

Consultation Paper CP23/12**

Expansion of the Dormant Assets scheme – second phase

May 2023

How to respond

We are asking for comments on this Consultation Paper (CP) by **10 July 2023**.

You can send them to us using the form on our [website](#).

Or in writing to:

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Chapter 1

Summary

Why we are consulting

- 1.1** The Dormant Asset Scheme (DAS) was initially set up to allow banks and building societies to pay dormant monies to an authorised reclaim fund, which would then put this money towards funding good causes.
- 1.2** In February 2022, the Dormant Assets Act 2022 (DAA 2022) received Royal Assent. The Act amends the Dormant Bank and Building Society Accounts Act 2008 to expand the scope of dormant assets that can be contributed to the DAS. The new assets in scope of the expanded scheme fall under five asset classes:
- insurance
 - pensions
 - securities
 - investment assets
 - client money
- 1.3** We have been working closely with HM Government and Reclaim Fund Limited (RFL) to expand the scheme. We made changes to our Handbook to facilitate phase 1 expansion in August 2022, covering insurance, pensions and securities.
- 1.4** We are now consulting on the second phase of the DAS to make amendments to our rules and guidance to enable dormant investment assets and client money to be available to the scheme.

Who this applies to

- 1.5** Reclaim Fund Limited (RFL), managers and depositaries of authorised collective investment schemes, and firms holding client money should read this consultation. It may also be of interest to insolvency practitioners, professional advisers, trade associations, consumers and consumer organisations.

What we want to change

- 1.6** We are suggesting some technical changes in our Handbook to facilitate full expansion of DAS in the remaining asset classes. The FCA's intention is to ensure any Handbook changes allow firms to participate in the Dormant Asset Scheme and consumers are able to access reclaims.

Measuring success

- 1.7** The key indicators of success in the early years of expansion will be the number of firms that choose to become participants in the scheme and are accepted by RFL, and the value of dormant assets that are transferred to the scheme. Over time, the number of consumers making successful applications for repayment claims will also be indicative of whether procedures are working well.

Next steps

- 1.8** We want to know what you think of our proposals. Please use this [online form](#) or email: cp23-12@fca.org.uk by 10 July 2023.
- 1.9** Depending on the feedback received to this consultation we hope to finalise our proposals in Q4 2023.

Chapter 2

The wider context

- 2.1** The Dormant Bank and Building Society Accounts Act 2008 supported the creation of the DAS. Under the DAS, bank accounts are deemed dormant when they have been untouched for a minimum of 15 years and the bank or building society has been unable to trace the owner. Banks and building societies can voluntarily channel funds from dormant accounts to the DAS via an Authorised Reclaim Fund (ARF) or dormant asset fund operator. The ARF is responsible for meeting any reclaims and the distribution of dormant funds to good causes.
- 2.2** The DAS is underpinned by three principles:
- Reunification first: assets are only classed as dormant and made available to the Scheme after satisfying strict criteria with participating firms' first priority being to trace and reunite people with their assets
 - Full restitution: asset owners are able, at any point, to reclaim the amount that would have been due to them had a transfer into the scheme not occurred
 - Voluntary participation: potential participants can choose whether to contribute to the scheme and to what extent

Reclaim Fund Limited

- 2.3** There is one ARF in the UK – Reclaim Fund Ltd (RFL) which was established in 2011 by the Cooperative Banking Group (now Angel Square Investments Ltd). RFL administers the DAS and is an executive non-departmental public body, sponsored by HM Treasury. Since 2011, over £745m has been made available through the DAS to social and environmental initiatives, including £150m allocated to support coronavirus recovery. After ten years of operation, the current Scheme is reaching a mature state, with significantly fewer funds flowing through the system each year.

Expansion

- 2.4** The Dormant Assets Act 2022 expanded the current DAS to facilitate the inclusion of assets from new sectors. The full list of assets in scope, new definitions of dormancy, and reclaim values can be found in the Dormant Assets Act 2022.
- 2.5** As agreed with HM Government and RFL, the expansion of the DAS will be staggered. This is to reflect the differences between the different asset classes and their resolution processes. We previously consulted on expansion to three asset classes: insurance, pensions, and securities. This consultation will facilitate expansion for investment assets and client money.

Equality and diversity considerations

- 2.6** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. We do not consider that the proposals have a negative impact on any of the groups with protected characteristics under the Equality Act 2010. We see the wider public policy of using dormant assets for public good will likely benefit some groups with protected characteristics.
- 2.7** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.

Chapter 3

Overview of assets in scope

- 3.1** This chapter explains in more detail how the expansion of the Dormant Assets scheme will apply to investment assets and client money.

Investment Assets

- 3.2** The Dormant Assets Scheme (DAS) applies to dormant 'investment assets' as defined in sections 8 to 9 of the Dormant Assets Act 2022. Investment assets are eligible amounts owing by virtue of a collective scheme investment (CIS) – in other words, sums of money attributable to units or shares in collective investment schemes authorised by the FCA under Part XVII of the Financial Services and Markets Act 2000 (FSMA) (which we refer to below as "authorised funds").
- 3.3** Authorised funds are widely used as a way of investing indirectly in a wide range of financial instruments and other asset classes, such as property. In the past, most investors dealt directly with the firm managing the authorised fund and were recorded as its customers. Over time, firms may have lost contact with some of these long-standing customers. The investments of such 'lost' investors in a fund may now qualify as dormant investment assets.
- 3.4** The DAS does not apply to overseas recognised schemes, or to unregulated CIS such as hedge funds and other alternative investment vehicles.
- 3.5** There are four ways in which a collective scheme investment can turn into an 'investment asset'. In three cases, either the authorised fund manager (AFM) or the depositary of the fund will have been holding a cash amount which has eventually become dormant – these amounts may represent either:
- a.** the proceeds of redemption of units, carried out on the unitholder's instructions or by the AFM under the terms of the fund's prospectus (for example, if the holding of units is below the stated minimum value); or
 - b.** amounts of income distributed to unitholders; or
 - c.** orphan monies remaining in a fund that is being wound up, after the bulk of the assets have either been sold (and the proceeds repaid to investors) or transferred to another authorised fund under a scheme of arrangement.
- 3.6** In each of these cases, the AFM and depositary may regard the eligible amount as dormant if they have received no communication from the unitholder (or a person acting on the unitholder's behalf) during the previous six years. However, the unitholder is entitled to make a claim at any time in the future for the sum transferred to the Authorised Reclaim Fund (ARF), plus any interest due, but adjusted for any fees and charges payable.

- 3.7** The fourth type of eligible amount is where a registered holding of units has become dormant. This cannot happen until 12 years have passed since the AFM and depositary received any communication from the unitholder or their representative. In this case, the Act gives the AFM and the depositary the power to 'convert' the units into a right of payment. In other words, the AFM will redeem the units for their current market value, and