequate internal systems and controls to effectively segregate *client money* held for one trust from *client money* held for another trust; and
 - (2) conduct *internal client money reconciliations* as set out in CASS 7.16 and *external client money reconciliations* under CASS 7.15.20R for each trust.
- 7.10.40 G The provisions in CASS 7.10.34R to CASS 7.10.39G do not affect the general application of the *client money rules* regarding *money* that is held by a *firm* other than in its capacity as a *trustee firm*.

General purpose

- 7.10.41 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*.

7.11 Treatment of client money

Title transfer collateral arrangements

- 7.11.1 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.

- 7.11.2 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.

- 7.11.3 R (1) A *firm* must ensure that any arrangement relating to the transfer of full ownership of a *client's money* to the *firm* for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1) is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.

- (2) Regardless of the form of the written agreement in (1) (which may have additional commercial purposes), it must cover the *client's* agreement to:
- (a) the terms for the arrangement relating to the transfer of the *client's* full ownership of *money* to the *firm*;
 - (b) any terms under which the ownership of *money* is to transfer from the *firm* back to the *client*; and
 - (c) (to the extent not covered by the terms under (b)), any terms for the termination of:
 - (i) the arrangement under (a); or
 - (ii) the overall agreement in (1).
- (3) A *firm* must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.
- 7.11.4 G The terms referred to in CASS 7.11.3R(2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of *money* to the *firm* is not in effect from time to time, or is contingent on some other condition.
- 7.11.5 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*.
- 7.11.6 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*.
- 7.11.7 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*.
- 7.11.8 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*.

Termination of title transfer collateral arrangements

- 7.11.9 R (1) If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate an arrangement relating to the transfer of full ownership of its *money* to the *firm* for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1), and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication, which also records the date the communication was received.
- (2) A *firm* must keep a *client's* written communication, or a written record of the *client's* communication in (1), for five years starting from the date the communication was received by the *firm*.
- (3) (a) If a *firm* agrees to the termination of an arrangement relating to the transfer of full ownership of a *client's money* to the *firm*, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's money* will be treated as *client money* by the *firm* thereafter.
- (b) If a *firm* does not agree to terminate an arrangement relating to the transfer of full ownership of a *client's money* to the *firm*, it must notify the *client* of its disagreement in writing.
- (4) A *firm* must keep a written record of any notification it makes to a *client* under (3) for a period of five years, starting from the date the notification was made.
- 7.11.10 G CASS 7.11.9R(3)(a) refers only to a *firm's* agreement to terminate an existing arrangement relating to the transfer of full ownership of a *client's money* to the *firm*. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.
- 7.11.11 G When a *firm* notifies a *client* under CASS 7.11.9R(3)(a) of when the termination of an arrangement relating to the transfer of full ownership of

the *client's money* to the *firm* is to take effect, it should take into account:

- (1) any relevant terms relating to such a termination that have been agreed with the *client*; and
- (2) the period of time it reasonably requires to return the *money* to the *client*, or to update its records under CASS 7.15 (Records, accounts and reconciliations) and to segregate the *money* as *client money* under CASS 7.13 (Segregation of client money).

- 7.11.12 R If an arrangement relating to the transfer of full ownership of a *client's money* to a *firm* for the purposes set out in CASS 7.11.1R(1) and CASS 7.11.2R(1) is terminated then, unless otherwise permitted under the *client money rules* and notified to the *client* under CASS 7.11.9R(3)(a), the *firm* must treat that *money* as *client money* from the start of the next *business day* following the date of termination as set out in the *firm's* notification under CASS 7.11.9R(3)(a). Where the *firm's* notification under CASS 7.11.9R(3)(a) does not state when the termination of the arrangement will take effect, the *firm* must treat that *money* as *client money* from the start of the next *business day* following the date on which the *firm's* notification is made.
- 7.11.13 G A *firm* to which CASS 7.11.12R applies should, for example, update its records under CASS 7.15 (Records, accounts and reconciliations) and segregate the *money* as *client money* under CASS 7.13 (Segregation of client money), from the relevant time at which the *firm* is required to treat the *money* as *client money*.

Delivery versus payment transaction exemption

- 7.11.14 R (1) Subject to (2) and CASS 7.11.16R and with the agreement of the relevant *client*, *money* need not be treated as *client money* in respect of a delivery versus payment transaction through a *commercial settlement system* if:
- (a) in respect of a *client's* purchase, the *firm* intends for the *money* from the *client* to be due to it within one *business day* following the *firm's* fulfilment of its delivery obligation to the *client*; or
 - (b) in respect of a *client's* sale, the *firm* intends for the *money* in question to be due to the *client* within one *business day* following the *client's* fulfilment of its delivery obligation to the *firm*.
- (2) If the payment or delivery by the *firm* to the *client* has not occurred by the close of business on the third *business day* following the date on which the *firm* makes use of the exemption under (1), the *firm* must stop using that exemption for the transaction.
- 7.11.15 G The exclusion from the *client money rules* for delivery versus payment

transactions under CASS 7.11.14R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 26 of *MiFID*.

- 7.11.16 R A *firm* cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under CASS 7.11.14R in either or both of the following circumstances:
- (1) it is not a direct member or participant of the relevant *commercial settlement system*, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that *commercial settlement system*;
 - (2) the transaction in question is being settled by another *person* on behalf of the *firm* through an account held at the relevant *commercial settlement system* by that other *person*.
- 7.11.17 R Where a *firm* does not meet the requirements in CASS 7.11.14R or CASS 7.11.16R for the use of the exemption in CASS 7.11.14R, the *firm* is subject to the *client money rules* in respect of any *money* it holds in connection with the delivery versus payment transaction in question.
- 7.11.18 G
- (1) In line with CASS 7.11.14R, where a *firm* receives *money* from the *client* in fulfilment of the *client's* payment obligation in respect of a delivery versus payment transaction the *firm* is carrying out through a *commercial settlement system* in respect of a *client's* purchase, and the *firm* has not fulfilled its delivery obligation to the *client* by close of business on the third *business day* following the date of the *client's* fulfilment of its payment obligation to the *firm*, the *firm* must treat the *client money* in accordance with the *client money rules* until delivery by the *firm* to the *client* occurs.
 - (2) Upon settlement of a delivery versus payment transaction a *firm* is carrying out through a *commercial settlement system* (including when it is settled within the three *business day* period referred to in CASS 7.11.14R(2)) then, in respect of:
 - (a) a *client's* purchase, the *custody rules* apply to the relevant *safe custody asset* the *firm* receives upon settlement; and
 - (b) a *client's* sale, the *client money rules* will apply to the relevant *money* received on settlement.
- 7.11.19 R A *firm* will not be in breach of the requirement under CASS 7.13.6R to receive *client money* directly into a *client bank account* if it:
- (1) receives the *money* in question:
 - (a) in accordance with CASS 7.11.14R(1)(a) but it is subsequently required under CASS 7.11.14R(2) to hold that *money* in accordance with the *client money rules*; or

- (b) in the circumstances referred to in CASS 7.11.18G(2)(b); and
 - (2) pays the *money* in question into a *client bank account* promptly, and in any event by close of business on the *business day* following:
 - (a) the expiration of the relevant period referred to in CASS 7.11.14R(2); or
 - (b) receipt of the *money* in the circumstances referred to in CASS 7.11.18G(2)(b).
- 7.11.20 R (1) If a *firm* makes use of the exemption under CASS 7.11.14R, it must obtain the *client's* written agreement to the *firm's* use of the exemption.
- (2) In respect of each *client*, the record created in (1) must be retained during the time that the *firm* makes use, or intends to make use, of the exemption under CASS 7.11.14R in respect of that *client's* monies.
- 7.11.21 R (1) Subject to (2), *money* need not be treated as *client money*:
- (a) 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* in either of the following circumstances:
 - (i) the *authorised fund manager* receives the *money* 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*; or
 - (ii) 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*;
 - (2) Where, in respect of *money* received in any of the circumstances set out in (1), the *authorised fund manager* has not, by close of business on the *business day* following the date of receipt of the *money*, paid this *money* to the *depository* of an *AUT* or *ACS*, the *ICVC* or to the *client* as the case may be, the *authorised fund manager* must stop using the exemption under (1) for that transaction.
- 7.11.22 R An *authorised fund manager* will not be in breach of the requirement under CASS 7.13.6R to receive *client money* directly into a *client bank account* if it received the *money* in accordance with CASS 7.11.21R(1) and is subsequently required under CASS 7.11.21R(2) to hold that *money* in accordance with the *client money rules*.
- 7.11.23 G Where proceeds of redemption paid to the *client* in accordance with CASS

7.11.21R(1)(a)(ii) are paid by cheque, the cheque should be issued from the relevant *client bank account*.

- 7.11.24 R (1) If a *firm* makes use of the exemption under CASS 7.11.21R, it must obtain the *client's* written agreement to the *firm's* use of the exemption.
- (2) In respect of each *client*, the record created in (1) must be retained for the duration of the time that the *firm* makes use of the exemption under CASS 7.11.21R in respect of that *client's money*.

Money due and payable to the firm

- 7.11.25 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*.
- 7.11.26 G *Money* will not become properly due and payable to the *firm* merely through the *firm* holding that *money* for a specified period of time. If a *firm* wishes to cease to hold *client money* for a *client* it must comply with CASS 7.11.34R (Discharge of fiduciary duty) or, if the balance is allocated but unclaimed *client money*, CASS 7.11.50R (Allocated but unclaimed client money) or CASS 7.11.57R (De minimis amounts of unclaimed client money).
- 7.11.27 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*.
- 7.11.28 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 7.15.2R, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out *internal client money reconciliations* either in accordance with the *standard methods of internal client money reconciliation* or the requirements for a *non-standard method of internal client money reconciliation*.
- 7.11.29 G When a *client's* obligation or liability, which 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

7.11.30 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.

7.11.31 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 7.11.34R);

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 7.11.1R (Title transfer collateral arrangements)).

Interest

7.11.32 R A *firm* must pay a *retail client* any interest earned on *client money* held for that *client* unless it has otherwise notified him in writing.

7.11.33 G (1) The *firm* may, under the terms of its agreement with the *client*, pay some, none, or all interest earned to the relevant *client*.

- (2) Where interest is payable on *client money* by a *firm* to *clients*:
 - (a) such sums are *client money* and so, if not paid to, or to the order of the *clients*, are required to be segregated in accordance with CASS 7.13 (Segregation of client money);
 - (b) the interest should be paid to *clients* in accordance with the *firm's* agreement with each *client*; and
 - (c) if the *firm's* agreement with the *client* is silent as to when interest should be paid to the *client* the *firm* should follow CASS 7.13.36R (Allocation of client money receipts);

irrespective of whether the *client* is a *retail client* or otherwise.

Discharge of fiduciary duty

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

- (1) it is paid to the *client*, or a duly authorised representative of the

client; or

- (2) it is:
- (a) paid to a third party on the instruction of, or with the specific consent of, the *client* unless it is transferred to a third party in the course of effecting a transaction under CASS 7.14.2R (Transfer of client money to a third party); or
 - (b) paid to a third party pursuant to an obligation on the *firm* where:
 - (i) that obligation arises under an enactment; and
 - (ii) the obligation under that enactment is applicable to the *firm* as a result of the nature of the business being undertaken by the *firm* for its *client*; or
 - (c) transferred in accordance with CASS 7.11.42R; or
 - (d) transferred in accordance with CASS 7.11.44R; or
- (3) subject to CASS 7.11.38R, 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 7.11.25R (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 7.15.29R(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 7.11.35R; or
- (7) it is paid by an *authorised central counterparty* directly to the *client* in accordance with CASS 7.11.36R; or.
- (8) it is transferred by the *firm* to a *clearing member* in connection with a *regulated clearing arrangement* and the *clearing member* remits payment to another *firm* or to another *clearing member* in accordance with CASS 7.11.37R(1); or
- (9) it is transferred by the *firm* to a *clearing member* in connection with a *regulated clearing arrangement* and the *clearing member* remits payment directly to the *indirect clients* of the *firm* in accordance with CASS 7.11.38R(2); or
- (10) it is paid to charity under CASS 7.11.50R or 7.11.57R.

7.11.35 R *Client money* which the *firm* places at an *authorised central counterparty*

in connection with a *regulated clearing arrangement* 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*.

7.11.36 R *Client money* which the *firm* places at an *authorised central counterparty* in connection with a *regulated clearing arrangement* 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*.

7.11.37 R *Client money* received or held by the *firm* and transferred to a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement* ceases to be *client money* for that *firm* and, if applicable, the *clearing member*, if the *clearing member*:

- (1) remits payment to another *firm* or to another *clearing member* in accordance with default management procedures adopted by the *clearing member* which comply with the requirements of article 4(4) of the *EMIR L2 Regulation*; or
- (2) remits payment to the *indirect clients* of the *firm* in accordance with default management procedures adopted by the *clearing member* which comply with the requirements of articles 4(4) and 4(5) of the *EMIR L2 Regulation*.

7.11.38 R *Client money* received or held by the *firm* for a *sub-pool* ceases to be *client money* for that *firm* to the extent that such *client money* is transferred by the *firm* to an *authorised central counterparty* or a *clearing member* as a result of *porting*.

7.11.39 R A *firm* must not pay *client money* into a bank account of the *client* that has been opened without the consent of that *client*.

7.11.40 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.

Transfer of business

7.11.41 G A *firm* may transfer *client money* to a third party as part of transferring all or part of its business if, in respect of each *client* with an interest in the *client money* that is sought to be transferred, it:

- (1) obtains the consent or instruction of that *client* at the time of the transfer of business (see *CASS 7.11.34R(2)(a)*); or
- (2) complies with *CASS 7.11.42R* (see *CASS 7.11.34R(2)(c)*); or

- (3) complies with CASS 7.11.44R (see CASS 7.11.34R(2)(d)).
- 7.11.42 R Subject to CASS 7.11.44R, *money* ceases to be *client money* for a *firm* if:
- (1) it is transferred by the *firm* to another *person* as part of a transfer of business to that *person* where the *client money* relates to the business being transferred;
 - (2) it is transferred on terms which require the other *person* to return a *client's* transferred sums to the *client* as soon as practicable at the *client's* request;
 - (3) a written agreement between the *firm* and the relevant *client* provides that:
 - (a) the *firm* may transfer the *client's client money* to another *person*; and
 - (b)
 - (i) the sums transferred will be held by the *person* to whom they are transferred in accordance with the *client money rules* for the *clients*; or
 - (ii) if not held in accordance with (i), the *firm* will exercise all due skill, care and diligence in assessing whether the *person* to whom the *client money* is transferred will apply adequate measures to protect these sums; and
 - (4) the *firm* complies with the requirements in (3)(b)(ii) (if applicable).
- 7.11.43 G In considering how and whether to introduce the written agreement referred to in CASS 7.11.42R (3), *firms* should have regard to any relevant obligations to *clients*, including requirements under the *Unfair Terms Regulations*.

Transfer of business: de minimis sums

- 7.11.44 R
- (1) *Client money* belonging to those categories of *clients* set out in (2) and in respect of those amounts set out in (2) ceases to be *client money* of the *firm* if it is transferred by the *firm* to another *person*:
 - (a) as part of a transfer of business to that other *person* where these sums relate to the business being transferred; and
 - (b) on terms which require the other *person* to return a *client's* transferred sums as soon as practicable at the *client's* request.
 - (2)
 - (a) For *retail clients* the amount is £25.
 - (b) For all other *clients* the amount is £100.

- 7.11.45 G For the avoidance of doubt, sums transferred under CASS 7.11.44R do not, for the purposes of that *rule*, require the instruction or specific consent of each *client* at the time of the transfer or a written agreement as set out in CASS 7.11.42R (3).

Transfer of business: client notifications

- 7.11.46 R Where a *firm* transfers *client money* belonging to its *clients* under either or both of CASS 7.11.42R and CASS 7.11.44R, it must ensure that those *clients* are notified no later than seven *days* after the transfer taking place:
- (1) whether or not the sums will be held by the person to whom they have been transferred in accordance with the *client money rules* and, if not, how the sums being transferred will be held by that *person*;
 - (2) the extent to which the sums transferred will be protected under a compensation scheme; and
 - (3) that the *client* may opt to have the *client's* transferred sum returned to it as soon as practicable at the *client's* request.
- 7.11.47 R The *firm* must notify the *FCA* of its intention to effect any transfer of *client money* under either or both of CASS 7.11.42R and CASS 7.11.44R at least seven *days* before it transfers the *client money* in question.

Allocated but unclaimed client money

- 7.11.48 G The purpose of CASS 7.11.50R is to set out the requirements *firms* must comply with in order to cease to treat as *client money* any unclaimed balance which is allocated to an individual *client*.
- 7.11.49 G Before acting in accordance with CASS 7.11.50R to CASS 7.11.58G, a *firm* should consider whether its actions are permitted by law and consistent with the arrangements under which the *client money* is held. For the avoidance of doubt, these provisions relate to a *firm's* obligations as an *authorised person* and to the treatment of *client money* under the *client money rules*.
- 7.11.50 R A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under CASS 7.11.34R(10), provided:
- (1) this is permitted by law and consistent with the arrangements under which the *client money* is held;
 - (2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);
 - (3) it can demonstrate that it has taken reasonable steps to trace the

client concerned and to return the balance; and

(4) the *firm* complies with CASS 7.11.54R.

7.11.51 G Where the *client money* balance held by a *firm* is, in aggregate, £100 or less for a *client* other than a *retail client* or, for a *retail client*, £25 or less, the *firm* may comply with CASS 7.11.57R instead of CASS 7.11.50R.

7.11.52 E (1) Taking reasonable steps in CASS 7.11.50R(3) includes following this course of conduct:

- (a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;
- (b) writing to the *client* at the last known address either by post or by electronic mail to inform it of the *firm's* intention to no longer treat the *client money* balance as *client money* and to pay the sums concerned to charity if the *firm* does not receive instructions from the *client* within 28 days;
- (c) where the *client* has not responded after the 28 days referred to in (b), attempting to communicate the information set out in (b) to the *client* on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;
- (d) subject to (e) and (f), where the *client* has not responded within 28 days following the most recent communication, writing again to the *client* at the last known address either by post or by electronic mail to inform them that:
 - (i) as the *firm* did not receive a claim for the relevant *client money* balance, it will in 28 days pay the balance to a registered charity; and
 - (ii) an undertaking will be provided by the *firm* or a member of its *group* to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future;
- (e) if the *firm* has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the *client* is no longer at a particular address, the *firm* should not use that address for the purposes of (d);
- (f) if, after carrying out the steps in (a), (b) and (c), the *firm* has obtained positive confirmation that none of the contact details it holds for the relevant *client* are accurate or, if utilised, the communication is unlikely to reach the *client*, the *firm* does not have to comply with (d); and

- (g) waiting a further 28 *days* following the most recent communication under this *rule* before paying the balance to a registered charity.
 - (2) Compliance with (1) may be relied on as tending to establish compliance with CASS 7.11.50R.
 - (3) Contravention of (1) may be relied on as tending to establish contravention of CASS 7.11.50R.
- 7.11.53 G For the purpose of CASS 7.11.52R(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including telephoning the *client*, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.
- 7.11.54 R (1) Where a *firm* wishes to release a balance allocated to an individual *client* under CASS 7.11.50R it must comply with either (a) or (b) and, in either case, (2):
- (a) the *firm* must unconditionally undertake to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future; or
 - (b) the *firm* must ensure that an unconditional undertaking in the terms set out in (a) is made by a member of its *group* and there is suitable information available for relevant *clients* to identify the member of the *group* granting the undertaking.
- (2) The undertakings in this *rule* must be:
- (a) authorised by the *firm's governing body* where (1)(a) applies or by the *governing body* of the *group* member where (1)(b) applies;
 - (b) legally enforceable by any *person* who had a legally enforceable claim to the balance in question at the time it was released by the *firm*, or by an assign or successor in title to such claim; and
 - (c) retained by the *firm*, and where (1)(b) applies, by the *group* member indefinitely.
- 7.11.55 R (1) If a *firm* pays away *client money* under CASS 7.11.50R(4) it must make and retain, or where the *firm* already has such records, retain:
- (a) records of all balances released from *client bank* accounts under CASS 7.11.50R (including details of the amounts and the identity of the *client* to whom the *money* was allocated);

- (b) all relevant documentation (including charity receipts); and
 - (c) details of the communications the *firm* had or attempted to make with the *client* concerned pursuant to CASS 7.11.50R(3).
- (2) The records in (1) must be retained indefinitely.
 - (2) If a member of the *firm's group* has provided an undertaking under CASS 7.11.54R(2) then the records in (1) must be readily accessible to that *group* member.

De minimis amounts of unclaimed client money

- 7.11.56 G The purpose of CASS 7.11.57R is to allow a *firm* to pay away to charity *client money* balances of (i) £25 or less for *retail clients* or (ii) £100 or less for other *clients* when those balances remain unclaimed. If a *firm* follows this process, the *money* will cease to be *client money* (see CASS 7.11.34R(10)).
- 7.11.57 R A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under CASS 7.11.34R(10), provided:
- (1) the balance in question is (i) for a *retail client*, in aggregate, £25 or less, or (ii) for a *professional client*, in aggregate, £100 or less;
 - (2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);
 - (3) the *firm* has made at least one attempt to contact the *client* to return the balance using the most up-to-date contact details the *firm* has for the *client*, and the *client* has not responded to such communication within 28 days of the communication having been made; and
 - (4) the *firm* makes and/or retains records of all balances released from *client bank* accounts in accordance with this *rule*. Such records must include the information in CASS 7.11.55R (1)(a) and (b).

Costs associated with paying away allocated but unclaimed client money

- 7.11.58 G Any costs associated with the *firm* ceasing to treat unclaimed *client money* balances as *client money* pursuant to CASS 7.11.50R to CASS 7.11.57R should be paid for from the *firm's* own funds, including:
- (1) any costs associated with the *firm* carrying out the steps in CASS 7.11.50R(3), CASS 7.11.51 or CASS 7.11.57R(3); and
 - (2) the cost of any insurance purchased by a *firm* or the relevant

member of its *group* to cover any legally enforceable claim in respect of the *client money* paid away.

7.12 Organisational requirements: client money

Requirement to protect client money

- 7.12.1 R 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*]

Requirement to have adequate organisational arrangements

- 7.12.2 R 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*]

- 7.12.3 G The risk of loss or diminution of rights in connection with *client money* can arise where a *firm's* organisational arrangements give rise to the possibility that *client money* held by the *firm* may be paid for the account of a *client* whose *money* is yet to be received by the *firm*. Consistent with the requirement to hold *client money* as trustee (see *CASS 7.17.5G*), a *firm* should ensure its organisational arrangements are adequate to minimise such a risk. This may include, for example, allowing for sufficient periods of time for payments of *client money* to the *firm* to become available for use (including automated payments, credit card payments and payments by cheque), and setting up safeguards to ensure that payments out of *client bank accounts* do not take effect before the relevant amount of *client money* has become available for use by the *firm*.

7.13 Segregation of client money

Application and purpose

- 7.13.1 G The segregation of *client money* from a *firm's* own *money* is an important safeguard for its protection.
- 7.13.2 R Where a *firm* establishes one or more *sub-pools*, the provisions of *CASS 7.13* (Segregation of client money) shall be read as applying separately to the *firm's* general pool and each *sub-pool* in line with *CASS 7.19.3R* and *CASS 7.19.12R*.

Depositing client money

- 7.13.3 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 *CRD 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*]

- 7.13.4 G A *firm* should ensure that any *money* other than *client money* that is deposited in a *client bank account* is promptly paid out of that account unless such *money* is a minimum sum required to open the account, or to keep the account open.

Approaches for the segregation of client money

- 7.13.5 G The two approaches that a *firm* can adopt in discharging its obligations under this section are:
- (1) the 'normal approach'; or
 - (2) the 'alternative approach' (see *CASS 7.13.54G* to *CASS 7.13.69G*).

The normal approach

- 7.13.6 R Unless otherwise permitted by any other *rule* in *CASS 7.13*, a *firm* using the normal approach must ensure that all *client money* it receives is paid directly into a *client bank account* at an institution referred to in *CASS 7.13.3R(1)* to (3), rather than being first received into the *firm's* own account and then segregated.
- 7.13.7 G *Firms* should ensure that *clients* and third parties make transfers and payments of any *money* which will be *client money* directly into the *firm's* *client bank accounts*.

Selection, appointment and review of third parties

- 7.13.8 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 *CRD 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*]

- 7.13.9 G *Firms* should ensure that their consideration of a *CRD credit institution*, bank or *qualifying money market fund* under CASS 7.13.8R focuses on the specific legal entity in question and not simply that *person's* group as a whole.
- 7.13.10 R When a *firm* makes the selection, appointment and conducts the periodic review of a *CRD 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*]
- 7.13.11 G In complying with CASS 7.13.8R and CASS 7.13.10R, a *firm* should consider, as appropriate, together with any other relevant matters:
- (1) the capital of the *CRD credit institution* or bank;
 - (2) the amount of *client money* placed, as a proportion of the *CRD 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;
 - (3) the extent to which *client money* that the *firm* deposits or holds with any *CRD credit institution* or bank incorporated outside the *UK* would be protected under a deposit protection scheme in the relevant jurisdiction;
 - (4) the credit-worthiness of the *CRD 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 *CRD credit institution* or bank and *affiliated companies*.

Client bank accounts

- 7.13.12 R A *firm* must take the necessary steps to ensure that *client money* deposited, in accordance with CASS 7.13.3R, 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*]
- 7.13.13 R
- (1) An account which the *firm* uses to deposit *client money* under CASS 7.13.3R(1) to (3) must be a *client bank account*.
 - (2) Each *client bank account* used by a *firm* must be held on terms under which:

- (a) the relevant bank's contractual counterparty is the *firm* that is subject to the requirement under CASS 7.13.3R; and
- (b) unless the *firm* has agreed terms that comply with CASS 7.13.13R(3), the *firm* is able to make withdrawals of *client money* promptly and, in any event, within one *business day* of a request for withdrawal.

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

- (3) *Firms* may use *client bank accounts* held on terms under which withdrawals are, without exception, prohibited until the expiry of a fixed term or a notice period of a maximum of 30 days.
 - (4) Paragraphs (2)(b) and (3) do not apply in respect of *client money* received by a *firm* in its capacity as a *trustee firm*.
- 7.13.14 G CASS 7.13.13R(2)(b) and (3) do not prevent a *firm* from depositing *client money* on terms under which a withdrawal may be made before the expiry of a fixed term or a notice period (whatever the duration), including where such withdrawal would incur a penalty charge to the *firm*.
- 7.13.15 G CASS 7.13.13R does not prevent a *firm* from depositing *client money* in overnight money market deposits which are clearly identified as being *client money* (for example, in the *client bank account* acknowledgment letter).
- 7.13.16 G *Firms* are reminded of their obligations under CASS 7.18 (Acknowledgment letters) for *client bank accounts*. *Firms* should also ensure that *client bank accounts* meet the requirements in the relevant *Glossary* definitions, including regarding the titles given to the accounts.
- 7.13.17 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.2.1G (Failure of the authorised firm: primary pooling event)). The requirements of CASS 7.13.13R (2) and (3) apply for each type of *client bank account*.
- 7.13.18 G A *designated client bank account* may be used for a *client* only where that *client* has consented to the use of that account. If a *firm* deposits *client money* into a *designated client bank account* then, in the event of a *secondary pooling event* in respect of the relevant bank, the account will not be pooled with any *general client bank account* or *designated client fund account*.
- 7.13.19 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. If a *firm* deposits *client money* into a *designated client fund account* then, in the event of a *secondary pooling*

event in respect of the relevant bank, the account will not be pooled with any *general client bank account* or *designated client bank account*.

Diversification of client money

- 7.13.20 R Notwithstanding the requirement at CASS 7.13.22R a *firm* must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that the value of those funds do not at any point in time exceed 20 per cent of the total of all the *client money* held by the *firm* in its *client bank accounts*.
- 7.13.21 R For the purpose of CASS 7.13.20R an entity is a relevant group entity if it is:
- (1) a *CRD credit institution* or a bank authorised in a third country; and
 - (2) a member of the same *group* as that *firm*.
- 7.13.22 R Subject to the requirement at CASS 7.13.20R, and in accordance with *Principle 10* and CASS 7.12.1R, a *firm* must:
- (1) periodically assess whether it is appropriate to diversify (or further diversify) the third parties with which it deposits some or all of the *client money* that the *firm* holds; and
 - (2) whenever it concludes that it is appropriate to do so, it must make adjustments accordingly to the third parties it uses and to the amounts of *client money* deposited with them.
- 7.13.23 G In complying with the requirement in CASS 7.13.22R to periodically assess whether diversification (or further diversification) is appropriate, a *firm* should have regard to:
- (1) whether it would be appropriate to deposit *client money* in *client bank accounts* opened at a number of different third parties;
 - (2) whether it would be appropriate to limit the amount of *client money* the *firm* holds with third parties that are in the same *group* as each other;
 - (3) whether risks arising from the *firm's* business models create any need for diversification (or further diversification);
 - (4) the market conditions at the time of the assessment; and
 - (5) the outcome of any due diligence carried out in accordance with CASS 7.13.8R and CASS 7.13.10R.
- 7.13.24 G The *rules* in SUP 16.14 provide that CASS *large firms* and CASS *medium firms* must report to the *FCA* in relation to the identity of the entities with which they deposit *client money* and the amounts of *client money* deposited with those entities. The *FCA* will use that information to monitor compliance with the diversification *rule* in CASS 7.13.20R.

- 7.13.25 R (1) A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a bank or a *qualifying money market fund* under CASS 7.13.8R. The *firm* must make the record on the date it makes the selection or appointment and must keep it from that date until five years after the *firm* ceases to use that particular *person* for the purposes of depositing *client money* under CASS 7.13.3R.
- (2) A *firm* must make a record of each periodic review of its selection and appointment of a bank or a *qualifying money market fund* that it conducts under CASS 7.13.8R, its considerations and conclusions. The *firm* must make the record on the date it completes the review and must keep it from that date until five years after the *firm* ceases to use that particular *person* for the purposes of depositing *client money* under CASS 7.13.3R.
- (3) A *firm* must make a record of each periodic review that it conducts under CASS 7.13.22R, its considerations and conclusions. The *firm* must make the record on the date it completes out the review and must keep it for five years from that date.

Qualifying money market funds

- 7.13.26 R Where a *firm* deposits *client money* with a *qualifying money market fund*, the *firm's* holding of those units in that fund will be subject to any applicable requirements of the *custody rules*.
- [**Note:** recital 23 to the *MiFID implementing Directive*]
- 7.13.27 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.
- 7.13.28 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*]
- 7.13.29 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*; and
 - (3) if it is the case, that the *units* will be held as the *client's safe custody assets* in accordance with the *custody rules*.

Segregation in different currency

- 7.13.30 R A *firm* may segregate *client money* in a different currency from that in which it was received or in which the *firm* is liable to the relevant *client*. 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.

Mixed remittance

- 7.13.31 R Except in the circumstances described in CASS 7.13.72R(1)(a), where a *firm* using the normal approach receives a *mixed remittance* it should:
- (1) in accordance with CASS 7.13.6R, take necessary steps to ensure the *mixed remittance* is paid directly into a *client bank account*; and
 - (2) promptly and, in any event no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the *money* that is not *client money* out of the *client bank account*.

Physical receipts of client money

- 7.13.32 R Where a *firm* receives *client money* in the form of cash, a cheque or other payable order, it must:
- (1) pay the *money* in accordance with CASS 7.13.6R, promptly, and no later than on the *business day* after it receives the *money* into a *client bank account*, unless either:
 - (a) the *money* is received by a business line for which the *firm* uses the alternative approach, in which case the *money* must be paid into the *firm's* own bank account promptly, and no later than on the *business day* after it receives the *money*; or
 - (b) the *firm* is unable to meet the requirement in (1) because of restrictions under the *regulatory system* or law regarding the receipt and processing of *money*, in which case the *money* must be paid in accordance with CASS 7.13.6R as soon as possible;
 - (2) if the *firm* holds the *money* in the meantime before paying it in accordance with CASS 7.13.6R (or in the case of (1)(a), into its own bank account), hold it in a secure location in accordance with *Principle 10*; and
 - (3) in any case, record the receipt of the *money* in the *firm's* books and records in accordance with CASS 7.15 (Records, accounts and reconciliations).

- 7.13.33 R Where a *firm* receives *client money* in the form of a cheque that is dated with a future date, unless the *firm* returns the cheque it must:
- (1) pay the *money* in accordance with CASS 7.13.6R, promptly, and no later than the date on the cheque if the date is a *business day* or the next *business day* after the date on the cheque;
 - (2) in the meantime, hold it in a secure location in accordance with *Principle 10*; and
 - (3) record the receipt of the *money* in the *firm's* books and records in accordance with CASS 7.15 (Records, accounts and reconciliations).

Appointed representatives, tied agents, field representatives and other agents

- 7.13.34 R A *firm* must ensure that *client money* received by its *appointed representatives, tied agents, field representatives* or other agents is:
- (1) received directly into a *client bank account* of the *firm*, where this would have been required if such *client money* had been received by the *firm* otherwise than through its *appointed representatives, tied agents, field representatives* or other agents (see CASS 7.13.6R and CASS 7.13.7G); or
 - (2) if it is received in the form of a cheque or other payable order:
 - (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*, 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*.

- 7.13.35 G Under CASS 7.13.34R(2)(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 and, in any event, no later than the next *business day* after receipt, would fulfil CASS 7.13.34R (2)(b).

Allocation of client money receipts

- 7.13.36 R (1) A *firm* must allocate any *client money* it receives to an individual *client* promptly and, in any case, no later than ten *business days* following the receipt (or where subsequent to the receipt of *money*

it has identified that the *money*, or part of it, is *client money* under CASS 7.13.37R, no later than ten *business days* following that identification).

- (2) Pending a *firm's* allocation of a *client money* receipt to an individual *client* under (1), it must record the received *client money* in its books and records as “unallocated client money”.

- 7.13.37 R If a *firm* receives money (either in a *client bank account* or an account of its own) which it is unable to immediately identify as *client money* or its own *money*, it must:
- (1) take all necessary steps to identify the *money* as either *client money* or its own *money*;
 - (2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as “unidentified client money” while it performs the necessary steps under (1).

- 7.13.38 G If a *firm* is unable to identify *money* that it has received as either *client money* or its own *money* under CASS 7.13.37R, it should consider whether it would be appropriate to return the *money* to the person who sent it or to the source from where it was received, for example, the banking institution).

Money due to a client from a firm

- 7.13.39 R Pursuant to the *client money segregation requirements*, a *firm* that is operating the normal approach and 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*.

- 7.13.40 G Where the *firm* has payment instructions from the *client* the *firm* should pay the *money* to the order of the *client*, rather than into a *client bank account*.

Prudent segregation

- 7.13.41 R If it is prudent to do so to prevent a *shortfall* in *client money* on the occurrence of a *primary pooling event*, a *firm* may pay *money* of its own into a *client bank account* and subsequently retain that *money* in the *client bank account* (*prudent segregation*). *Money* that the *firm* retains in a *client bank account* under this *rule* is *client money* for the purposes of the *client money rules* and the *client money distribution rules*.

- 7.13.42 G A *firm* must make and retain an up-to-date record of all payments made under CASS 7.13.41R. (See further CASS 7.13.50R to 7.13.53R: the prudent segregation record.)
- 7.13.43 R If a *firm* intends to pay its own *money* into a *client bank account* under CASS 7.13.41R it must establish a written policy that is approved by its *governing body* (and retain such policy for a period of at least five years after the date it ceases to retain such *money* in a *client bank account* under CASS 7.13.41R) detailing:
- (1) the specific anticipated risks in relation to which it would be prudent for the *firm* to make such payments into a *client bank account*;
 - (2) why the *firm* considers that the use of such a payment is a reasonable means of protecting *client money* against each of the risks set out in the policy; and
 - (3) the method that the *firm* will use to calculate the amount required to address each risk set out in the policy.
- 7.13.44 R The *firm* may amend its written policy to reflect changes in the specific anticipated risks in relation to which it would be prudent for the *firm* to make payments into a *client bank account* under CASS 7.13.41R.
- 7.13.45 R The *firm's* written policy must not conflict with the *client money rules* or the *client money distribution rules*. If there is a conflict, the *client money rules* and the *client money distribution rules* will prevail.
- 7.13.46 G In the event the *firm* faces a risk not contemplated under its current policy it will not be prevented from prudently segregating *money* as *client money* in accordance with these *rules* but the policy must be created or amended, as applicable, as soon as reasonably practicable.
- 7.13.47 G Examples of the types of risks that a *firm* may wish to provide protection for under CASS 7.13.41R include systems failures and business that is conducted on non-*business days* where the *firm* would be unable to pay any anticipated *shortfall* into its *client bank accounts*.
- 7.13.48 R To the extent that the *firm* no longer considers it prudent to retain *money* in its *client bank account* pursuant to CASS 7.13.41R in order to ensure that *client money* is protected, the *firm* may cease to treat that *money* as *client money*.
- 7.13.49 R Any *money* that the *firm* ceases to treat as *client money* pursuant to CASS 7.13.48R must be withdrawn from its *client bank account* as an excess under CASS 7.15.29R as part of its next reconciliation.

Prudent segregation record

- 7.13.50 R A *firm* must create and keep up-to-date records so that the amount of *money*

paid into *client bank accounts* and retained as *client money* pursuant to CASS 7.13.41R or withdrawn pursuant to CASS 7.13.49R, and the reasons for such payment, retention and withdrawal can be easily ascertained (the *prudent segregation record*).

- 7.13.51 R The *prudent segregation record* must record:
- (1) the outcome of the *firm's* calculation of its *prudent segregation*;
 - (2) the amounts paid into or withdrawn from a *client bank account* pursuant to CASS 7.13.41R or CASS 7.13.49R;
 - (3) why each payment or withdrawal is made;
 - (4) in respect of the *firm's* written policy required by CASS 7.13.43R the *firm* must record, as applicable, either:
 - (a) that the payment or withdrawal is made in accordance with that policy; or
 - (b) that the policy will be created or amended to include the reasons for this payment or withdrawal;
 - (5) that the *money* was paid by the *firm* in accordance with CASS 7.13.41R or withdrawn by the *firm* in accordance with CASS 7.13.49R; and
 - (6) the up-to-date total amount of *client money* held pursuant to CASS 7.13.41R.
- 7.13.52 G *Firms* are reminded that payments and records made in accordance with CASS 7.13.51R should not be used as a substitute for a *firm* keeping accurate and timely records in accordance with CASS 7.15 (Records, accounts and reconciliations) and requirements under SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (Compliance).
- 7.13.53 R The *prudent segregation record* must be retained for five years after the *firm* ceases to retain *money* as *client money* pursuant to CASS 7.13.41R.

The alternative approach to client money segregation

- 7.13.54 G (1) In certain circumstances, use of the normal approach for a particular business line of a *firm* could lead to significant operational risks to *client money* protection. These may include a business line under which *clients'* transactions are complex, numerous, closely related to the *firm's* proprietary business and/or involve a number of currencies and time zones. In such circumstances, subject to meeting the relevant criteria and fulfilling the relevant notification and audit requirements, a *firm* may use the alternative approach to segregating *client money* for that business line.

- (2) Under the alternative approach, *client money* is received into and paid out of a *firm's* own bank account. A *firm* that adopts the alternative approach to segregating *client money* should (in line with CASS 7.15.16R(2)) carry out an *internal client money reconciliation* on each *business day* ('T0') and calculate how much *money* it either needs to withdraw from, or place in from its own bank account or its *client bank account* as a result of any discrepancy arising between its *client money requirement* and its *client money resource* as at the close of business on the previous *business day* ('T-1').
- (3) The *alternative approach mandatory prudent segregation* required under CASS 7.13.65R is designed to address the risks that:
- (a) *client money* in a *firm's* own bank account may not be available to be pooled for distribution to *clients* on the occurrence of a *primary pooling event*; and
 - (b) at the time of a *primary pooling event* the *firm* may not have segregated in its *client bank account* a sufficient amount of *client money* to meet its *client money requirement*.
- 7.13.55 R A *firm* that wishes to adopt the alternative approach for a particular business line must first establish, and document in writing, its reasons for concluding, that:
- (1) adopting the normal approach would lead to greater operational risks to *client money* protection compared to the alternative approach;
 - (2) adopting the alternative approach (including complying with the requirements for *alternative approach mandatory prudent segregation* under CASS 7.13.65R), would not result in undue operational risk to *client money* protection; and
 - (3) the *firm* has systems and controls that are adequate to enable it to operate the alternative approach effectively and in compliance with *Principle 10* (Clients' assets).
- 7.13.56 R A *firm* must retain any documents created under CASS 7.13.55R in relation to a particular business line for a period of at least five years after the date it ceases to use the alternative approach in connection with that business line.
- 7.13.57 R At least three *months* before adopting the alternative approach for a particular business line, a *firm* must:
- (1) inform the *FCA* in writing that it intends to adopt the alternative approach for that particular business line; and
 - (2) if requested by the *FCA*, make any documents it created under

CASS 7.13.54R available to the *FCA* for inspection.

- 7.13.58 R (1) In addition to the requirement under CASS 7.13.57R, before adopting the alternative approach, a *firm* must send a written report to the *FCA* prepared by an independent auditor of the *firm* in line with a *reasonable assurance engagement*, stating the matters set out in (2).
- (2) The written report in (1) must state whether, in the auditor's opinion:
- (a) the *firm's* systems and controls are suitably designed to enable it to comply with CASS 7.13.62R to CASS 7.13.65R; and
- (b) the *firm's* calculation of its *alternative approach mandatory prudent segregation* amount under CASS 7.13.65R is suitably designed to enable the *firm* to comply with CASS 7.13.65R.
- 7.13.59 R (1) A *firm* that uses the alternative approach must review, at least on an annual basis and with no more than one year between each review, whether its reasons for adopting the alternative approach for a particular business line, as documented under CASS 7.13.55R, continue to be valid.
- (2) If, following the review in (1), a *firm* finds that its reasons for adopting the alternative approach are no longer valid for a particular business line, it must stop using the alternative approach for that business line as soon as reasonably practicable, and in any event within six months of the conclusion of its review in (1).
- 7.13.60 R A *firm* that uses the alternative approach must not materially change how it will calculate and maintain the *alternative approach mandatory prudent segregation* amount under CASS 7.13.65R unless:
- (1) an auditor of the *firm* has prepared a report that complies with the requirements in CASS 7.13.58R(2)(b) in respect of the *firm's* proposed changes; and
- (2) the *firm* provides a copy of the report prepared by the auditor under (a) to the *FCA* before implementing the change.
- 7.13.61 G A *firm* is reminded that, under SUP 3.4.2R, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.
- 7.13.62 R A *firm* that uses the alternative approach for a particular business line must, on each *business day* ('T0'):
- (1) receive any *money* from and pay any *money* to (or, in either case,

on behalf of) *clients* into and out of its own bank accounts;

- (2) perform the necessary reconciliations of records and accounts required under CASS 7.15 (Records, accounts and reconciliations);
- (3) adjust the balances held in its *client bank account* (by effecting transfers between its own bank account and its *client bank account*) to address any difference arising between its *client money requirement* and its *client money resource* as at the close of business on the previous *business day* ('T-1'), so that the correct amount reflected in the reconciliations under (2) is segregated in its *client bank account*; and
- (4) subject to CASS 7.13.63R below, keep segregated in its *client bank account* the balance held under (3) until it has performed a reconciliation on the following *business day* ('T+1') and as a result of that reconciliation is undertaking further adjustments under (3).

7.13.63 R During the period between the adjustment in CASS 7.13.62R(3) and the completion of the next reconciliations in CASS 7.13.62R(2), a *firm* that uses the alternative approach for a particular business line may:

- (1) increase the balance held in its *client bank account* by making intra-day transfers (during T0) from its own bank account to its *client bank account* before the completion of the internal *client money* reconciliation under CASS 7.13.62R(2) (that is expected sometime later on T0) only if:
 - (a) the *firm* reasonably expects that the *client money requirement* for the previous *business day* (T-1) will increase above the *client money resource* currently (during T0) held in its *client bank account*; and
 - (b) such reasonable expectations are based on the working calculation of the *client money requirement* relating to the previous *business day* (T-1) that the *firm* has already determined on that *business day* (during T0) (as part of the process of completing its internal *client money* reconciliation); or
- (2) decrease the balance held in its *client bank account* by making intra-day transfers (during T0) from its *client bank account* to its own bank account before the completion of the internal *client money* reconciliation under CASS 7.13.62R (2) (that is expected sometime later on T0) only if:
 - (a) the *firm* reasonably expects that the *client money requirement* for the previous *business day* (T-1) will decrease below the *client money resource* currently held (during T0) in its *client bank account*; and

- (b) such reasonable expectations are based on the working calculation of the *client money requirement* relating to the previous *business day* (T-1) that the *firm* has already determined on that *business day* (during T0) (as part of the process of completing its *internal client money reconciliation*).

However, in doing so, a *firm* must act prudently and should take appropriate steps to manage the risk of not having segregated an amount that appropriately reflects its actual *client money requirement* at any given time.

- 7.13.64 G It is anticipated that CASS 7.13.63R may be used by *firms* which maintain *client bank accounts* in a number of different time zones and making adjustments to the balances of those *client bank accounts* is dependent on meeting cut off times for money transfers in those time zones.
- 7.13.65 R (1) A *firm* that uses the alternative approach must, in addition to CASS 7.13.62R, pay an amount (determined in accordance with this *rule*) of its own *money* into its *client bank account* and subsequently retain that *money* in its *client bank account* (*alternative approach mandatory prudent segregation*). The amount segregated by a *firm* in its *client bank account* under this *rule* is *client money* for the purposes of the *client money rules* and the *client money distribution rules*.
- (2) The amount required to be segregated under this *rule* must be an amount that a *firm* reasonably determines would be sufficient, at the time it makes the determination, to protect *client money* against the risk that at any time in the following three months the following categories of *client money* may not have been fully segregated in its *client bank account* or may not be (or become) available for pooling under CASS 7A.2.4R(1), were a *primary pooling event* to occur:
- (a) *client money* that is received and held by the *firm* in its own bank account during the period between:
- (i) the *firm's* adjustment of *client bank account* balances under CASS 7.13.62R(3) on a particular *business day*; and
- (ii) the *firm's* subsequent adjustments under CASS 7.13.62R(3) on the following *business day*; and
- (b) *money* received and held by the *firm* in its own bank account which the *firm* does not initially identify as part of its *client money requirement*, but which subsequently does become part of its *client money requirement*;

with the effect that the *firm's alternative approach mandatory prudent segregation* under this *rule* will reduce, as far as possible,

any *shortfall* that might have been produced as a result of (a) or (b) on the occurrence of a *primary pooling event*.

- (3) (a) Subject to (c), in reaching its determination under (2) of the amount of *money* that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a *firm* must take into account the following in respect of each business line for which it uses the alternative approach, and for at least the previous three months:
- (i) the *firm's client money requirement* over the course of that prior period (excluding any amount that was required to be segregated under this *rule* during that prior period for the purposes of *alternative approach mandatory prudent segregation*);
 - (ii) the daily adjustment payments that the *firm* made into its *client bank account* under CASS 7.13.62R(3) during that prior period; and
 - (iii) the amount of *money* received by the *firm* in its own bank account which it did not initially identify as part of its *client money requirement*, but which subsequently, and during that prior period, became part of its *client money requirement*;
- as shown in its internal records.
- (b) In reaching its determination under (2) a *firm* must also take into account, but at all times having regard to the requirement under (2), any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business lines may have on:
- (i) the *firm's client money requirement* during the forthcoming three months for which the amount of *alternative approach mandatory prudent segregation* required under this *rule* is being determined;
 - (ii) the daily adjustment payments that the *firm* is likely to make into its *client bank account* under CASS 7.13.62R(3) in that same period; and
 - (iii) the amount of unidentified receipts of *money* that the *firm* is likely to receive into its own bank account and which will subsequently, in that same period, become part of its *client money requirement*.
- (c) If, at the time of its determination under (2), the *firm* has not

been trading for three months in a business line for which it is using the alternative approach, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to establish a three-month reference period.

- (4) (a) A *firm* must, at regular intervals that are at least quarterly, repeat and complete the combined process of:
- (i) determining the amount that it is required to segregate for the purposes of *alternative approach mandatory prudent segregation* under (2) and (3);
 - (ii) making necessary adjustments to its records to reflect any changes to its *client money requirement* (in accordance with CASS 7.16.16R(3) and CASS 7.16.17R(2)); and
 - (iii) paying any additional amounts of its own *money* into its *client bank account* to increase the *firm's alternative approach mandatory prudent segregation* or withdrawing any excess amounts from its *client bank account* to decrease the *firm's alternative approach mandatory prudent segregation* after it has adjusted its records under (ii).
- (b) The combined process of (a)(i) to (iii) must take no longer than ten *business days*.
- (c) To the extent that a *firm's* compliance with (a)(i) and (ii) results in there being an excess in the *firm's client bank account*, the *firm* may cease to treat that *money* as *client money*.
- (5) A *firm* must ensure that the individual responsible for CASS oversight under CASS 1A.3.1R, CASS 1A.3.1AR or CASS 1A.3.1CR (as appropriate) reviews the adequacy of the amount of the *firm's alternative approach mandatory prudent segregation* maintained under this *rule* at least annually.

Alternative approach mandatory prudent segregation record

- 7.13.66 R A *firm* must create and keep up-to-date records so that any amount of *money* that is, pursuant to CASS 7.13.65R:
- (1) paid into a *client bank account* and retained as *client money*; or
 - (2) withdrawn from a *client bank account*;
- can be easily ascertained (the *alternative approach mandatory prudent*

segregation record).

- 7.13.67 R The alternative *approach mandatory prudent segregation record* under CASS 7.13.66R must record:
- (1) the date of the first determination under CASS 7.13.65R(2) and each subsequent review undertaken under CASS 7.13.65R(4), and the total amount that the *firm* determined was required to be segregated under CASS 7.13.65R(2) as at that date;
 - (2) the date of any payment of the *firm's* own money into a *client bank account*, or withdrawal of any excess from a *client bank account* under CASS 7.13.65R, and for each such occasion:
 - (a) the amount of the payment or withdrawal;
 - (b) the fact that the *money* was paid or withdrawn by the *firm* in accordance with CASS 7.13.65R; and
 - (c) as at that date, the total amount actually segregated by the *firm* under CASS 7.13.65R.

- 7.13.68 R The *alternative approach mandatory prudent segregation record* must be retained for five years after the *firm* ceases to segregate any *money* in accordance with CASS 7.13.65R.

- 7.13.69 G Nothing in CASS 7.13.54G to CASS 7.13.68R prevents a *firm* from also making use of the *prudent segregation* rule in CASS 7.13.41R.

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

- 7.13.70 G CASS 7.13.72R sets out the circumstances under which a *firm*, that would otherwise be required to comply with the requirement in CASS 7.13.6R to receive *client money* directly into a *client bank account*, must receive *client money* into its own bank account.
- 7.13.71 R A *firm* that is also a *clearing member* that is using the normal approach in connection with *regulated clearing arrangements* must use reasonable endeavours to ensure it is not required under its arrangements with an *authorised central counterparty* to receive *mixed remittances* from or pay *mixed remittances* to the *authorised central counterparty* through a single bank account.
- 7.13.72 R
- (1) If, notwithstanding its reasonable endeavours in accordance with CASS 7.13.71R, the *firm* is required under its arrangements with an *authorised central counterparty* to:
 - (a) receive *mixed remittances* into a single bank account and pay *mixed remittances* to the *authorised central counterparty* from that bank account; or

- (b) pay *mixed remittances* to the *authorised central counterparty* using a single bank account;

it must comply, as applicable, with (2) and CASS 7.13.73R.

- (2) (a) In either or both of the circumstances described in (1), the *firm* must pay any *mixed remittances* from its own bank account.
- (b) Where, in the circumstances described in (1)(a) *mixed remittances* from an *authorised central counterparty* are received into a *firm's* own account it must transfer the *client money* element of the *mixed remittance* to its *client bank account* promptly and, in any event, no later than the next *business day* after receipt.

- 7.13.73 R (1) Where the circumstances described in CASS 7.13.72(1)(a) apply to a *firm* it must pay an amount (determined in accordance with this *rule*) of its own *money* into its *client bank* account and retain that *money* in its *client bank account* (*clearing arrangement mandatory prudent segregation*). The amount segregated by a *firm* in its *client bank account* under this *rule* will be *client money* for the purposes of the *client money rules* and the *client money distribution rules*.
- (2) The amount required to be segregated under this *rule* must be an amount that a *firm* reasonably determines would be sufficient, at the time it makes the determination, to protect *client money* against the risk that at any time in the following three months *client money* received from the *authorised central counterparty* and held by the *firm* in its own bank account following receipt of these monies under CASS 7.13.72R(1)(a) and until their transfer in accordance with CASS 7.13.72R(2)(b) may not have been fully segregated in its *client bank account* or may not be (or become) available for pooling under CASS 7A.2.4R(1), were a *primary pooling event* to occur with the effect that the *firm's clearing arrangement mandatory prudent segregation* under this *rule* will reduce, as far as possible, any *shortfall* that might have been produced as a result of this risk on the occurrence of a *primary pooling event*.
- (3) (a) Subject to (c), in reaching its determination under (2) of the amount of *money* that would be sufficient to address the risks referred to in (2) for the forthcoming three months, a *firm* must take into account the following for at least the previous three months:
- (i) the *firm's client money requirement* over the course of that prior period (excluding any amount that was required to be segregated under this *rule* during that prior period for the purposes of *clearing arrangement mandatory prudent segregation*); and

- (ii) the payments that the *firm* made into its *client bank account* under CASS 7.13.72R(2)(b) during that prior period;

as shown in its internal records.

- (b) In reaching its determination under (2) a *firm* must also take into account, at all times having regard to the requirement under (2), any impact that particular events, the seasonal nature of each relevant business line, or any other aspect of those business line(s) may have on:
 - (i) the *firm's client money requirement* during the forthcoming three months for which the amount of *clearing arrangement mandatory prudent segregation* required under this *rule* is being determined; and
 - (ii) the payments that the *firm* is likely to make into its *client bank account* under CASS 7.13.72R(2)(b).
- (c) If, at the time of its determination under (2), the *firm* has not been trading for three months in a business line for which it is using the normal approach in connection with *regulated clearing arrangements*, then it must use the records that are available to it and must also factor in reasonable forecasts, as required under (b), to make up a three-month reference period.
- (4) (a) A *firm* must, at regular intervals that are at least quarterly, repeat and complete the combined process of:
 - (i) determining the amount that it is required to segregate for the purposes of *clearing arrangement mandatory prudent segregation* under (2) and (3);
 - (ii) making necessary adjustments to its records to reflect any changes to its *client money requirement* in accordance with CASS 7.16.16R(3) and CASS 7.16.17R(1); and
 - (iii) paying any additional amounts of its own *money* into its *client bank account* to increase the *firm's clearing arrangement mandatory prudent segregation* or withdrawing any excess amounts from its *client bank account* to decrease the *firm's clearing arrangement mandatory prudent segregation* after it has adjusted its records under (ii).
- (b) The combined process of (a)(i) to (iii) must take no longer

than ten *business days*.

(c) To the extent that a *firm's* compliance with (a)(i) and (ii) results in there being an excess in the *firm's client bank account*, the *firm* may cease to treat that *money* as *client money*.

(5) A *firm* must ensure that the individual responsible for CASS oversight under CASS 1A.3.1R, CASS 1A.3.1AR or CASS 1A.3.1CR (as appropriate) reviews the adequacy of the amount of the *firm's clearing arrangement mandatory prudent segregation* maintained under this *rule* at least annually.

Clearing arrangement mandatory prudent segregation record

7.13.74 R A *firm* must create and keep up-to-date records so that any amount of *money* that is, pursuant to CASS 7.13.73R:

- (1) paid into a *client bank account* and retained as *client money*; or
- (2) withdrawn from a *client bank account*;

can be easily ascertained (the *clearing arrangement mandatory prudent segregation record*).

7.13.75 R The *clearing arrangement mandatory prudent segregation record* under CASS 7.13.74R must record:

- (1) the date of the first determination under CASS 7.13.73R(2) and each subsequent review undertaken under CASS 7.13.73R(4), and the total amount that the *firm* determined was required to be segregated under CASS 7.13.73R(2) as at that date;
- (2) the date of any payment of the *firm's own money* into a *client bank account*, or withdrawal of any excess from a *client bank account* under CASS 7.13.73R(4)(a)(iii), and for each such occasion:
 - (a) the amount of the payment or withdrawal;
 - (b) the fact that the *money* was paid or withdrawn by the *firm* in accordance with CASS 7.13.73R; and
 - (c) as at that date, the total amount actually segregated by the *firm* under CASS 7.13.73R.

7.13.76 R The *clearing arrangement mandatory prudent segregation record* must be retained for five years after the *firm* ceases to segregate any *money* in accordance with CASS 7.13.73R.

7.13.77 G Nothing in CASS 7.13.73R to CASS 7.13.76R prevents a *firm* from making use of the prudent segregation rule in CASS 7.13.41R.

7.13.78 G The obligation to use reasonable endeavours referred to in CASS 7.13.71R is a continuing obligation. *Firms* should assess, at least on an annual basis, whether it is possible for payments of *client money* between the *firm* and the *authorised central counterparties* to be made separately from house monies and for such payments to be received into and made from its *client bank accounts*.

7.13.79 G Where a *firm* operates a *sub-pool* in accordance with CASS 7.19 (Clearing member client money sub-pools), the references to *client bank accounts* in CASS 7.13.70G to CASS 7.13.78G should be read as *client bank accounts* pertaining to the relevant *sub-pool*.

7.14 Client money held by a third party

7.14.1 G This section sets out the requirements a *firm* must comply with when it allows another *person* to hold *client money*, other than under CASS 7.13.3R, without discharging its fiduciary duty 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 equity balance* held at the *intermediate broker* until the contract is terminated and all of that *client's* positions at that *broker* closed. Similarly, this section applies where a *firm* allows a broker to hold *client money* in respect of the *firm's client's non-margined transactions*, again without the *firm* discharging its fiduciary duty to that *client*. In all cases, 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 7.11.34R).

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

- (1) the *firm* allows that *person* to hold the *client money*:
 - (a) for the purpose of one or more transactions 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 *firm* may allow the other *person* to hold its *client money*.

7.14.3 G *Client money* that a *firm* allows another person to hold under CASS 7.14.2R:

- (1) should only be held for transactions which are likely to occur (and for which the other *person* needs to receive *client money*) or have recently settled (and such that the other *person* has received *client money*); and
 - (2) should be recorded in *client transaction accounts* by that other *person*.
- 7.14.4 G Apart from *client money* held by a *firm* in an *individual client account* or an *omnibus client account* at an *authorised central counterparty*, a *firm* should not hold excess *client money* in its *client transaction accounts*.

Client money arising from, or in connection with, safe custody assets

- 7.14.5 G (1) *Money* arising from, or in connection with, the holding of a *safe custody assets* by a *firm* which is due to *clients* should, unless treated otherwise under the *client money rules*, be treated as *client money* by the *firm*.
- (2) *Firms* are reminded of the *guidance* in CASS 6.1.2G.
- 7.14.6 R If a *firm* has deposited *safe custody assets* with a third party under CASS 6.3 and *client money* arises from, or in connection with, those *safe custody assets* then the *firm* must ensure that the third party either deposits the money in a *client bank account* of the *firm* or records it in a *client transaction account* for the benefit of the *firm clients* as appropriate.
- 7.14.7 G *Firms* are reminded of the *guidance* in CASS 7.14.4G which is applicable to *client transaction accounts*.
- 7.14.8 G If the third party holding the *safe custody assets* under CASS 7.14.6R is a bank with which the *firm* is permitted to deposit *client money* under CASS 7.13.3R, then the *client bank account* referred to in CASS 7.14.6R may be an account with that bank.
- 7.14.9 G *Firms* are reminded of the requirements under CASS 7.18 for *acknowledgement letters*, which must be complied with before using *client bank accounts* and *client transaction accounts*.

7.15 Records, accounts and reconciliations

- 7.15.1 G (1) This section sets out the requirements a *firm* must meet when keeping records and accounts of the *client money* it holds.
- (2) Where a *firm* establishes one or more *sub-pools*, the provisions of CASS 7.15 (Records, accounts and reconciliations) shall be read as applying separately to the *firm's general pool* and each *sub-pool* in line with CASS 7.19.3R and CASS 7.19.4R.

- 7.15.2 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*]

- 7.15.3 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*]

- 7.15.4 G The requirements in CASS 7.15.2R to CASS 7.15.3R are for a *firm* to keep internal records and accounts of *client money*. Therefore, any records falling under those requirements should be maintained by the *firm* and should be separate to any records the *firm* may have obtained from any third parties, such as those with or through whom it may have deposited, or otherwise allowed to hold, *client money*.

Record keeping

- 7.15.5 R (1) A *firm* must maintain records so that it is able to promptly determine the total amount of *client money* it should be holding for each of its *clients*.
- (2) A *firm* must ensure that its records are sufficient to show and explain its transactions and commitments for its *client money*.
- (3) Unless otherwise stated, a *firm* must ensure that any record made under the this chapter is retained for a period of five years starting from the later of:
- (a) the date it was created; and
- (b) (if it has been modified since the date it was created), the date it was most recently modified.
- 7.15.6 G Unless required sooner under another *rule* in this chapter, in complying with CASS 7.15.5R(1) a *firm* should ensure it is able to determine the total amount of *client money* it should be holding for each *client* within two *business days* of having taken a decision to do so or at the request of the *FCA*.
- 7.15.7 R For each *internal client money reconciliation* and *external client money reconciliation* the *firm* conducts, it must ensure that it records:
- (1) the date it carried out the relevant process;
- (2) the actions the *firm* took in carrying out the relevant process; and
- (3) the outcome of its calculation of its *client money requirement* and

client money resource.

Policies and procedures

- 7.15.8 G *Firms* are reminded that they must, under SYSC 6.1.1R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* under this chapter. This should include, for example, establishing and maintaining policies and procedures concerning:
- (1) the frequency and method of the reconciliations the *firm* is required to carry out under this section;
 - (2) the resolution of reconciliation discrepancies under this section; and
 - (3) the frequency at which the *firm* is required to review its arrangements in compliance with this chapter.

Receipts of client money

- 7.15.9 R A *firm* must maintain appropriate records that account for all receipts of *client money* in the form of cash, cheque or other payable order that are not yet deposited in a *client bank account* (see CASS 7.13.32R and CASS 7.13.33R).
- 7.15.10 G *Firms* following one of the *standard methods of internal client money reconciliation* in CASS 7.16 are also reminded that they must, as part of their *internal client money reconciliation*, take into account all receipts of *client money* in the form of cash, cheque or other payable order that are not yet deposited in a *client bank account* (see CASS 7.13.32R and CASS 7.13.33R).

Payments made to discharge fiduciary duty

- 7.15.11 R If a *firm* draws a cheque, or other payable order, to discharge its fiduciary duty to its *clients*, it must continue to record its obligation to its *clients* until the cheque, or other payable order, is presented and paid by the bank.

Internal client money reconciliations

- 7.15.12 R An *internal client money reconciliation* requires a *firm* to carry out a reconciliation of its internal records and accounts of the amount of *client money* that the *firm* holds for each *client* with its internal records and accounts of the *client money* the *firm* should hold in *client bank accounts* or has placed in *client transaction accounts*.
- 7.15.13 R In carrying out an *internal client money reconciliation*, a *firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records) rather than the values contained in the records it has obtained from banks and other third parties with whom it has placed *client money* (for example, bank statements).

- 7.15.14 G An *internal client money reconciliation* should:
- (1) be one of the steps a *firm* takes to arrange adequate protection for *clients'* assets when the *firm* is responsible for them (see *Principle 10* (Clients' assets), as it relates to *client money*);
 - (2) be one of the steps a *firm* takes to satisfy its obligations under CASS 7.12.2R and CASS 7.15.3R and, where relevant, SYSC 4.1.1R(1) and SYSC 6.1.1R, to ensure the accuracy of the *firm's* records and accounts;
 - (3) for the normal approach to segregating *client money* (CASS 7.13.6R), check whether the amount of *client money* recorded in the *firm's* records as being segregated in *client bank accounts* meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis; and
 - (4) for the alternative approach to segregating *client money* (CASS 7.13.62R), calculate the amount of *client money* to be segregated in *client bank accounts* which meets the *firm's* obligations to its *clients* under the *client money rules* on a daily basis.
- 7.15.15 R (1) A *firm* must perform an *internal client money reconciliation*:
- (a) each *business day*; and
 - (b) based on the records of the *firm* as at the close of business on the previous *business day*.
- (2) When performing an *internal client money reconciliation*, a *firm* must, subject to (3), follow one of the *standard methods of internal client money reconciliation* in CASS 7.16.
- (3) A *firm* proposing to follow a *non-standard method of internal client money reconciliation* must comply with the requirements in CASS 7.15.17R to CASS 7.15.19G.
- 7.15.16 R (1) A *firm* which has adopted the normal approach to segregating *client money* (see CASS 7.13.6R) must use the *internal client money reconciliation* to check whether its *client money resource*, as at the close of business on the previous *business day*, was equal to its *client money requirement* at the close of business on that previous day.
- (2) A *firm* that adopts the alternative approach to segregating *client money* (see CASS 7.13.54G) must use the *internal client money reconciliation* to ensure that its *client money resource* as at the close of business on any *day* it carries out an *internal client money reconciliation* is equal to its *client money requirement* at the close of business on the previous day.

Non-standard method of internal client money reconciliation

- 7.15.17 R A *non-standard method of internal client money reconciliation* is a method of *internal client money reconciliation* which does not meet the requirements in CASS 7.16 (The standard methods of internal client money reconciliation).
- 7.15.18 R (1) Before using a *non-standard method of internal client money reconciliation*, a firm must:
- (a) establish and document in writing its reasons for concluding that the method of *internal client money reconciliation* it proposes to use will:
 - (i) (for the normal approach to segregating *client money*) check whether the amount of *client money* recorded in the firm's records as being segregated in *client bank accounts* meets the firm's obligation to its *clients* under the *client money rules* on a daily basis; or
 - (ii) (for the alternative approach to segregating *client money*) calculate the amount of *client money* to be segregated in *client bank accounts* which meets the firm's obligations to its *clients* under the *client money rules* on a daily basis;
 - (b) notify the FCA of its intentions to use a *non-standard method of internal client money reconciliation*; and
 - (c) send a written report to the FCA prepared by an independent auditor of the firm in line with a *reasonable assurance engagement* and stating the matters set out in (2).
- (2) The written report in (1)(c) must state whether in the auditor's opinion:
- (a) the method of *internal client money reconciliation* which the firm will use is suitably designed to enable it to (as applicable):
 - (i) (for the normal approach to segregating *client money*) check whether the amount of *client money* recorded in the firm's records as being segregated in *client bank accounts* meets the firm's obligation to its *clients* under the *client money rules* on a daily basis; or
 - (ii) (for the alternative approach to segregating *client money*) calculate the amount of *client money* to be segregated in *client bank accounts* which meets the firm's obligations to its *clients* under the *client money rules* on a daily basis; and
 - (b) the firm's systems and controls are suitably designed to

enable it to carry out the method of *internal client money reconciliation* the *firm* will use.

- (3) A *firm* using a *non-standard method of internal client money reconciliation* must not materially change its method of undertaking *internal client money reconciliations* unless:
- (a) the *firm* has established and documented in writing its reasons for concluding that the changed methodology will meet the requirements in (1)(a)(i) and (ii), as applicable;
 - (b) an auditor of the *firm* has prepared a report that complies with the requirements in (1)(c) and (2) in respect of the *firm's* proposed changes; and
 - (c) the *firm* provides a copy of the report prepared by the auditor under (2) to the *FCA* before implementing the change .

- 7.15.19 G A *firm* is reminded that, under *SUP 3.4.2R*, it must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its function.

External client money reconciliations

- 7.15.20 R A *firm* must conduct, on a regular basis, reconciliations between its internal records and accounts and those of any third parties which hold *client money*.

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

- 7.15.21 G The purpose of an *external client money reconciliation* is to ensure the accuracy of a *firm's* internal records and accounts against those of any third parties by whom *client money* is held.

Frequency of external client money reconciliations

- 7.15.22 R A *firm* must perform an *external client money reconciliation*:
- (1) as regularly as is necessary but without allowing more than one month to pass between each *external client money reconciliation*; and
 - (2) as soon as reasonably practicable after the date to which the *external client money reconciliation* relates.
- 7.15.23 R When determining the frequency at which it will undertake *external client money reconciliations*, a *firm* must have regard to:
- (1) the frequency, number and value of transactions which the *firm* undertakes in respect of *client money*; and
 - (2) the risks to which the *client money* is exposed, such as the nature, volume and complexity of the *firm's* business and where and with

whom *client money* is held.

- 7.15.24 R (1) A *firm* must make and retain records sufficient to show and explain any decision it has taken under CASS 7.15.23R when determining the frequency of its *external client money reconciliation*. Subject to (2), any such records must be retained indefinitely.
- (2) If any decision under CASS 7.15.23R is superseded by a subsequent decision under that *rule* then the record of that earlier decision retained in accordance with (1) need only be retained for a further period of five years from the subsequent decision.
- 7.15.25 G In most circumstances, *firms* which undertake transactions on a daily basis should conduct an *external client money reconciliation* each *business day*.
- 7.15.26 R (1) Subject to (3), a *firm* must review the frequency it conducts its *external client money reconciliations* at least annually to ensure that it continues to comply with CASS 7.15.22R and has given due consideration to the matters in CASS 7.15.23R.
- (2) For each review a *firm* undertakes under (1), it must record the date and the actions it took in reviewing the frequency of its *external client money reconciliations*.
- (3) A *firm* need not carry out a review under (1) if it is conducting *external client money reconciliations* each *business day*.

Method of external client money reconciliations

- 7.15.27 R An *external client money reconciliation* requires a *firm* to:
- (1) compare:
- (a) the balance, currency by currency, on each *client bank account* recorded by the *firm*, as set out in the most recent statement or other form of confirmation issued by the bank with which those accounts are held; and
- (b) the balance, currency by currency, on each *client transaction account* as recorded by the *firm*, as set out in the most recent statement or other form of confirmation issued by the *person* with whom the account is held; and
- (2) promptly identify and resolve any discrepancies between those balances under CASS 7.15.31R and CASS 7.15.32R.
- 7.15.28 R A *firm* must ensure it includes the following items within its *external client money reconciliation*:
- (1) any *client's approved collateral* a *firm* holds which secures an individual negative *client equity balance* (see CASS 7.16.32R); and

- (2) any of its own *approved collateral* a firm holds which is used to meet the total *margin transaction requirement* in CASS 7.16.33R.

Reconciliation discrepancies

- 7.15.29 R When a discrepancy arises between a *firm's client money resource* and its *client money requirement* identified by a *firm's internal client money reconciliations*, the *firm* must determine the reason for the discrepancy and 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 from a *client bank account* within the same time period.
- 7.15.30 G Where the discrepancy identified under CASS 7.15.29R has arisen as a result of a breach of the *client money segregation requirements*, the *firm* should ensure it takes sufficient steps to avoid a reoccurrence of that breach (see *Principle 10* (Clients' assets), as it relates to *client money*, CASS 7.15.3R and, where relevant, SYSC 4.1.1R(1) and SYSC 6.1.1R).
- 7.15.31 R If any discrepancy is identified by an *external client money reconciliation*, the *firm* must investigate the reason for the discrepancy and take all reasonable steps to correct it without undue delay, 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*.
- 7.15.32 R While a *firm* is unable to immediately resolve a discrepancy identified by an *external client money reconciliation*, and one record or set of records examined by the *firm* during its *external client money reconciliation* indicates that there is a need to have a greater amount of *client money* or, if appropriate, *approved collateral* than is the case, the *firm* must assume, until the matter is finally resolved, that that record or set of records is accurate and pay its own *money* into a relevant account.

Notification requirements

- 7.15.33 R A *firm* must inform the *FCA* in writing without delay if:
- (1) its internal records and accounts of *client money* are materially out of date, inaccurate or invalid so that the *firm* is no longer able to comply with the requirements in CASS 7.15.2R, CASS 7.15.3R or CASS 7.15.5R(1);
- (2) it will be unable to, or materially fails to, pay any *shortfall* into a *client bank account* or withdraw any excess from a *client bank account* so that the *firm* is unable to comply with CASS 7.15.29R after having carried out an *internal client money reconciliation*;

- (3) it will be unable to, or materially fails to, identify and resolve any discrepancies under CASS 7.15.31R to CASS 7.15.32R after having carried out an *external client money reconciliation*;
- (4) it will be unable to, or materially fails to, conduct an *internal client money reconciliation* in compliance with CASS 7.15.12R and CASS 7.15.15R;
- (5) it will be unable to, or materially fails to, conduct an *external client money reconciliation* in compliance with CASS 7.15.20R to CASS 7.15.28R; and
- (6) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* under the *client money segregation requirements*.

Annual audit of compliance with the client money rules

- 7.15.34 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*.

7.16 The standard methods of internal client money reconciliation

- 7.16.1 G (1) *Firms* are required to carry out an *internal client money reconciliation* each *business day* (CASS 7.15.12R and CASS 7.15.15R). This section sets out methods of reconciliation that are appropriate for these purposes (the *standard method of internal client money reconciliation*).
- (2) Where a *firm* establishes one or more *sub-pools*, the provisions of CASS 7.16 (The standard methods of internal client money reconciliation) shall be read as applying to the *firm's general pool* and each *sub-pool* individually, in line with CASS 7.19.3R and CASS 7.19.4R.
- 7.16.2 G (1) A *non-standard method of internal client money reconciliation* is a method of *internal client money reconciliation* which does not meet the requirements of this section.
- (2) Where a *firm* uses a *non-standard method of internal client money reconciliation* it is reminded that it must comply with the requirements in CASS 7.15.18R.
- 7.16.3 G Regardless of whether a *firm* is following one of the *standard methods of internal client money reconciliation* or a *non-standard method of internal*

client money reconciliation, it is reminded that it must maintain its records so that it is able to promptly calculate the total amount of *client money* it should be holding for each *client* (see CASS 7.15.5R(1)).

- 7.16.4 G *Firms* are reminded that the *internal client money reconciliation* should achieve the purposes set out in CASS 7.15.14G.
- 7.16.5 G (1) A *firm* that adopts the normal approach to segregating *client money* (CASS 7.13.6R) will be using the methods in this section to check whether it has correctly segregated *client money* in its *client bank accounts*.
- (2) A *firm* that adopts the alternative approach to segregating *client money* (CASS 7.13.54G) will be using the methods in this section to calculate how much *money* it needs to withdraw from, or place in, *client bank accounts* as a result of any discrepancy arising between its *client money requirement* and its *client money resource* at the close of business on the previous *business day*.
- 7.16.6 G Unless otherwise stated, *firms* are reminded that they are required to receive all *client money* receipts directly into a *client bank account* (see CASS 7.13.6R).
- 7.16.7 G A *firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* (eg, into a *client bank account*) no later than on the *business day* after it receives the *money* (see CASS 7.13.32R). Once deposited into a *client bank account*, that receipt of *client money* should form part of the *firm's client money resource* (see CASS 7.16.8R). In calculating its *client money requirement*, a *firm* will need to take into account any *client money* received as cash, cheques or payment orders but not yet deposited into a *client bank account* (see CASS 7.16.25R(3) and CASS 7.16.26G).

Client money resource

- 7.16.8 R The *client money resource* is the aggregate balance on the *firm's client bank accounts*.
- 7.16.9 G (1) A *firm* should ensure that the amount it reflects in its *internal client money reconciliation* as its *client money resource* is equal to the aggregate balance on its *client bank accounts*. For example, if:
- (a) a *firm* holds *client money* received as cash, cheques or payment orders but not yet deposited in a *client bank account* (in accordance with CASS 7.13.32R); and
- (b) that *firm* records all receipts from *clients*, whether or not yet deposited with a bank, in its cashbook (see CASS 7.16.26G(1)(a));

its *client money resource* should not include the cash, cheques or payment orders received but not yet deposited in a *client bank*

account.

- (2) The *guidance* in (1) is consistent with a *firm's* obligations to maintain its internal records in an accurate way, particularly their correspondence to the *client money* held for *clients*.

Client money requirement

- 7.16.10 R Subject to CASS 7.16.12R, the *client money requirement* must be calculated by one, but not both, of the following of two methods:
- (1) the *individual client balance method* (CASS 7.16.16R); or
 - (2) the *net negative add-back method* (CASS 7.16.17R).
- 7.16.11 R The *net negative add-back method* may only be used, under this section, by a CASS 7 *asset management firm* or a CASS 7 *loan-based crowdfunding firm* and only if such *firms* do not undertake any *marginated transactions* for, or on behalf of, their *clients*.
- 7.16.12 R A CASS 7 *loan-based crowdfunding firm* must not use the *individual client balance method* under this section.
- 7.16.13 G
- (1) The *client money requirement* should represent the total amount of *client money* a *firm* is required to have segregated in *client bank accounts* under the *client money rules*.
 - (2) CASS 7.16.11R does not prevent a *firm* from adopting a *net negative add-back method* as part of a *non-standard method of internal client money reconciliation*.
 - (3) CASS 7.16.12R does not prevent a CASS *loan-based crowdfunding firm* from adopting the *individual client balance method* as part of a *non-standard method of internal client money reconciliation*.
 - (4) If a *firm* uses the *individual client balance method* in respect of some of its business lines and the *net negative add-back method* in respect of others it will be conducting a *non-standard method of internal client money reconciliation*.
- 7.16.14 G
- (1) The *individual client balance method* (CASS 7.16.16R) may be applied by any *firm* except a CASS 7 *loan-based crowdfunding firm*. This method requires a *firm* to calculate the total amount of *client money* it should be segregating in *client bank accounts* by reference to how much the *firm* should be holding in total (ie, across all its *client bank accounts* and businesses) for each of its individual *clients* for:
 - (a) *non-marginated transactions* (CASS 7.16.16R(1) and CASS 7.16.21R);

- (b) *marginised transactions* (CASS 7.16.16R(2) and CASS 7.16.32R); and
 - (c) certain other matters (CASS 7.16.16R(3) and CASS 7.16.25R).
- (2) (a) CASS 7.16.22E is an *evidential provision* which sets out a method *firms* should use for calculating how much they should be holding in total for each individual *client* for *non-marginised transactions*.
- (b) The calculation in CASS 7.16.22E permits a *firm* to calculate either one *individual client balance* across all its products for each *client* or a number of *individual client balances* per *client* equal to the number of products operated by the *firm* for each client (see CASS 7.16.22E(1)).
- (c) The calculation referred to in (2)(b) may also be applied by different types of *firms* and, as a result, each *firm* will need to apply the calculation in way which recognises the business model under which that *firm* operates.
- 7.16.15 G The *net negative add-back method* (CASS 7.16.17R) is available to CASS 7 *asset management firms* and CASS 7 *loan-based crowdfunding firms*, many of whom may operate internal ledger systems on a bank account by bank account, not *client-by-client*, basis. This method allows a *firm* to calculate the total amount of *client money* it is required to have segregated in *client bank accounts* by reference to:
- (1) the balances in each *client bank account* (see CASS 7.16.17R(1) and CASS 7.16.18G(2));
 - (2) whether any individual *client's* net position in a specific *client bank account* is negative (see CASS 7.16.17R(2) and CASS 7.16.18G(2)); and
 - (3) certain other matters (see CASS 7.16.17R(2) and CASS 7.16.25R).

Client money requirement calculation: individual client balance method

- 7.16.16 R Subject to CASS 7.16.25R and CASS 7.16.37R, under this method the *client money requirement* must be calculated by taking the sum of, for all *clients* and across all products and accounts:
- (1) the *individual client balances* calculated under CASS 7.16.21R, excluding:
 - (a) *individual client balances* which are negative (ie, debtors); and
 - (b) *clients' equity balances*;

- (2) the total *margin*ed transaction requirement (calculated under CASS 7.16.32R); and
- (3) any amounts that have been segregated as *client money* according to the *firm's* records under any of the following: CASS 7.13.51R(1) (*prudent segregation record*), CASS 7.13.66R (*alternative approach mandatory prudent segregation record*) and/ CASS 7.13.74R (*clearing arrangement mandatory prudent segregation record*).

Client money requirement calculation: net negative add-back method

- 7.16.17 R Subject to CASS 7.16.25R, under this method the *client money requirement* must be calculated by taking the sum of, for each *client bank account*:
- (1) the amount which the *firm's* internal records show as held on that account; and
 - (2) an amount that offsets each negative net amount which the *firm's* internal records show attributed to that account for an individual *client*.
- 7.16.18 G (1) A *firm* which utilises the *net negative add-back method* is reminded that it must do so in a way which allows it to maintain its records so that, at any time, the *firm* is able to promptly determine the total amount of *client money* it should be holding for each *client* (see CASS 7.15.5R(1)).
- (2) For the purposes of CASS 7.16.17R, a *firm* should be able to readily use the figures previously recorded in its internal records and ledgers (for example, its cashbook or other internal accounting records) as at the close of business on the previous *business day* without undertaking any additional steps to determine the balances in the *firm's client bank accounts*.
- 7.16.19 G A *firm* which utilises the *net negative add-back method* may:
- (1) calculate its *client money requirement* and *client money resource* on a bank account by bank account basis;
 - (2) for the purposes of CASS 7.16.17R, a *firm* should take into account any amounts that have been segregated as *client money* according to the *firm's* records under either or both CASS 7.13.50R (*prudent segregation record*) and CASS 7.13.66R (*alternative approach mandatory prudent segregation record*).

Non-margin

ed transactions (eg, securities): individual client balance

- 7.16.20 G The sum of positive *individual client balances* for each *client* should represent the total amount of all *money* the *firm* holds, has received or is obligated to have received or be holding as *client money* in a *client bank account* for that *client* for *non-margin*ed transactions.

7.16.21 R A *firm* must calculate a *client's individual client balances* in a way which captures the total amount of all *money* the *firm* should be holding as *client money* in a *client bank account* for that *client* for *non-margined transactions* under the *client money rules*.

- 7.16.22 E (1) A *firm* may calculate either:
- (a) one *individual client balance* for each of its *clients*, based on the total of the *firm's* holdings for each *client*; or
 - (b) a number of *individual client balances* per *client*, equal to the number of products the *firm* operates for each *client*.

(2) Each *individual client balance* for a *client* should be calculated in accordance with this table:

Individual client balance calculation			
	Free <i>money</i> (sums held for a <i>client</i> free of sale or purchase (eg, see (3)(a)) and		A
	sale proceeds due to the <i>client</i> :		
(a)	for <i>principal deals</i> when the <i>client</i> has delivered the <i>designated investments</i> ; and		B
(b)	for <i>agency deals</i> , when:		
	(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)	for <i>principal deals</i> , paid for by the <i>client</i> when the <i>firm</i> has not delivered the <i>designated investments</i> to the <i>client</i> ; and		D
(d)	for <i>agency deals</i> , paid for by the <i>client</i> when:		
	(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	E2

		been delivered to the <i>client</i> ;	
Less			
		<i>money</i> owed by the <i>client</i> for 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> for sales transactions by, or for, the <i>client</i> if the <i>client</i> has not delivered the <i>designated investments</i> .	G
<i>Individual client balance 'X' =</i> $(A+B+C1+C2+D+E1+E2)-F-G$			X

- (3) When calculating an *individual client balance* for each *client*, a *firm* should also:
- (a) ensure it includes:
- (i) *client money* consisting of dividends received and interest earned and allocated (see CASS 7.11.32R);
 - (ii) *client money* consisting of dividends (actual or payments in lieu), stock lending fees and other payments received and allocated (see CASS 6.1.2G);
 - (iii) *money* the *firm* appropriates and segregates as *client money* to cover an unresolved *shortfall* in *safe custody assets* it identifies in its internal records which is attributable to an individual *client* (see CASS 6.6.54R(2)); and
 - (iv) *money* the *firm* segregates as *client money* instead of an individual *client's safe custody asset* until such time as the relevant delivery versus payment transaction settles under CASS 6.1.12R(2); and
- (b) deduct any amounts due and payable by the *client* to the *firm* (see CASS 7.11.25R).
- (4) Compliance with (1), (2), (3) and (4) may be relied on as tending to establish compliance with CASS 7.16.21R.

- 7.16.23 R A *firm* must calculate an *individual client balance* using the contract value of any *client* purchases or sales, being the value to which the *client* would be contractually entitled to receive or contractually obligated to pay.
- 7.16.24 G If a *firm* calculates each *individual client balance* on a product-by-product basis under CASS 7.16.22E(1)(b), the result should be that the *firm* does not net *client* positions across all products and accounts.

Other requirements for calculating the client money requirement

- 7.16.25 R When calculating the *client money requirement* under either of the methods in CASS 7.16.10R, a *firm* must:
- (1) include any unallocated *client money* (see CASS 7.13.36R) and unidentified receipts of *money* it considers prudent to segregate as *client money* (see CASS 7.13.37R);
 - (2) include any money the *firm* appropriates and holds as *client money* to cover an unresolved *shortfall* in *safe custody assets* identified in its internal records which is not attributable, or cannot be attributed to, an individual *client* (see CASS 6.6.49R, CASS 6.6.50R and CASS 6.6.54R);
 - (3) take into account any *client money* received as cash, cheques or payment orders but not yet deposited into a *client bank account* under CASS 7.13.32R (see also CASS 7.15.9R);
 - (4) if it has drawn any cheques or other payable orders, to discharge its fiduciary duty to its *clients* and continue to treat the sum concerned as forming part of its *client money requirement* until the cheque or order is presented and paid by the bank (see CASS 7.11.40R); and
 - (5) ensure it has taken into account all *client money* the *firm* should be holding in connection with *clients' non-margined transactions*.
- 7.16.26 G (1) Under CASS 7.16.25R(3), where a *firm* holds *client money* received as cash, cheques or payment orders but not yet deposited in a *client bank account* under CASS 7.13.32R, it may:
- (a) include these balances when calculating its *client money requirement* (eg, where the *firm* records all receipts from *clients*, whether or not yet deposited with a bank, in its cashbook); or
 - (b) exclude these balances when calculating its *client money requirement* (eg, where the *firm* only records *client* receipts to its cashbook once deposited with a bank).
- (2) In line with (1)(a), the *firm* will need to ensure that, before finalising the calculation of its *client money requirement* within this section, it deducts these balances, to ensure that they do not give rise to a discrepancy between the *firm's client money requirement* and *client money resource* (see CASS 7.15.29R).
 - (3) In line with (1)(b), although the balances concerned do not form part of the *firm's client money requirement*, the *firm* must continue to account for all receipts of *client money* as cash, cheques or payment orders but not yet deposited in a *client bank account* in its records and accounts (see CASS 7.13.32R and CASS 7.15.9R).

- 7.16.27 G (1) In accordance with CASS 7.16.25R(5), where a *firm* has allowed another *person* to hold *client money* in connection with a *client's non-margined transaction* (eg, in a *client transaction account* under CASS 7.14 (Client money held by a third party), the *firm* should include these balances when calculating its *client money requirement*.
- (2) If a *firm* is utilising the *individual client balance method* (CASS 7.16.16R) to calculate its *client money requirement*, CASS 7.16.21R requires the *firm* to include the sums it holds for each *client* that are placed with another *person* in connection with a *client's non-margined transaction* when calculating a *client's individual client balance* (eg, see CASS 7.16.22E and items C1 and E2).
- (3) Under (1) and (2), the *firm* will need to ensure that, before finalising the calculation of its *client money requirement* within this section, it deducts the balances held for *clients' non-margined transactions in client transaction accounts*, to ensure that they do not give rise to a discrepancy between the *firm's client money requirement* and *client money resource* (see CASS 7.15.29R).
- (4) Under (1), (2) and (3), in determining the balances of *client money* a *firm* has allowed another *person* to hold in connection with a *client's non-margined transaction* or the balances held for *clients' non-margined transactions in client transaction accounts*, a *firm* should use the values contained in its internal records and ledgers (see CASS 7.15.13R).

Margined transactions (eg, derivatives): equity balances

- 7.16.28 R Subject to CASS 7.16.30R, a *client's equity balance* is the amount which the *firm* would be liable to pay to the *client* (or the *client* to the *firm*) under the *client money rules* for *margined transactions* if each of the open positions were liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the account with the *firm* were closed. This notional balance should include any unrealised losses or profits associated with that *client's* open positions, and any margin the *firm* has received from the *client* in connection with those positions.
- 7.16.29 R Subject to CASS 7.16.30R, a *firm's equity balance* is the amount which the *firm* would be liable to pay to the exchange, *clearing house*, *intermediate broker* or *OTC* counterparty (or vice-versa) for the *firm's margined transactions* if each of the open positions of those of the *firm's clients* that are entitled to protection under the *client money rules* were liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the *firm's client transaction accounts* with that exchange, *clearing house*, *intermediate broker* or *OTC* counterparty were closed. This notional balance should include any unrealised losses or profits associated with the open positions the *firm* holds for *clients* and any margin the *firm* holds for *clients* in the relevant *client transaction accounts*.

- 7.16.30 R The terms '*client's equity balance*' and '*firm's equity balance*' refer to cash values and do not include non-cash *collateral* or other *designated investments* (including *approved collateral*) the *firm* holds for a *margin*ed transaction.

Margin

ed transactions (eg, derivatives): margined transaction requirement

- 7.16.31 G The *margin*ed transaction requirement should represent the total amount of *client money* a *firm* is required under the *client money rules* to segregate in *client bank accounts* for *margin*ed transactions. The calculation in CASS 7.16.33R is designed to ensure that an amount of *client money* is held in *client bank accounts* which equals at least the difference between the equity the *firm* holds at exchanges, *clearing houses*, *intermediate brokers* and *OTC* counterparties for *margin*ed transactions for *clients* entitled to protection under the *client money rules*, and the amount due to *clients* under the *client money rules* for those same *margin*ed transactions. With this calculation, a *firm's margin*ed transaction requirement should represent, if positions were unwound, the *firm's* gross liabilities to *clients* entitled to protection under the *client money rules* for *margin*ed transactions.
- 7.16.32 R The total *margin*ed 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 *client approved collateral*; and
 - (3) the net aggregate of the *firm's equity balance* (negative balances being deducted from positive balances) on *client transaction accounts* for *customers* with exchanges, *clearing houses*, *intermediate brokers* and *OTC* counterparties.
- 7.16.33 R
- (1) To meet the total *margin* transaction requirement, a *firm* may appropriate and use its own *approved collateral*, provided it meets the requirements in (2).
 - (2) The *firm* must hold the *approved collateral* in a way which ensures that, in accordance with CASS 7A.2.3AR, the *approved collateral* will be liquidated on the occurrence of a *primary pooling event* and the proceeds paid into a *client bank account*, and in so doing:
 - (a) ensure the *approved collateral* is clearly identifiable as separate from the *firm's* own property and is recorded by the *firm* in its records as being held for its *clients*;
 - (b) keep a record of the actions the *firm* has taken under this *rule* which includes a description of the terms on which the *firm* holds the *approved collateral*, identifies that the *approved collateral* is held for the benefit of its *clients* and specifies the *approved collateral* that the *firm* has appropriated for the

purposes of this *rule*; and

- (c) update the record made under (b) whenever the *firm* ceases to appropriate and use *approved collateral* under this rule.

7.16.34 G Where CASS 7.16.33R applies, the *firm* will be reducing the requirement arising from CASS 7.16.16R(2) and, as such, simultaneously reducing its overall *client money requirement* (ie, the amount of money the *firm* is required to segregate in *client bank accounts*).

7.16.35 R If a *firm's* total *marginied transaction requirement* is negative, the *firm* must treat it as zero for the purposes of calculating its *client money requirement*.

LME bond arrangements

7.16.36 R A *firm* with a *Part 30 exemption order* which also operates an *LME bond arrangement* for the benefit of US-resident investors must exclude the *client equity balances* for transactions undertaken on the *LME* on behalf of those US-resident investors from the calculation of the *marginied transaction requirement*, to the extent those transactions are provided for by an *LME bond arrangement*.

Reduced client money requirement option

- 7.16.37 R Where appropriate, a *firm* may:
- (1) when, in respect of a *client*, there is a positive *individual client balance* and a negative *client equity balance*, offset the credit against the debit and, therefore, have a reduced *individual client balance* in CASS 7.16.21R for that *client*; and
 - (2) when, in respect of a *client*, there is a negative *individual client balance* and a positive *client equity balance*, offset the credit against the debit and, therefore, have a reduced *client equity balance* (CASS 7.16.28R) for that *client*.
- 7.16.38 G The effect of CASS 7.16.37R 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 CASS 7.16.21R and CASS 7.16.28R and, therefore, reduce its overall *client money requirement*.

7.17 Statutory trust

7.17.1 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

- 7.17.2 R Subject to CASS 7.17.3R in respect of a *trustee firm*, a *firm* receives and holds *client money* as trustee 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)
 - (a) where a *firm* maintains only a *general pool* of *client money*, subject to (4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such with respect to *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;
 - (b) where a *firm* has established one or more *pools* of *client money*, subject to (4):
 - (i) the *general pool* is held for all the *clients* of the *firm* for whom the *firm* receives or holds *client money* (other than *clients* which are *insurance undertakings* when acting in regard to *client money* received during *insurance mediation activity* and that was opted in to this chapter) according to their respective interests; and
 - (ii) each *sub-pool* is for the *clients* of the *firm* who are identified as beneficiaries of the *sub-pool* in question, in accordance with CASS 7.19.6R(2), 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) for the payment of the costs properly attributable to the distribution of the *client money* in (2) if such distribution takes place following the *failure* of the *firm*; and
 - (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.
- 7.17.3 R A *trustee firm* which is subject to the *client money rules* by virtue of CASS 7.10.1R(2) receives and holds *client money* as trustee on the terms in CASS 7.17.2R, subject to its obligations to hold *client money* as trustee under the relevant instrument of trust.
- 7.17.4 G If a *trustee firm* holds *client money*, the *firm* should follow the provisions in CASS 7.10.33R to CASS 7.10.40G.

- 7.17.5 G The statutory trust under CASS 7.17.2R does not permit a *firm*, in its capacity as trustee, to use *client money* to advance credit to the *firm's clients*, itself, or any other *person*. For example, if a *firm* wishes to undertake a transaction for a *client* in advance of receiving *client money* from that *client* to fund that transaction, it should not advance credit to that *client* or itself using other *clients' client money* (ie, it should not 'pre-fund' the transaction using other *clients' client money*).

7.18 Acknowledgment letters

Purpose

- 7.18.1 G The main purposes of an *acknowledgement letter* are:
- (1) to put the bank, exchange, *clearing house*, *intermediate broker*, *OTC* counterparty or other *person* (as the case may be) on notice of a *firm's clients' interests* in *client money* that has been deposited with, or has been allowed to be held by, such *person*;
 - (2) to ensure that the *client bank account* or *client transaction account* has been opened in the correct form (eg, whether the *client bank account* is being correctly opened as a *general client bank account*, a *designated client bank account* or a *designated client fund account*), and is distinguished from any account containing *money* that belongs to the *firm*; and
 - (3) to ensure that the bank, exchange, *clearing house*, *intermediate broker*, *OTC* counterparty or other *person* (as the case may be) understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account* or *client transaction account*, in respect of any sum owed to such *person*, or to any other third *person*, on any other account.

Client bank account acknowledgment letters

- 7.18.2 R (1) For each *client bank account*, a *firm* must, in accordance with CASS 7.18.6R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the bank with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.
- (2) Subject to CASS 7.18.14R and CASS 7.18.15R, a *firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the relevant bank that has not been inappropriately redrafted (see CASS 7.18.8R) and clearly identifies the *client bank account*.

Client transaction account acknowledgement letters

- 7.18.3 R (1) This *rule* does not apply to a *firm* to which CASS 7.18.4R(1) applies.
- (2) For each *client transaction account*, a *firm* must, in accordance with CASS 7.18.6R, complete and sign a *client transaction account acknowledgement letter* clearly identifying the *client transaction account*. That letter must be sent to the *person* with whom the *client transaction account* is, or will be, opened, requesting such *person* to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.
- (3) Subject to CASS 7.18.14R and CASS 7.18.15R, a *firm* must not allow the relevant *person* to hold any *client money* in a *client transaction account* maintained by that *person* for the *firm*, unless the *firm* has received a duly countersigned *client transaction account acknowledgement letter* from that *person* that has not been inappropriately redrafted (see CASS 7.18.8R) and that clearly identifies the *client transaction account*.

Authorised central counterparty acknowledgment letters

- 7.18.4 R (1) A *firm* which places *client money* at an *authorised central counterparty* in connection with a *regulated clearing arrangement* must, in accordance with CASS 7.18.6R, complete and sign an *authorised central counterparty acknowledgement letter* clearly identifying the relevant *client transaction account*. That letter must be sent to the *authorised central counterparty* with whom the *client transaction account* is, or will be, opened, requesting such *authorised central counterparty* to acknowledge receipt of the letter by countersigning it and returning it to the *firm*.
- (2) A *firm* which has complied with CASS 7.18.4R(1) may allow the *authorised central counterparty* to hold *client money* on the relevant *client transaction account*, whether or not the *authorised central counterparty* has countersigned and returned the *authorised central counterparty acknowledgement letter* it received from the *firm*.

Acknowledgement letters in general

- 7.18.5 G In drafting *acknowledgement letters* under CASS 7.18.2R, CASS 7.18.3R or CASS 7.18.4R, a *firm* is required to use the relevant template in CASS 7 Annex 2R, CASS 7 Annex 3R or CASS 7 Annex 4R, respectively.
- 7.18.6 R When completing an *acknowledgment letter* under CASS 7.18.2R(1), CASS 7.18.3R(1) or CASS 7.18.4R(1), a *firm*:
- (1) must not amend any of the *acknowledgement letter fixed text*;
- (2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and

- (3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.
- 7.18.7 G CASS 7 Annex 5G contains *guidance* on using the template *acknowledgement letters*, including when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.
- 7.18.8 R (1) If, on countersigning and returning the *acknowledgement letter* to a *firm*, the relevant *person* has also:
- (a) made amendments to any of the *acknowledgement letter fixed text*; or
 - (b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;
- the *acknowledgement letter* will have been inappropriately redrafted for the purposes of CASS 7.18.2R(2) or CASS 7.18.3R(3) (as applicable).
- (2) For the purposes of CASS 7.18.2R(2) or CASS 7.18.3R(3), amendments made to the *acknowledgement letter variable text* in the *acknowledgement letter* returned to a *firm* by the relevant *person*, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the *acknowledgement letter fixed text*, have been specifically agreed with the *firm* and do not cause the *acknowledgement letter* to be inaccurate.
- 7.18.9 R A *firm* must use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *person*.
- 7.18.10 R (1) A *firm* must retain each countersigned *client bank account acknowledgement letter* and *client transaction account acknowledgement letter* it receives, from the date of receipt until the expiry of five years from the date on which the last *client bank account* or *client transaction account* to which the *acknowledgement letter* relates is closed.
- (2) A *firm* must retain a copy of each *authorised central counterparty acknowledgement letter* it sends to an *authorised central counterparty* under CASS 7.18.4R(1), from the date it was sent until the expiry of five years from the date the last *client transaction account* to which the *acknowledgement letter* relates is closed.
- 7.18.11 R A *firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an *acknowledgment letter* returned

to the *firm* was authorised to countersign the letter on behalf of the relevant *person*).

- 7.18.12 R (1) This rule applies to:
- (a) any countersigned *client bank account acknowledgement letter* or *client transaction account acknowledgement letter* received by a *firm* under CASS 7.18.2R(2) or CASS 7.18.3R(3) respectively; and
 - (b) any *authorised central counterparty acknowledgement letter* sent by a *firm* under CASS 7.18.4R(1), whether or not it has been countersigned by the relevant *authorised central counterparty* and received by the *firm*.
- (2) A *firm* must, periodically (at least annually, and whenever it is aware that something referred to in an *acknowledgement letter* has changed) review each of its *acknowledgement letters* to ensure that they all remain accurate.
- (3) Whenever a *firm* finds an inaccuracy in an *acknowledgement letter*, it must promptly draw up a replacement *acknowledgement letter* under CASS 7.18.2R, CASS 7.18.3R or CASS 7.18.4R, as applicable, and, if it is an *acknowledgement letter* required to be sent under CASS 7.18.2R or CASS 7.18.3R, ensure that the new *acknowledgement letter* is duly countersigned and returned by the relevant *person*.
- 7.18.13 G Under CASS 7.18.12R, a *firm* should draw up and send out a replacement *acknowledgement letter* whenever:
- (1) there has been a change in any of the parties' names or addresses as set out in the letter; or
 - (2) the *firm* becomes aware of an error or misspelling in the drafting of the letter.
- 7.18.14 R If a *firm's client bank account* or *client transaction account* is transferred to another *person*, the *firm* must promptly draw up a new *acknowledgement letter* under CASS 7.18.2R, CASS 7.18.3R or CASS 7.18.4R, as applicable, and, if it is an *acknowledgement letter* required to be sent under CASS 7.18.2R or CASS 7.18.3R, ensure that the new *acknowledgement letter* is duly countersigned and returned by the relevant *person* within 20 *business days* of the *firm* sending it to that *person*.
- 7.18.15 R If a *firm* opens a *client bank account* after a *primary pooling event*, the *firm* must:
- (1) promptly draw up and send out a new *acknowledgement letter* under CASS 7.18.2R;
 - (2) not hold or receive any *client money* in or into the *client bank account* unless it has sent the *acknowledgement letter* to the relevant *person*;

and

- (3) if the *firm* has not received a duly countersigned *acknowledgement letter* that has not been inappropriately redrafted (see CASS 7.18.8R) within 20 *business days* of the *firm* sending the *acknowledgement letter*, 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.

Amend the following as shown.

7.19 Clearing member client money sub-pools

...

7.19.4 R Where a *firm* establishes one or more *sub-pools*, CASS ~~7.6~~ 7.15 (Records, accounts and reconciliations) should be read as applying to the *firm* for its *general pool* and each *sub-pool* individually.

7.19.5 R A *firm* that establishes one or more *sub-pools* must establish and maintain adequate internal controls and records in accordance with CASS ~~7.6~~ 7.15 (Records, accounts and reconciliations) to conduct internal and external reconciliations for each *sub-pool* and the *general pool* individually.

7.19.14 R ~~A~~ Save to the extent permitted under CASS 7.13.70R a *firm* that receives *client money* to be credited in part to one *pool* and in part to a *sub-pool* must:

- (1) ...

...

7 Annex 2R Client bank account acknowledgment letter template

[letterhead of *firm* subject to CASS ~~7.8.1~~ 7.18.2R, including full name and address of *firm*]

[name and address of bank]

[date]

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

...

7 Annex 3R Client transaction account acknowledgment letter template

[*letterhead of firm subject to CASS 7.8.2 7.18.3R, including full name and address of firm*]
 [*name and address of counterparty*]

[*date*]

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

...

7 Annex 4R Authorised central counterparty acknowledgment letter template

[*letterhead of firm subject to CASS 7.8.3 7.18.4R, including full name and address of firm*]
 [*name and address of authorised central counterparty*]

[*date*]

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

...

7 Annex 5G Guidance notes for acknowledgement letters (CASS 7.8 7.18)

...

3 Under *CASS 7.8.1 7.18.2R(2)* and *CASS 7.8.2 7.18.3R(3)*, *firms* are required to have in place a duly signed and countersigned *acknowledgment letter* for a *client bank account* or *client transaction account* (respectively) before they are allowed to hold or receive *client money* in or into the *client bank account*, or allow the relevant *person* to hold any *client money* on the *client transaction account* (respectively).

...

13 An *acknowledgment letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in *CASS 7.8 7.19*. However, where electronic signatures are used, a *firm* should consider whether, under *CASS 7.4.7 7.13.8R* and taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the letter.

...

20 If a *firm* does not, in any *client bank account acknowledgement letter* or *client transaction account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

- (a) the law and the jurisdiction under which either the *firm* or the relevant counterparty are organised; or
- (b) that specified in the underlying agreement/s (eg, banking, custody or clearing services agreement) with the relevant counterparty;

then the *firm* should consider whether it is at risk of breaching either ~~CASS 7.8.5R(3)~~ 7.18.6R(3) or, in the case of a *client bank account acknowledgement letter*, ~~CASS 7.4.7~~ 7.13.8R.

21 The *FCA* recognises that some *firms* and their counterparties may wish to clarify through additional words in the governing law provision (see paragraph (l) of the template in *CASS 7 Annex 2R* and paragraph (k) of the template in *CASS 7 Annex 3R*) that they are agreeing that the substantive law of the governing jurisdiction shall apply and that their intention is that a court should not decide to apply the substantive provisions of some other law instead of the parties' chosen governing law (a 'renvoi'). Where this is the case *firms* are permitted to insert additional text that seeks to provide increased legal certainty in the space provided. There is no restriction as to what additional words may be used (for example additional words such as "*without regard to the principles of choice of law*" may be appropriate in the circumstances), but a *firm* should at all times have regard to the need to comply with ~~CASS 7.8.5~~ 7.18.6R(3). However, for the majority of *firms* the *FCA* does not expect additional wording for the governing law provision to be necessary. This is likely to be the case where only a court that is subject to 'Rome I' (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008) is likely to accept jurisdiction over a dispute arising out of or in connection with the relevant *acknowledgement letter*.

Authorised signatories

22 A *firm* is required, under ~~CASS 7.8.8~~ 7.18.9R, to use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant counterparty.

...

35 A *firm* should ensure that *client money* placed in a money market deposit is clearly identified as *client money* (see ~~CASS 7.4.11BG~~ 7.13.15G).

...

37 A *firm* which operates the alternative approach to *client money* segregation (see ~~CASS 7.4.18AR~~ 7.13.62R) might not make deposits of *client money* in a money market deposit from another *client bank account*. In these circumstances, the *firm* need only include in the body of the letter how the *firm* will notify the bank that a money market deposit placed with it consists of *client money*. For example, the relevant space in the

template letter in CASS 7 Annex 2R may set out that:

...

7A Client money distribution

...

7A.2 Primary pooling events

...

7A.2.2 R When the *firm* notified, or is in breach of its duty to notify, the *FCA*, in accordance with ~~CASS 7.6.16~~ 7.15.33 R (Notification requirements), that it is unable to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

...

7A.2.3A R If a *primary pooling event* occurs in circumstances where the *firm* had, before the *primary pooling event*, reduced its *margin*ed transaction requirement by utilising *approved collateral* under ~~CASS 7 Annex 1G paragraph 15~~ 7.16.33R, it must immediately liquidate this *approved collateral* and place the proceeds in a *client bank account*.

Pooling and distribution

7A.2.4 R ...

(2) the *firm* must distribute *client money* comprising the notional pool² in accordance with ~~CASS 7.7.2R~~ 7.17.2R, so that:

...

(3) ...

(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 7.7.2R(4)~~ 7.17.2R(4);

...

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*³ or *clearing member* subject to ~~CASS 7.7.2R(4)~~ 7.17.2R(4); and

...

7A.2.4A G ...

- (5) The *firm's* obligation to its *client* in respect of *client money* held in a *sub-pool* is discharged to the extent that the *firm* transfers that *client money* to facilitate *porting* in accordance with ~~CASS 7.2.15R(8)~~ 7.11.34(8).
- 7A.2.5 R (-1)
- (a) ...
- (i) an authorised central counterparty to a clearing member other than the *firm* in connection with a *porting* arrangement in accordance with ~~CASS 7.2.15R(6)~~ 7.11.34R(6) in respect of that *client*;
- (ii) a *clearing member* to another *clearing member* or *firm* (other than the *firm*) in connection with a transfer in accordance ~~CASS 7.2.15R(8)~~ 7.11.34R(8);
- (b) ...
- (i) an *authorised central counterparty* directly to that *client*, in accordance with ~~CASS 7.2.15R(7)~~ 7.11.34R(7);
- (ii) a *clearing member* directly to an *indirect client* in accordance ~~CASS 7.2.15R(9)~~ 7.11.34R(9); and

...

7A.3 Secondary Pooling events

Failure of a bank, intermediate broke, settlement agent or OTC counterparty:
secondary pooling events

- 7A.3.1 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 7.4.1R(1)~~ 7.13.3R(1) to ~~CASS 7.4.1R(3)~~ 7.13.3R(3) (Depositing client money) or ~~CASS 7.5.2R~~ 7.14.2R (Transfer of client money to a third party).

...

- 7A.3.4 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.3.6R~~. The *firm* would be expected to reflect the *shortfall* that arises at the *failed* bank in the *general pool* (where the *firm* maintains only a *general pool*) and, where relevant, in a particular *sub-pool* (where the *firm* maintains both a *general pool* and one or more *sub-pools*) in its records of the entitlement of *clients* and of *money* held with third parties under ~~CASS 7.6~~ 7.15 (Records, accounts and reconciliations).

...

- 7A.3.8 R ...

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ~~CASS 7.6.2R~~ 7.15.3R (Records and accounts) for that *pool*, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

...

7A.3.10 R ...

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ~~CASS 7.6.2R~~ 7.15.3R (Records and accounts) in respect of the relevant *pool*, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

...

7A.3.11 R ...

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ~~CASS 7.6.2R~~ 7.15.3R (Records and accounts) for the relevant *pool*, and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

...

7A.3.17 R ...

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ~~CASS 7.6.2R~~ 7.15.3R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).

...

8 Mandates

...

8.2 Definition of mandate

- 8.2.1 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) (as applicable):

...

- (2) where those means are obtained in the course of, or in connection with, the firm's insurance mediation activity, they are in written form at the time they are obtained from the client;

...

~~Written~~ The form of a mandate

- 8.2.2 G 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 8.2.1R.~~

- (1) a standalone document containing certain information conferring authority to control a client's assets or liabilities on the firm;
- (2) a specific provision within a document or agreement that also relates to other matters; or
- (3) an authority provided by a client orally.

Retention by the firm

- 8.2.3 G (1) If a *firm* receives information that puts it in the position described in CASS 8.2.1R(4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retained it (for example by not destroying the relevant document, electronic record or telephone recording):

...

...

...

- 8.2.5 G A *mandate* in relation to the type of instructions referred to in CASS 8.2.1R(4)(a) could include a direct debit instruction over a *client's* bank account in favour of the *firm*. The fact that the instruction was given by the client in the form of a paperless direct debit would not prevent it from being a mandate.

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

...

8.3 Records and internal controls

...

- 8.3.2 R The records and *internal controls* required by CASS 8.3.1R 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* and, where a *mandate* was received in non-written form in the course of, or in connection with, its *designated investment business*, the details required under CASS 8.3.2CR;
 - ...
 - (3) *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is carried out in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
 - ...

A firm's list of mandates

- 8.3.2A R (1) A firm's up-to-date list of *mandates* under CASS 8.3.2R(1) must be maintained in a medium that allows the storage of information in a way accessible for future reference by the *FCA* or by an auditor preparing a report under SUP 3.10.4R.
- (2) It must be possible for any corrections or other amendments, and the contents of the list prior to such corrections and amendments, to be easily ascertained.
- 8.3.2B G A firm may use version control to comply with CASS 8.3.2AR(2).
- 8.3.2C R An entry in a firm's list of *mandates* under CASS 8.3.2R(1) that relates to a *mandate* that was received in non-written form (eg, in a telephone call) in the course of, or in connection with, its *designated investment business* must, as well as the information referred to at CASS 8.3.2R(1), include the following details:
- (1) the nature of the *mandate* (eg, debit card details);
 - (2) the purpose of the *mandate* (eg, collecting insurance premiums);
 - (3) how the *mandate* was obtained (eg, by telephone);
 - (4) the name of the relevant *client*; and
 - (5) the date on which the *mandate* was obtained.

- 8.3.2D G If a firm receives information through a telephone call in the course of, or in connection with, its *designated investment business* that amounts to a *mandate* as a result of the *firm* retaining a recording of the call (see CASS 8.2.3G), the requirements at CASS 8.3.2R(1) apply, regardless of whether or not the *firm* intends to use the *mandate* in the future. The *firm* will meet the requirements of CASS 8.3.2R(1) if the *firm's* list of *mandates* is updated with the details of the *mandate* that the *firm* obtained as a result of the call.
- 8.3.2E G A *firm* should not reproduce information meeting the conditions under CASS 8.2.1R as a separate record (eg, by including such information in its list of *mandates* under CASS 8.3.2R(1)) unless the *firm* considers this necessary, as this creates additional risk of misuse. Making a record of the details concerning the *mandate* described in CASS 8.3.2CR would be appropriate.
- 8.3.2F G When keeping its list of *mandates* under CASS 8.3.2R(1) up to date:
- (1) a *firm* should create a new entry in the list each time the *firm* obtains a new *mandate*;
 - (2) if, for an existing entry on its list, a *firm* obtains the same information meeting the conditions in CASS 8.2.1R again (eg, in a written confirmation following a paperless direct debit), the additional *mandate* is not a new *mandate* and the *firm* should not create another entry on the list; but
 - (3) the *firm* should, for every entry on its list, identify each of the locations in which it has retained the information that meets the conditions in CASS 8.2.1R (eg, a *client's* debit card details retained in a telephone recording and also the *firm's* written log of the call, or two separate documents containing the same information).

Retention of records

- 8.3.2G R A *firm* must retain the records required under CASS 8.3.1R in relation to a particular *mandate* for the following period after it ceases to have the *mandate* (eg, because the *firm* has destroyed the relevant document, electronic record or telephone recording), as applicable:
- (1) subject to (2), a minimum of one year;
 - (2) a minimum of five years, where the relevant *mandate* was held by the *firm* in the course of, or in connection with, its *MiFID business*.
- 8.3.2H G Where a *firm* has an obligation under CASS 8.3.2GR to retain records after it ceases to have a particular *mandate*, it may keep the *mandate* on the *firm's* list under CASS 8.3.2R(1) for the relevant period, but the list should be updated to reflect the fact that it ceased to have the relevant *mandate* at the relevant date.

...

9 Prime brokerage information to clients

9.1 Application

9.1.1 R This chapter applies ~~to a firm~~ as follows:

- (1) CASS 9.2 and CASS 9.3 apply to a prime brokerage firm to which CASS 6 (Custody rules) applies; and
- (2) ~~which is a prime brokerage firm~~ subject to (3) and (4), CASS 9.4 and CASS 9.5 apply to a firm to which either or both CASS 6 (Custody rules) and CASS 7 (Client money rules) applies;
- (3) CASS 9.4 and CASS 9.5 do not apply to a firm which only arranges safeguarding and administration of assets;
- (4) for a firm to which CASS 7 (Client money rules) applies as well as either or both of CASS 5 (Client money: insurance mediation activity) and CASS 11 (Debt management client money chapter) ,this chapter does not apply to client money that a firm holds in accordance with CASS 5 or CASS 11.

...

Insert the following section after CASS 9.4. The text is all new and is not underlined.

9.5 Reporting to clients on request

- 9.5.1 G *Firms* are reminded that, under COBS 16.4, they are required to send to each of their *clients* at least once a year a statement in a *durable medium* of those *designated investments* and/or *client money* they hold for that *client*. A *firm* which *manages investments* may provide this statement in its *periodic statement*, as required under COBS 16.3.
- 9.5.2 G *Firms* are reminded that the requirements in COBS 16.4 only set out the minimum frequency at which *firms* must report to their *clients* on their holdings of *designated investments* and/or *client money*. *Firms* may choose to report to their *clients* more frequently.
- 9.5.3 G Subject to CASS 9.5.6R, CASS 9.5.4R and CASS 9.5.5R require *firms* to comply with a *client's* request for information on the *custody assets* and/or *client money* the *firm* holds for a *client* under CASS 6 and/or CASS 7, and such request may be made by a *client* at any time.
- 9.5.4 R When a *firm* receives a request, made by a *client* or on a *client's* behalf, for a statement of the *custody assets* and/or *client money* that the *firm* holds for that *client*, the *firm* must provide the *client* with the statement requested in a *durable medium*.

- 9.5.5 R When a *firm* receives a request, made by a *client* or on a *client's* behalf, for a copy of any statement of *custody assets* and/or *client money* previously provided to that *client*, the *firm* must provide the *client* with the copy of the statement requested in a *durable medium* and within five *business days* following the receipt of the request.
- 9.5.6 R Any charge agreed between the *firm* and the *client* for providing the statements in CASS 9.5.4R and CASS 9.5.5R must reasonably correspond to the *firm's* actual costs.
- 9.5.7 G Any statement provided to a *client* under CASS 9.5.4R or CASS 9.5.5R may, although it is not required to, be in the same form as the statement a *firm* is required to provide to a *client* under COBS 16.4 or, if appropriate, COBS 16.3.
- 9.5.8 G Consistent with the *fair, clear and not misleading rule*, a *firm* should ensure that, in any statements of *custody assets* and/or *client money* it provides to its *clients*, it is clear from the statement which assets and/or monies the *firm* reports as holding for the *client* are, or are not, protected under CASS 6 and/or CASS 7 (eg, if the statement also includes information regarding assets and/or monies which are held by the *firm* for that *client* which are not subject to the *custody rules* and/or *client money rules*).
- 9.5.9 G *Firms* are reminded that under CASS 3.2.4G *firms* that enter into arrangements with retail *clients* covered by CASS 3 (Collateral) should, when appropriate, identify in any statement of *custody assets* sent to the *client* under COBS 16.4 (Statements of client designated investments or client money) or this section the details of the assets which form the basis of that collateral arrangement.

Amend the following as shown.

10 CASS resolution pack

10.1 Application, purpose and general provisions

...

General provisions

...

- 10.1.9 E (1) For the purpose of CASS 10.1.7R, the following documents and records should be retrievable immediately:

...

- (c) any written notification or ~~trust acknowledgement letters~~

acknowledgement letters referred to in CASS 10.2.1R(5);

- (d) the most recent ~~internal reconciliations relating to safe custody assets~~ internal custody records checks referred to in CASS 10.3.1R(3);
- (e) the most recent ~~external reconciliations relating to safe custody assets~~ external custody reconciliations referred to in CASS 10.3.1R(5);
- (f) the most recent ~~internal reconciliations relating to client money~~ internal client money reconciliations referred to in CASS 10.3.1R(7) and (7A); and
- (g) the most recent ~~external reconciliations relating to client money~~ external client money reconciliations referred to in CASS 10.3.1R(9).

...

...

10.2 Core content requirements

10.2.1 R A *firm* must include within its *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 7.4.1R~~ 7.13.3R or to hold ~~or control~~ *client money* in accordance with ~~CASS 7.5.2R~~ 7.14.2R; and

...

...

(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~~ acknowledgement letters sent or received pursuant to ~~CASS 7.8~~ 7.18;

...

- 10.2.2 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 record checks; and
 - ...

...

10.3 Existing records forming part of the CASS resolution pack

- 10.3.1 R A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:
- (1) ~~CASS 6.3.1R (4)~~ 6.3.2AR (safe custody assets: appropriateness of the firm's selection of a third party);
 - ...
 - (3) ~~CASS 6.6.2R and CASS 6.6.3R (safe custody assets held for each client), including internal reconciliations carried out pursuant to CASS 6.5.2R as explained in the guidance at CASS 6.5.4G;~~
 - (4) ~~CASS 6.5.2AR~~ 6.6.6R (client agreements: firm's right to use);
 - (4A) CASS 6.6.8R (internal custody record checks, physical asset reconciliations and external custody reconciliations);
 - (5) ~~CASS 6.5.6R~~ 6.6.34R (Reconciliations with external records External custody reconciliations);
 - (5A) SYSC 6.1.1R (policy and procedures for carrying out record checks and reconciliations);
 - (6) ~~CASS 7.4.10R~~ 7.13.25R (client money: appropriateness of the firm's selection of a third party);
 - (7) ~~CASS 7.6.1R~~ 7.15.2R, CASS 7.15.3R and CASS 7.15.5R (client money held for each client), ~~including internal reconciliations carried out pursuant to CASS 7.6.2R as explained in the guidance at CASS 7.6.6G;~~
 - (7A) CASS 7.15.7R (internal client money reconciliations and external client money reconciliations);
 - (8) ~~CASS 7.6.6ER and CASS 7.6.8R (method of internal reconciliation of client money balances);~~

(9) ~~CASS 7.6.9R (Reconciliations with external records);~~

...

(11) COBS 8.1.4R (retail and professional client agreements);

...

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
10 A	CASS <u>7.4.11AR(2)</u> <u>7.13.13R(2)</u>	...			
...					

Insert the following new rows in the appropriate numerical position in **Schedule 1 (Record Keeping Requirements)**. The new text is not underlined.

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS 6.1.8AR(2)	Client's communication to <i>firm</i> of wish to terminate TTCA	Client's communication of wish to terminate TTCA	When communication made	Five years (from date of communication)
CASS 6.1.8AR(4)	<i>Firm's</i> response to <i>client's</i> wish to terminate TTCA	<i>Firm's</i> response to <i>client's</i> wish to terminate TTCA	When notification given	Five years (from date of notification)

CASS 6.3.2AR(2)	A <i>firm's</i> periodic review into the selection and appointment of a third party under CASS 6.3.1R	Date of review, actions taken by the <i>firm</i> in reviewing the selection and appointment of a third party under CASS 6.3.1R, and grounds upon which the <i>firm</i> continues to be satisfied of appropriateness of its selection of that third party to hold <i>safe custody assets</i> belonging to <i>clients</i>	On the date of the review	Five 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>)
CASS 6.6.4R	<i>Client specific safe custody asset record</i>	<i>Client specific safe custody asset record</i>	Maintain up to date	Five years (from the date the record was made)
CASS 6.6.8R	<i>Internal custody record checks, physical asset reconciliations and external custody reconciliations</i> conducted carried out by the firm.	Date and actions the <i>firm</i> took when carrying out the relevant process; a list of the discrepancies the <i>firm</i> identified and the actions the <i>firm</i> took to resolve those discrepancies	Immediate	Not specified (see default provision CASS 6.6.7R)
CASS 6.6.16R	<i>Aggregate safe custody asset record</i>	All the <i>safe custody assets</i> the <i>firm</i> holds for its <i>clients</i> , including those deposited with third parties under CASS 6.3 and any	Maintain up to date if the <i>firm</i> wishes to use the <i>internal custody reconciliation method</i>	Not specified (see default provision CASS 6.6.7R)

		<i>physical safe custody assets</i>		
CASS 6.6.30R	<i>Rolling stock method for physical asset reconciliations</i>	<i>Firm's reasons for concluding that this method is adequately designed to mitigate risk of records being manipulated or falsified</i>	Before using this method	Five years (from the date the <i>firm</i> ceases to use this method)
CASS 6.6.45R	Frequency of the <i>firm's internal record custody checks, physical asset reconciliations and external custody reconciliations</i>	Sufficient to show and explain decision taken under CASS 6.6.44R when determining frequency	Immediate	(1) Subject to (2), indefinitely. (2) For any decision which is superseded by a subsequent decision, five years from the subsequent decision (with (1) applying to the subsequent decision).
CASS 6.6.46R(2)	Review of frequency if the <i>firm's internal record custody checks, physical asset reconciliations and external custody reconciliations</i>	Date of each review and the actions the <i>firm</i> took in reviewing the frequency at which it conducts the relevant process	Immediate	Not specified (see default provision CASS 6.6.7R)
CASS 6.6.54R(2)(a)	Actions taken by the <i>firm</i> to resolve <i>shortfall</i> under this rule	Actions taken, description of <i>shortfall</i> , identity of affected <i>client(s)</i> , applicable <i>assets</i> appropriated to cover the <i>shortfall</i> . Update when discrepancy resolved.	Maintain up to date	Not specified (see default provision CASS 6.6.7R)

CASS 6.6.54R(2)(b)	Actions taken by the <i>firm</i> to resolve <i>shortfall</i> under this rule	Actions taken, description of <i>shortfall</i> , identity of affected <i>client(s)</i> , amount of <i>money</i> appropriated to cover the <i>shortfall</i> . Update when discrepancy resolved.	Maintain up to date	Not specified (see default provision CASS 6.6.7R)
CASS 7.11.9R(2)	<i>Client's</i> communication to <i>firm</i> of wish to terminate TTCA	<i>Client's</i> communication of wish to terminate TTCA	When communication made	Five years (from date of communication)
CASS 7.11.9R(4)	<i>Firm's</i> response to <i>client's</i> wish to terminate TTCA	<i>Firm's</i> response to <i>client's</i> wish to terminate TTCA	When notification given	Five years (from date of notification)
CASS 7.11.20R	<i>Client's</i> agreement to <i>firm's</i> use of the delivery versus payment exemption under CASS 7.11.14R	Written evidence of <i>client's</i> agreement	Immediate	Until the <i>firm</i> ceases to use this exemption
CASS 7.11.24R	<i>Client's</i> agreement to <i>firm's</i> use of the delivery versus payment exemption under CASS 7.11.21R	Written evidence of <i>client's</i> agreement	Immediate	Until the <i>firm</i> ceases to use this exemption
CASS 7.13.25R(2)	<i>Firm's</i> periodic review into	Date of each review, actions the <i>firm</i> took in	Date of review	Five years (from date of review)

	selection and appointment of third party under CASS 7.13.8R.	reviewing the selection and appoint of a third party under CASS 7.13.8R, and the grounds upon which the <i>firm</i> continues to be satisfied of appropriateness of its selection of that third party to hold <i>client money</i>		
CASS 7.13.25R(3)	<i>Firm's</i> periodic review under CASS 7.13.22R.	Fact of review, its considerations and conclusions	Date of review	Five years (from date of review)
CASS 7.13.36R	Unallocated <i>client money</i>	Fact that the balance treated as unallocated <i>client money</i>	When firm is unable to immediately identify <i>money</i> as <i>client money</i> or its own <i>money</i> and it treats the balance as <i>client money</i>	Pending <i>firm's</i> allocation of the <i>client money</i> concerned to an individual <i>client</i>
CASS 7.13.50R; CASS 7.13.51R	Prudent segregation record	Details of <i>money</i> segregated under CASS 7.13.41R required by these rules	Maintain up to date	Five years (after the firm ceases to retain <i>money</i> as <i>client money</i> under CASS 7.13.41R)
CASS 7.13.66R; CASS 7.13.67R	Alternative approach <i>mandatory prudent segregation record</i>	Details of <i>money</i> segregated under CASS 7.13.65R required by these rules	Maintain up to date	Five years (after the firm ceases to retain <i>money</i> as <i>client money</i> under CASS 7.13.65R)

CASS 7.13.74R; CASS 7.13.75R	<i>Clearing arrangement mandatory prudent segregation record</i>	Details of <i>money</i> segregated under CASS 7.13.73R(3)(a) required by these rules	Maintain up to date	Five years (after the firm ceases to retain <i>money</i> as <i>client money</i> under CASS 7.13.73R(3)(a))
CASS 7.15.5R(1)	Total amount of <i>client money</i> the <i>firm</i> should be holding for each <i>client</i>	Total amount of <i>client money</i> the <i>firm</i> should be holding for each <i>client</i>	Maintain up to date	Not specified (see default provision CASS 7.15.5R(3))
CASS 7.15.5R(2)	Transactions and commitments for <i>client money</i>	Sufficient to show and explain transactions and commitments	Maintain up to date	Not specified (see default provision CASS 7.15.5R(3))
CASS 7.15.7R	<i>Internal client money reconciliations and external client money reconciliations</i> conducted carried out by the <i>firm</i>	Date, actions the <i>firm</i> took in carrying out the relevant process, and the outcome of its calculation of its <i>client money requirement</i> and <i>client money resource</i> . Fact of each reconciliation and review of the <i>firm's</i> arrangements for complying with CASS 7.15.5R to CASS 7.15.8R.	Immediate	Not specified (see default provision CASS 7.15.5R(3))
CASS 7.15.9R	Receipts of <i>client money</i>	Appropriate to account for all receipts of <i>client money</i> in the form of cash, cheque or	Maintain up to date	Not specified (see default provision CASS 7.15.5R(3))

		other payable order not yet deposited in a <i>client bank account</i>		
CASS 7.15.24R	Frequency of the <i>firm's external client money reconciliations</i>	Sufficient to show and explain decision taken under CASS 7.15.232R when determining frequency	Immediate	(1) Subject to (2), indefinitely. (2) For any decision which is superseded by a subsequent decision, five years from the subsequent decision (with (1) applying to the subsequent decision).
CASS 7.15.26R(2)	Review of frequency of the <i>firm's external client money reconciliations</i>	Date of each review and the actions the <i>firm</i> took in reviewing the frequency at which it carries out the <i>external client money reconciliations</i>	Not specified	Not specified (see default provision CASS 7.15.5R(3))

Amend the following as shown:

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 6.3.1R(4) <u>6.3.2AR(1)</u>	...			
CASS 6.5.1R <u>6.6.2R</u>	...			
CASS 6.5.2R <u>6.6.3R</u>	...			
CASS 7.1.3R (2) 7.11.3R(3)				
CASS 7.1.15CR <u>7.10.31R</u>	...			

CASS 7.1.15G 7.10.35R	...			
CASS 7.1.15JR 7. 10.38R	...			
CASS 7.2.23R 7.11.55R				
CASS 7.2.25R(4) 7.11.57R(4)				
CASS 7.4.10R 7.13.25R(1)	...			
CASS 7.6.1R 7.15.2R	...			
CASS 7.6.2R 7.15.3R	...			
CASS 7.6.6AR (1)(a) 7.15.18R(1)(a)	...			
CASS 8.3.1R	Adequate records and internal controls in respect of the <i>firm's</i> use of <i>mandates</i> (see CASS 8.3.2R (1) to CASS 8.3.2R (5) to CASS 8.3.2CR	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> , important <i>client</i> documents held by the <i>firm</i> , and, in relation to <u>non-written</u>	...	Not specified <u>One year after the <i>firm</i> ceases to have the <i>mandate</i> or, if the <i>mandate</i> was held in the course of or in connection with the <i>firm's</i> MiFID business, five years after the same date</u>

		<u>mandates, the further details required by CASS 8.3.2CR</u>		
...				

Insert the following new rows in the appropriate numerical position in **Schedule 2 (Notification Requirements)**. The new text is not underlined.

Sch 2.1G

...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 6.6.57R(3)	Inability or material failure to take the steps required under CASS 6.6.54R for the treatment of <i>shortfalls</i>	The fact that the <i>firm</i> is unable or has materially failed to comply and the reasons for that	Inability or material failure to comply with the requirement	Without delay
CASS 6.6.57R(4)	Inability or material failure to conduct an <i>internal custody record check</i> under CASS 6.6.11R to CASS 6.6.19R	The fact that the <i>firm</i> is unable or has materially failed to comply and the reasons for that	Inability or material failure to comply with the requirement	Without delay
CASS 6.6.57R(5)	Inability or material failure to conduct a <i>physical asset reconciliation</i> in compliance with CASS 6.6.22R to CASS 6.6.30R	The fact that the <i>firm</i> is unable or has materially failed to comply and the reasons for that	Inability or material failure to comply with the requirement	Without delay
CASS 6.6.57R(6)	Inability or material failure to conduct an <i>external custody record check</i> in	The fact that the <i>firm</i> is unable or has materially failed to	Inability or material failure to comply with the	Without delay

	compliance with CASS 6.6.34R to CASS 6.6.37R.	comply	requirement	
CASS 7.15.33R(1)	Inability to comply with CASS 7.15.2R, CASS 7.15.3R or CASS 7.15.5R(1), due to materially out of date, inaccurate or invalid internal records and accounts	The fact that the <i>firm</i> is unable to comply and the reasons for that	<i>Firm's</i> records and accounts are materially out of date, inaccurate or invalid internal so that it is unable to comply	Without delay
CASS 7.15.33R(2)	Inability to comply with CASS 7.15.29R after having carried out an <i>internal client money reconciliation</i>	The fact that the <i>firm</i> is unable to comply and the reasons for that	<i>Firm's</i> records and accounts are materially out of date, inaccurate or invalid internal so that it is unable to comply	Without delay
CASS 7.15.33R(3)	Inability or material failure to identify and correct any discrepancies under CASS 7.15.31R to CASS 7.15.32R after having carried out an <i>external client money reconciliation</i>	The fact that the <i>firm</i> is unable to comply and the reasons for that	Inability or material failure to comply	Without delay
CASS 7.15.33R(4)	Inability or material failure to conduct an <i>internal client money reconciliation</i> under CASS 7.15.12R and	The fact that the <i>firm</i> is unable to comply and the reasons for that	Inability or material failure to comply	Without delay

	CASS 7.15.15R			
CASS 7.15.33R(5)	Inability or material failure to conduct an <i>external client money reconciliation</i> under CASS 7.15.20R to CASS 7.15.28R	The fact that the <i>firm</i> is unable to comply and the reasons for that	Inability or material failure to comply	Without delay
CASS 7.15.33R(6)	Amount of <i>client money</i> segregated in <i>client bank accounts</i> materially differing from <i>client money segregation requirements</i> during preceding 12 months	The fact of the material difference and the reasons for that		Without delay

Amend the following as shown and re-order numerically as appropriate.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 6.5.13R (1) 6.57R (1)	Non-compliance or inability, in any material respect, Inability to comply with the requirements in CASS 6.5.1R 6.6.2R to CASS 6.6.4R (Records, and accounts and reconciliations); CASS 6.5.2R (Records and accounts, including internal reconciliations) or CASS 6.5.6R (Reconciliations with external	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

	records)			
CASS 6.5.13R (1A) 6.57R (2)	Non-compliance or material inability to comply with the requirements in CASS 6.5.1R 6.6.2R (Records, and accounts and reconciliations) and/or articles 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the <i>AIFMD level 2</i> 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 material respect, to comply with the requirements in CASS 6.5.10R (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 7.2.17G 7.12.42R	...			
CASS 7.4.17DR 7.13.57R
CASS 7.6.6AR(1)(b) 7.15.18R(1)(b)
CASS 7.6.16R(1)	Non-compliance or inability, in any material	The fact that the <i>firm</i> has not complied	Non-compliance or inability,	Without delay

	<p>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)</p>	<p>or is unable, in any material respect, to comply with the requirements and the reasons for that</p>	<p>in any material respect, to comply with the requirements</p>	
--	---	--	---	--

Annex D

Amendments to the Supervision manual (SUP)

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

This section comes into force on 1 June 2015

3 Auditors

...

3.10 Duties of auditors: notification and report on client assets

...

Application

3.10.2 R An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the *client money rules* in the *client money chapter* or the *debt management client money rules* if:

...

(2) that *firm* is subject to the rules of its *designated professional body* as specified in *CASS 7.1.15R(2)* *7.10.28R(2)* or *CASS 11.1.6R(2)* with respect to its *regulated activities*.

...

6 Applications to vary and cancel Part A permission and to impose, vary or cancel requirements

...

6.4 Applications for cancellation of permission

...

6.4.22 G In deciding whether to cancel a *firm's Part 4A permission*, the relevant regulator will take into account all relevant factors in relation to business carried on under that permission, including whether:

...

(2) the *firm* has complied with, *CASS 5.5.80R* and *CASS 7.2.15R*

7.11.34R (Client money: discharge of fiduciary duty) and CASS 7.2.19R 7.11.50R (Client money: allocated but unclaimed client money) if it has ceased to hold client money; these rules apply to both repayment and transfer to a third party;

...

6 Annex 4.2AG

1	<p>A <i>firm</i> must comply with <u>CASS 5.5.80R</u> and <u>CASS 7.2.15R 7.11.34R</u> (Client money: discharge of fiduciary duty) and <u>CASS 7.2.19R 7.11.50R</u> (Allocated but unclaimed <i>client money</i>) if it is ceasing to hold <i>client money</i>. A <i>firm</i> must also cease to hold or control <i>custody assets</i> in accordance with instructions received from <i>clients</i> and <u>COBS 6.1.7R</u> (Information concerning safeguarding of designated investments belonging to clients and client money). These <i>rules</i> apply to both repayment and transfer to a third party.</p>
---	---

12 Appointed representatives

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

12.6.5A G When complying with the *MiFID client money segregation requirements*, *firms'* attention is drawn to ~~the guidance in~~ CASS 7.4.24G to CASS 7.4.27G 7.13.34R and CASS 7.13.35R .

...

16 Annex 29R

Client Money and Asset Return

Section 1 - Firm Information

This section should be completed by all firms

- 1 Name of CASS audit firm
- 2 Name of CASS audit firm (if other was selected above)
- 3 Did the firm hold client money during the reporting period?
- 4 Did the firm ~~hold safeguard and administer~~ safe custody assets during the reporting period?
- 5 Was the firm subject to the CFTC Part 30 Exemption Order during the reporting period?

Alternative Approach to client money segregation

- 6 Did the firm operate the alternative approach during the reporting period? ~~(CASS 7.4.14G – 7.4.16G)~~
- 7 Has ~~the firm received the auditor assurances required for its use of~~ the alternative approach and provided these to the FCA ~~been signed off by the firm's auditors (as detailed in CASS 7.4.14G – 7.4.16G)?~~

Overview of firm's activities subject to CASS

Please complete the table below with all business types undertaken for segregated clients

	A	B	C	D
8	Type of business activity	Number of clients	Balance of client money as at reporting period end date	Value of safe custody assets as at reporting period end date
	Total			

Section 2 - Balances

This section should be completed by all firms

- 9 Highest client money balance held during the reporting period
- 10 Lowest client money balance held during the reporting period
- 11 Highest value of safe custody assets held during the reporting period
- 12 Lowest value of safe custody assets held during the reporting period

A

Section 3 - Segregation of client money

This section should only be completed if the answer to question 3A is "Yes"

	A	B	C	D	E
13	Type	Institution where client money held	Client money balances	Country of incorporation of the institution	Is this a group entity
		Total			

Section 4 - Client money requirement and resources

This section should only be completed if the answer to question 3A is "Yes"

14	Client money requirement	A	
	of which:		
15	Unallocated to individual clients but identified as client money		
16	Unidentified receipts of client money in client money bank accounts treated as client money		
17	Uncleared payments e.g. unrepresented cheques sent to clients		
18	Excess cash in segregated accounts Prudent segregation of client money		
19	Client money resource		
20	Surplus Excess (+)/ deficit shortfall (-) of client money resource against client money requirement		
21	Adjustments made to withdraw an excess or rectify a deficit shortfall identified as a result of an internal <u>client money</u> reconciliation		

Section 5 - Client money reconciliations

This section should only be completed if the answer to question 3A is "Yes"

		A	
		Frequency	
22	Client money Internal <u>client money</u> reconciliation		
23	Client money External <u>client money</u> reconciliation		
24	Client money unreconciled <u>unresolved</u> items		

A	B	C	D
6-29 days	30-59 days	60-90 days	90+ days

Section 6 - Segregation of safe custody assets

This section should only be completed if the answer to question 4A is "Yes"

	A	G	B	C	D	E	F
25	How registered?	<u>Where</u> <u>How</u> held?	Name of institution where <u>safe</u> custody assets held/ <u>registered</u>	Number of lines of stock	Value of safe custody assets as at reporting period end date	Country of incorporation of the institution	Is this a group entity
				Total			

Section 7 - Safe custody assets record checks and reconciliations

This section should only be completed if the answer to question 4A is "Yes"

	A	B	C
26	Safe custody assets <u>unreconciled</u> <u>unresolved</u> items	30 days	60 days
			90 days

	A	B	C
27	<u>Method</u> <u>Record check/reconciliation</u>	Frequency	Type of safe custody asset
	"Internal reconciliation"		
	"Internal system evaluation"		
	"Physical reconciliation - total count"		
	"Physical reconciliation - rolling stock"		
	"External reconciliation"		
	"External reconciliation to CREST"		

Section 8 - Record Keeping and Breaches

Record Keeping

This section should only be completed if the answer to question 3A is "Yes"

	A	B	C	D	E	F
	Number of accounts held at beginning of the reporting period	Number of new accounts opened during the reporting period	Number of accounts closed during the reporting period	Total number of accounts at the end of the reporting period	Number of trust status letters and/or acknowledgment letters in place that cover these accounts at the end of the reporting period covered by an acknowledgment letter	Explanation of <u>difference</u> discrepancies
28 Client bank accounts						
29 Client transaction accounts						
30 Total						

Notifiable CASS Breaches

This section should be completed by all firms

- 31 ~~Did any of the circumstances referred to in CASS 6.6.57R arise the firm fail to comply with requirements set out in CASS 6.5.1R, CASS 6.5.2R, CASS 6.5.6R and CASS 6.5.10R?~~ A
- 32 ~~If yes, was a notification made to the FCA did the firm comply with the notification requirements?~~
- 33 ~~Did any of the circumstances referred to in CASS 7.15.33R arise the firm fail to comply with requirements in any of CASS 7.6.1R, 7.6.2R, 7.6.9R, 7.6.13R to 7.6.15?~~
- 34 ~~If yes, was a notification made to the FCA did the firm comply with the notification requirements?~~

Section 9 - Outsourcing and Offshoring

This section should only be completed by firms who outsource and/or offshore

	A	B	C	D
35	Who do you outsource and/or offshore your client money and/or custody asset operations to? (name of entity)	What function of your CASS operations do you outsource and/or offshore?	Location of service provider	Significant changes being made or planned to existing arrangements

16 Annex 29AG

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

Client Money and Asset Return (CMAR)

This annex contains *guidance* on the *CMAR* and is therefore addressed only to a *firm* which is subject to *SUP* 16.14.

General

...

A *firm* should include in any amount of *client money* that it reports any *client money* which it has allowed another *person* to hold or control in accordance with *CASS* ~~7.5.2R~~ 7.14.2R (for example, an exchange, *clearing house* ~~or~~, *intermediate broker* or *OTC counterparty*).

Reporting Period period

The reporting period for the *CMAR* is the calendar month for which a *CMAR* is required to be completed in accordance with *SUP* 16.14.3R, including the first *day* and the last *day* of that month. For example, the January reporting period will be 1 January ~~+~~ to 31 January ~~+~~, regardless of whether or not any *day* in January is a *business day*.

...

Reporting ~~Client Money Balances~~ client money balances using internal client money reconciliations

The *guidance* in this annex assumes that a *firm* uses one of the standard ~~method~~ methods of internal client money reconciliation. *Firms* that use a ~~different method of internal reconciliation~~ non-standard method of internal client money reconciliation in accordance with *CASS* ~~7.6.7R~~ 7.15.17R should read the *guidance* in this annex in so far as it is consistent with that ~~different~~ non-standard method.

Where this *data item* requires a *firm* to report any *client money* balances, unless otherwise specified the *firm* should report on the basis of balances used for its ~~internal reconciliation~~ internal client money reconciliation carried out on the first *business day* following the reporting period in question. This means using the values contained in the *firm's* internal accounting records and ledgers, for example its cash book or other internal accounting records, rather than the values contained in statements the records it has obtained received from its banks and other third parties with whom it has placed client money (for example, bank statements).

Currency

...

Section 1 Firm information

...

2 Name of *CASS* audit firm (if 'Other' was selected above)

If a *firm* selects 'Other' in (1), it should enter the name of ~~its~~ the auditor that provides its client assets report (see *SUP* 3.10).

...

- 4 Did the *firm* ~~hold safeguard and administer~~ *safe custody assets* during the reporting period?

A *firm* should state “Yes” or “No”.

A *firm* should state “Yes” if, during the reporting period:

- (a) it held *financial instruments* belonging to a *client* in the course of its *MiFID business*; or
 (b) it was *safeguarding and administering investments* in the course of its business that is not *MiFID business*.

A *firm* should not take into account *safe custody assets* in respect of which it was merely *arranging safeguarding and administration of assets* in accordance with CASS 6 during the reporting period.

- 5 Was the *firm* subject to ~~a CFTC~~ the *CFTC’s Part 30 exemption order* during the reporting period?

A *firm* should state “Yes” or “No”. *Handbook* provisions dealing with the ~~CFTC~~ *CFTC’s Part 30 exemption order* are set out in CASS 7.4.32G to CASS 7.4.35R 12.

- 6 Did the *firm* operate the alternative approach during the reporting period (~~see CASS 7.4.14G to CASS 7.4.19G~~) (see CASS 7.13.54G to CASS 7.13.69G)?

A *firm* should state “Yes” or “No”. *Handbook* provisions dealing with the alternative approach to *client money segregation* are set out in CASS 7.4.14G 7.14.54G to CASS 7.4.19G 7.14.69G.

- 7 Has the *firm* received the auditor assurances required for its use of the alternative approach and provided these to the FCA ~~alternative approach been signed off by the *firm’s* auditor?~~

A *firm* should state “Yes” or “No”.

~~CASS 7.4.15R provides that a *firm* that does not operate 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.~~

Pursuant to CASS 7.13.58R before adopting the *alternative approach*, a *firm* must first send a written report to the FCA prepared by an independent auditor of the *firm* in line with a *reasonable assurance engagement*, stating the matters set out in CASS 7.13.58R(2).

...

- 8C Balance of *client money*

In relation to each of the investment activities or services identified, a *firm* should report in this data field the total amount of *client money* that it held belonging to *clients* in respect of the activity or service in question.

A *firm* should report *client money* balances on the basis of balances used in the ~~internal reconciliation~~ *internal client money reconciliation* that the *firm* carried out on the first *business day* following the reporting period in question.

...

Section 2 Balances

...

In relation to data fields 9 to 12, a *firm* should determine the lowest and highest figures by reference to the data that it has recorded ~~from internal reconciliations~~ in the internal records and accounts the *firm* holds that relate to the reporting period in question.

Section 3 Segregation of client money

13A Type

A *firm* should identify the types of institution with which it has placed *client money*. ~~CASS 7.4.1R~~ 7.13.3R identifies the type of institution with which a *firm* must promptly place into one or more accounts *client money* that it receives. ~~CASS 7.5.2R~~ 7.14.2R identifies a ~~limited number of~~ the circumstances in which a *firm* may allow another *person*, such as an exchange, a *clearing house* ~~or~~, an *intermediate broker* or an OTC counterparty, to hold or control *client money*.

For each institution with which it has placed *client money*, the *firm* should identify in this data field whether the *client money* was:

- (a) deposited with a CRD credit institution;
- (b) placed with a clearing house;
- (c) placed with an exchange;
- (d) placed with an intermediate broker;
- (e) placed in a qualifying money market fund;
- (f) deposited with a bank authorised in a third country; and
- (g) deposited with a central bank.

In relation to any *client money* a *firm* has placed with an OTC counterparty and/or any other *person*, the *firm* should selection option (d).

...

13C *Client money* balances

A *firm* should report the total amount of *client money* which it has placed with each institution identified in 13B.

A *firm* should report *client money* balances on the basis of balances used in the ~~internal reconciliation~~ internal *client money* reconciliation that the *firm* carried out on the first *business day* following the reporting period in question.

A *firm* should include in the *client money* balance the aggregate balance of any allocated but unclaimed *client money* which a the *firm* continues to treat as ~~*client money*~~ *client money* such. For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.

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

...

13E Group entity

A *firm* should indicate in this data field whether each institution with which it has placed *client money* is or is not a relevant group entity within the meaning of CASS ~~7.4.9BR~~ 7.13.21R. A *firm* should note that the definition in CASS ~~7.4.9BR~~ 7.13.21R is specific to CASS and the entities which comprise it may not be the same as those which comprise the *firm's group*.

Section 4 Client money requirement and resource

14 Client money requirement

In relation to a *firm* that follows one of the standard ~~method~~ methods of internal client money reconciliation, that *firm* should report its *client money requirement*, calculated in accordance with CASS 7.16.10R ~~7.16 Annex 1G paragraph 6~~.

A *firm* should report its *client money requirement* on the basis of the ~~internal reconciliation~~ internal client money reconciliation that the *firm* carried out on the first *business day* following the reporting period in question.

A *firm* should include in the *client money requirement* the aggregate balance of any allocated but unclaimed client money which a the firm continues to treat as such-client money. For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.

...

15 Unallocated to individual *clients* but identified as *client money*

A *firm* should report the amount of ~~unallocated~~ *client money* that it holds that it has recorded in its internal records and accounts as “unallocated client money” in accordance with CASS 7.13.36R(2). A *firm* should not include balances for this data field that it is reporting in data field 16.

16 Unidentified receipts segregated as client money in *client bank accounts*

A *firm* should report the amount of *client money* that it has recorded in its internal records and accounts as “unallocated client money” in accordance with CASS 7.13.36R(2). A *firm* should not include balances for this data field that it is reporting in data field 15. ~~is held in that firm's client bank accounts and client transaction accounts which is the subject of enquiry by that firm to determine whether that money is client money.~~

17 Uncleared payments e.g. ~~unpresented cheques sent to clients~~

...

- 18 Excess cash in segregated accounts Prudent segregation of client money and the alternative approach mandatory prudent segregation
- A In this data field, a *firm* should report: (i) the amount of *client money* that it holds in *client bank accounts* ~~and *client transaction accounts* which the *firm* included in its *client money requirement*~~ as a result of the *firm's* application of CASS 7.4.18BR (Alternative approach buffer) and CASS 7.4.21R 7.13.41R (Prudent segregation), and (ii) if applicable, the amount of *client money* that it holds in *client bank accounts* as a result of the requirement set out in CASS 7.13.65R (mandatory prudent segregation). A *firm* should not include balances for this data field that it is reporting in data fields 15-17.
- 19 Client money resource
- A *firm* should report its *client money resource* on the basis of the *client money resource* used in the ~~internal reconciliation~~ internal client money reconciliation that the *firm* carried out on the first *business day* following the reporting period in question (which should be the same ~~internal reconciliation~~ internal client money reconciliation used by the *firm* to report its *client money requirement* in data field 14).
- A *firm* should include in the *client money resource* resource the aggregate balance of any allocated but unclaimed *money* which a *firm* continues to treat as *client money*. For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.
- 20 ~~Surplus~~ Excess (+)/ deficit- shortfall (-) of *client money resource* resource against *client money requirement*
- A *firm* should report in this data field the amount by which its *client money resource* resource ~~exceeds~~ is greater than its *client money requirement* requirement (to be reported in the *data item* as a positive amount), or as the case may be, the amount by which its *client money requirement* requirement ~~exceeds~~ is greater than its *client money resource* resource (to be reported in the *data item* as a negative amount).
- Where a ~~an surplus excess~~ or ~~deficit~~ shortfall does not exist following a *firm's* ~~internal~~ internal client money reconciliation, the *firm* should report '0' for this data field.
- 21 Adjustments made to withdraw an excess or rectify a ~~deficit~~ shortfall identified as a result of an ~~internal reconciliation~~ internal client money reconciliation.
- A *firm* should report the amount of *money* that it added to correct a ~~deficit~~ shortfall or, as the case may be, that it withdrew reflecting an excess ~~a surplus~~.

In relation to data fields 14 to ~~20~~ 21, a *firm* should report by reference to the results of its ~~internal reconciliation~~ internal client money reconciliation carried out on the first *business day* following the reporting period in question.

Data fields 15-18 relate to *client money* balances identified in a *firm's* internal ~~accounting records and ledgers~~, for example its cash book or other internal accounting records, that form part of the *client money requirement* ~~requirement~~ reported in data field 14. ~~Data fields 15-18 will not equal the *client money requirement* reported in data field 14 unless the balances reported for data fields 15-18 include all balances that are allocated to individual *clients*.~~

Section 5 Client money reconciliations

22 ~~Internal client~~ *Client money* ~~internal reconciliation~~ *reconciliation*

A *firm* should identify in this data field the frequency with which it performs ~~internal reconciliations~~ *internal client money reconciliations*.

23 ~~External client~~ *Client money* ~~external reconciliation~~ *reconciliation*

A *firm* should identify in this data field the frequency with which it performs ~~external reconciliations~~ *external client money reconciliations*.

24 *Client money* ~~unreconciled~~ *unresolved* items

A *firm* should identify in this data field the number of ~~unreconciled~~ *unresolved* *client money* items and allocate each item to one of the specified time bands according to the length of time for which it has remained ~~unreconciled~~ *unresolved*.

For the purposes of this data field, the number of ~~unreconciled~~ *unresolved* *client money* items includes: (a) the number of individual unresolved discrepancies identified as part of a *firm's* internal *client money reconciliations* (see CASS 7.15.12R); and (b) the number of individual unresolved discrepancies identified as part of a *firm's* external *client money reconciliations* (see CASS 7.15.29R), but not those unresolved discrepancies that have arisen solely as a result of timing differences between the accounting systems of third party providing the statement or confirmation and that of the firm. In both cases, only include those items which have remained unresolved for period of six calendar *days* or more ~~refers to the number of individual discrepancies/breaks identified as part of a *firm's* internal and external reconciliations which have remained unresolved for period of 6 calendar *days* or more. For the purposes of this data field unreconciled items should include any unresolved differences that have not yet been allocated to individual clients and any unidentified *client money* balances, but should not include items that were in fact reconciled by taking into account timing differences between a *firm's* own accounting records (e.g. cash book entries) and *client bank account* statements.~~

For the purposes of this data field, the number of unresolved items should also include any individual items recorded in a *firm's* internal records and accounts as "unallocated client money" in accordance with CASS 7.13.36R(2) which have remained unresolved for period of six calendar days or more.

...

Section 6 Segregation of safe custody assets

In order to complete this section a *firm* will need to group the *safe custody assets* it held at the reporting period end date by the method of registration used (25A), the means by which the assets were held (25G) and the name of the institution with which the assets were deposited or registered (25B). Each group of *safe custody assets* so identified should be reported as a separate row.

When reporting dematerialised *safe custody assets* a *firm* holds in a *collective investment scheme*, a *firm* has the option to report the holdings in either one of the following ways:

- (1) per *fund* manager (ie, for every *fund* manager with whom the *firm* has holdings registered) it should use a new row to report the relevant holdings; or
- (2) on an aggregate basis by reference to each variance of data fields 25A, 25E and 25F (where relevant, ie, for each variance, such as holdings based in different countries and/or different methods of legal title registration), the *firm* should use a new row. For example, an asset held in one country in the name of a nominee company should be in a different row from an asset held in the same country in the name of a *client*, and also from an asset held in another country in the name of the same nominee company.

Annex 1 to this guidance sets out an example of reporting under either of these options.

25A How registered?

...

25B Name of institution where *safe custody assets* held/registered

...

In relation to any dematerialised *safe custody assets* which a *firm* held as the sole *custodian* the *firm* should report the name of the central securities depository where the *safe custody assets* were deposited registered, for example CREST, Euroclear UK & Ireland, etc. and should select “deposited with any other third party” when completing data field 25G.

In relation to any dematerialised *safe custody assets* a *firm* holds in a *collective investment scheme*, a *firm* should report, either:

- (a) the name of the fund manager who retains the regulatory responsibility for maintaining the legal register for those *safe custody assets*, if the *firm* is reporting by fund manager (for example, in respect of a *UK OEIC*, the *ACD*); or
- (b) the term “collective investment scheme” if the *firm* is reporting on an aggregate basis.

25C Number of lines of stock

...

For the purpose of this data field, a *firm* should treat each stock which bears its own CUSIP or ISIN number, or any individual *collective investment scheme* as a separate line of stock.

25D Value of *safe custody assets* as at reporting period end date

As at the reporting period end date, a *firm* should calculate the total value of the *safe custody assets* reported on each row and enter that value in the data field.

25E Country of incorporation of the institution

In relation to each institution identified in 25B, a *firm* should report the name of the country in which that institution is incorporated using the appropriate two letter ISO code.

In relation to dematerialised *safe custody assets* a *firm* holds in a *collective investment scheme*, the *firm* should report the country of incorporation of the relevant *fund manager* who has retained regulatory responsibility for registering units in the *collective investment scheme*. This means that a *firm* will need to have at least one row per country of incorporation of relevant *fund managers* regardless of whether the *firm* is reporting per *fund manager* or on an aggregate basis.

25F Group entity?

A *firm* should indicate in this data field whether each institution with which it placed *safe custody assets* is or is not a member of that *firm's group*. In relation to any dematerialised *safe custody assets* a *firm* holds in a *collective investment scheme*, the *firm* should treat the *fund manager* of that scheme as the relevant institution.

25G ~~Where~~ How held?

For each group of *safe custody assets* that a *firm* (in carrying on the *regulated activity* of *safeguarding and administering investments*) held at the reporting period end date, the *firm* should identify in this data field how ~~whether~~ the *safe custody assets* were held.:

- (a) ~~held in the *firm's* physical possession (for example any non-dematerialised assets such as bearer notes);~~
- (b) ~~deposited with a third party *custodian* (this may include any third party that has responsibility to the *firm* for the *safe custody assets*, such as a sub-custodian or a *fund manager*);~~
- (c) ~~deposited with a third party exchange;~~
- (d) ~~deposited with a third party *clearing house*;~~
- (e) ~~deposited with a third party intermediary; or~~
- (f) ~~deposited with any other third party (where none of the above options adequately describe how the *safe custody assets* are held).~~

	<u>If the <i>safe custody assets</i> were:</u>	<u>Choose the following option from the drop down box in the form:</u>
(a)	<u>held in the <i>firm's</i> physical possession (for example, any non-dematerialised assets such as bearer notes);</u>	<u>Firm physical;</u>
(b)	<u>deposited with a third party <i>custodian</i> (this may include any third party that has responsibility to the <i>firm</i> for the <i>safe custody assets</i>, such as a sub-custodian);</u>	<u>3rd party custodian</u>
(c)	<u>deposited with a third party exchange and/or <i>clearing house</i>;</u>	<u>Exchange/Clearing House</u>
(d)	<u>deposited with a third party intermediary; or</u>	<u>Intermediary</u>
(e)	<u>deposited/registered with any other third party (where none of the above options adequately describes how the <i>safe custody assets</i> are held).</u>	<u>Other</u>

In relation to any dematerialised *safe custody assets* which a *firm* held as the sole *custodian* the *firm* should select “Other” ~~option (f)~~ and report the name of the central securities depository where the *safe custody assets* were ~~deposited~~ registered, for example CREST, Euroclear UK & Ireland, etc. when completing data field 25B.

In relation to any dematerialised *safe custody assets* a *firm* holds in a *collective investment scheme*, the *firm* should select “Other”.

Section 7 Safe Custody Assets Reconciliations custody assets records checks and reconciliations

26 *Safe custody assets* ~~unreconciled~~ unresolved items

A *firm* should identify in this data field the number of ~~unreconciled~~ unresolved *safe custody assets* items and allocate each item to one of the specified time bands according to the length of time for which it has remained ~~unreconciled~~ unresolved.

For the purposes of this data field, the number of ~~unreconciled~~ unresolved safe custody assets items refers to the number of individual discrepancies (‘‘eg, custody record breaks’’) identified as part of a *firm’s* ~~external reconciliation~~ external custody reconciliation which have remained unresolved for a specific period of time.

CASS 6.6.48G provides that a discrepancy should not be considered to be resolved until is fully investigated and any associated *shortfall* is made good.

In relation to the 30-day field, a *firm* should report items which have remained ~~unreconciled~~ unresolved for at least 30 *days* but no more than 59 *days*.

In relation to the 60-day field, a *firm* should report items which have remained ~~unreconciled~~ unresolved for at least 60 *days*, but no more than 60 89 *days*.

In relation to the 90-day field, a *firm* should report items which have remained ~~unreconciled~~ unresolved for at least 90 *days*.

27A Method of custody record check/reconciliation

~~In relation to each type of *safe custody asset* identified in 27C, a *firm* should report the method of internal reconciliation that it applied to that type of asset. CASS 6.5.2R to CASS 6.5.5R set out rules and guidance in relation to internal reconciliation methods.~~

In relation to each type of *safe custody asset* identified in 27C, a *firm* should report:

(a) the method of *internal custody records checks* that it utilised in respect of that type of asset during the reporting period, by selecting either:

(i) ‘‘internal reconciliation’’ where it performed its *internal custody record checks* using the *internal custody reconciliation method*; or

(ii) ‘‘internal system evaluation’’ where it performed its *internal custody record checks* using the *internal system evaluation method*.

CASS 6.6.10G to 6.6.20G sets out rules and guidance in relation to *internal custody records checks*, and the available methods;

(b) (if applicable) the method of *physical asset reconciliation* that it utilised in respect of all *physical safe custody assets* it held during the reporting period, by selecting either:

(i) ‘‘physical reconciliation - total count’’ where it performed its *physical asset reconciliations* using the *total count method*; or

(ii) ‘‘physical reconciliation - rolling stock’’ where it performed its *physical asset reconciliations* under the *rolling stock method*.

CASS 6.6.21G to 6.6.32G set out rules and guidance in relation to *physical asset reconciliations*, and the available methods; and

(c) (if applicable) the method of *external custody reconciliation* that it utilised in respect of that type of asset during the reporting period, by selecting either:

(i) ‘‘External reconciliation to CREST’’ where it performed an *external custody reconciliation* with Euroclear UK & Ireland for *safe custody assets* held in the *CREST* system; or

(ii) “external reconciliation”, where it performed an *external custody reconciliation* with any other third party.

CASS 6.6.33G to 6.6.43G set out rules and guidance in relation to external custody checks, and the available methods.

27B Frequency

In relation to each custody record check/reconciliation type method identified in 27A, a *firm* should report the frequency with which it conducted ~~internal reconciliations~~ the custody record check/reconciliation for its safe custody assets during the reporting period using that record check/reconciliation method.

27C Type of *safe custody asset*

A *firm* should report the different types of *safe custody asset* (e.g. shares) that it held and may do so using its own description of an asset type.

Section 8 Record keeping and ~~branches~~ notification requirements

...

28F Explanation of ~~discrepancies~~ difference

A *firm* should provide a brief explanation for any difference between the number of *client bank accounts* reported for 28D and the number of ~~trust/acknowledgement letters~~ *client bank accounts* reported in 28E which were covered by a *client bank account acknowledgement letter* to cover these accounts reported for 28E in accordance with (see CASS 7.8.1R 7.18.2R).

...

29F Explanation of ~~discrepancies~~ difference

A *firm* should provide a brief explanation where there is a difference between the number of *client transaction accounts* reported for 29D and the number of ~~trust/acknowledgement letters~~ *client transaction accounts* reported in 29E which were covered by a *client transaction account acknowledgement letter* and/or *authorised central counterparty acknowledgement letter* to cover these accounts reported for 29E (see in accordance with CASS 7.8.2R 7.18.3R and/or CASS 7.8.3R 7.18.4R).

31 Did any of the circumstances referred to in CASS 6.6.57R arise? ~~the firm fail to comply with the requirements set out in CASS 6.5.1R, CASS 6.5.2R, CASS 6.5.6R and CASS 6.5.10R?~~

~~A *firm* should indicate whether, at any point during the reporting period, it failed to comply with any of the requirements set out in CASS 6.5.1R, CASS 6.5.2R and CASS 6.5.6R.~~

~~If a *firm*, having carried out a reconciliation during the reporting period, failed to comply with CASS 6.5.10R, it should also record that fact in this data field.~~

~~CASS 6.5.10R provides that a *firm* must promptly correct any discrepancies which are revealed in the reconciliations envisaged by CASS 6.5 and make good, or provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.~~

~~A *firm* should indicate whether at any point during the reporting period one of the situations referred to in CASS 6.6.57R arose, in which the *firm* was obligated to notify the FCA.~~

~~Some of the notification requirements in CASS 6.6.57R only apply where a *firm* materially fails to comply with a *rule* (ie, a breach of the *rule* having occurred), while others apply where the *firm* was unable to comply with a *rule* (ie, a *firm* had not yet breached the relevant *rule* but became aware that it would, in the future, either continuously or for a specified period, be unable to comply with the specified *rule*). Therefore, a *firm* should base its response only on those breaches that would be notifiable.~~

- 32 ~~If yes, was a notification made to the FCA did the *firm* comply with the notification requirements?~~

~~If in data field 31 the *firm* has answered “Yes”, acknowledged a failure to comply with any of the specified *rules*, it should confirm in this data field whether a notification all notifications was were made to the FCA in accordance with CASS 6.5.13R 6.6.57R.~~

~~Where the *firm*’s response to data field 31 relates to multiple instances of non-compliance, it should only answer “Yes” in this data field if all instances were notified.~~

- 33 ~~Did any of the circumstances referred to in CASS 7.15.33R arise? Did the *firm* fail to comply with any of the requirements set out in CASS 7.6.1R, CASS 7.6.2R, CASS 7.6.9R and CASS 7.6.13R to CASS 7.6.15R?~~

~~A *firm* should indicate whether, at any point during the reporting period it failed to comply with any of the requirements set out in CASS 7.6.1R, CASS 7.6.2R and CASS 7.6.9R.~~

~~If a *firm*, having carried out a reconciliation during the reporting period, failed to comply with one or more of the obligations found in CASS 7.6.13R to CASS 7.6.15R, it should also record that fact in this data field.~~

~~CASS 7.6.13R to CASS 7.6.15R set out requirements which apply to a *firm* in relation to internal and external reconciliation discrepancies.~~

~~A *firm* should indicate whether at any point during the reporting period one of the situations referred to in CASS 7.15.33R arose, in which the *firm* was required to notify the FCA.~~

~~Some of the notification requirements in CASS 7.15.33R only apply where a *firm* materially fails to comply with a *rule* (ie, a breach of the *rule* having occurred), while others apply where the *firm* was unable to comply with a *rule* (ie, a *firm* had not yet~~

breached the relevant *rule* but became aware that it would, in the future, either continuously or for a specified period, be unable to comply with the specified *rule*). Therefore, a *firm* should base its response only on those breaches that would be notifiable.

34 If yes, ~~was a notification made to the FCA~~ did the *firm* comply with the notification requirements?

If in data field 33 the *firm* has answered “Yes”, ~~acknowledged a failure to comply with any of the specified *rules*~~, it should confirm in this data field whether a ~~notification~~ all notifications ~~was~~ were made to the FCA in accordance with CASS ~~7.6.16R~~ 7.15.33R.

~~Where the *firm*'s response to data field 33 covers multiple instances of non-compliance, it should only answer “Yes” in this data field if all instances were notified.~~

~~In relation to data fields 31 and 33, a *firm* should answer “Yes” if it failed to comply with any of the *rules* specified in those data fields at any point during the reporting period in question, whether or not it is in compliance at the end of the reporting period.~~

~~A *firm*'s responses to data fields 31 and 33 should only include ~~relate to~~ unresolved breaches that occurred within the particular a previous CMAR reporting period if those breaches would have required further notification under CASS 6.6.57R ~~in question and not to any breach that may have occurred in a previous reporting period, even if the breach remains unresolved.~~~~

~~A *firm* should answer “N/A” as appropriate to data fields 31 and 33 if it did not hold *client money* or *safe custody assets* during the reporting period.~~

~~In relation to data fields 32 and 34, a *firm* should only answer “Yes” if the *firm* has acknowledged any breaches in data fields 31 or 33, and all such breaches were notified as required within the reporting period in question.~~

~~CASS 6.5.13R and CASS 7.6.16R require that the FCA be informed without delay of any of the matters in respect of which notification is required by those *rules*. Submission of the CMAR within the time limit specified in SUP 16.14.3R does not discharge the obligations in those *rules* and a *firm* remains obliged to notify the FCA as soon as it becomes aware that any of the circumstances described in those *rules* has arisen.~~

~~A *firm* should answer “N/A” as appropriate to data fields 32 and 34 if the *firm* has answered either “No” or “N/A” for data fields 31 and 33 respectively.~~

CASS 6.6.57R and CASS 7.15.33R require that the FCA be informed without delay of any of the matters in respect of which notification is required by those *rules*. Submission of the CMAR within the time limit specified in SUP 16.14.3R does not discharge the obligations in those *rules* and a *firm* remains obliged to notify the FCA as soon as it becomes aware that any of the circumstances described in those *rules* has arisen.

...

Annex 1**Options for reporting dematerialised safe custody assets a firm holds in a collective investment scheme in fields 25A-G****Option 1 – reporting holdings per fund manager**

Table 1 shows an example of some of the possible permutations of reporting this way. In Table 1:

- With respect to Fund Manager X, for the purposes of completing fields 25A-G of the CMAR, the reporting firm needs to complete one line. This is because in relation to its holdings in all 3 collective investment schemes (reported in 25C) the units are registered in the name of a nominee company controlled by the firm. Fund Manager X is incorporated in Guernsey and it is a member of the firm’s group. The same applies with respect to Fund Manager Y.
- With respect to Fund Manager Z, for the purposes of completing fields 25A-G of the CMAR, the reporting firm needs to complete two separate lines. This is because in relation to the firm’s holdings in 1 collective investment scheme (reported in 25C) the units are registered in the name of a nominee company which is controlled by the firm and in relation to the firm’s holdings in the other 3 collective investment schemes the units are registered in the name of a nominee company which is controlled by an affiliated company. Fund Manager Z is incorporated in the Cayman Islands and it is a member of the firm’s group.

Table 1

<u>A</u>	<u>G</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
<u>How registered?</u>	<u>How held /registered</u>	<u>Institution where safe custody assets held/registered</u>	<u>Number of lines of stock</u>	<u>Value of safe custody assets as at reporting period end date</u>	<u>Country of incorporation of the institution</u>	<u>Is this a group entity</u>
<u>Nominee company which is controlled by the firm</u>	<u>Other</u>	<u>Fund Manager X</u>	<u>3</u>	<u>£600m</u>	<u>Guernsey</u>	<u>Yes</u>
<u>Nominee company which is controlled by the firm</u>	<u>Other</u>	<u>Fund Manager Y</u>	<u>5</u>	<u>£350m</u>	<u>Guernsey</u>	<u>Yes</u>

<u>Nominee company which is controlled by the firm</u>	<u>Other</u>	<u>Fund Manager Z</u>	<u>1</u>	<u>£90m</u>	<u>Cayman Islands</u>	<u>Yes</u>
<u>Nominee company which is controlled by an affiliated company</u>	<u>Other</u>	<u>Fund Manager Z</u>	<u>3</u>	<u>£400m</u>	<u>Cayman Islands</u>	<u>Yes</u>
<u>Nominee company which is controlled by an affiliated company</u>	<u>Other</u>	<u>Fund Manager XX</u>	<u>5</u>	<u>£250m</u>	<u>Cayman Islands</u>	<u>Yes</u>

Option 2 – reporting on an aggregate basis

Table 2 shows an example of some of the possible permutations of reporting this way. In Table 2:

- Line (i) reports all the firm’s holdings in collective investment schemes in relation to which the units are registered in the name of a nominee company which is controlled by the firm and the relevant fund manager is incorporated in Guernsey and is a group entity.
- Line (ii) reports all the firm’s holdings in collective investment schemes in relation to which the units are registered in the name of a nominee company which is controlled by the firm and the relevant fund manager is incorporated in the Cayman Islands and is a group entity.
- Line (iii) reports all the firm’s holdings in collective investment schemes in relation to which the units are registered in the name of a nominee company which is controlled by an affiliated firm and the relevant fund manager is incorporated in the Cayman Islands and is a group entity.

Table 2

<u>A</u>	<u>G</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
<u>How registered?</u>	<u>How held / registered</u>	<u>Institution where safe custody assets</u>	<u>Number of lines of stock</u>	<u>Value of safe custody</u>	<u>Country of incorporation of the</u>	<u>Is this a group</u>

		<u>held/registered</u>		<u>assets as at reporting period end date</u>	<u>institution</u>	<u>entity</u>	
<u>(i)</u>	<u>Nominee company which is controlled by the firm</u>	<u>Other</u>	<u>collective investment scheme</u>	<u>8</u>	<u>£950m</u>	<u>Guernsey</u>	<u>Yes</u>
<u>(ii)</u>	<u>Nominee company which is controlled by the firm</u>	<u>Other</u>	<u>collective investment scheme</u>	<u>1</u>	<u>£90m</u>	<u>Cayman Islands</u>	<u>Yes</u>
<u>(iii)</u>	<u>Nominee company which is controlled by an affiliated company</u>	<u>Other</u>	<u>collective investment scheme</u>	<u>8</u>	<u>£650m</u>	<u>Cayman Islands</u>	<u>Yes</u>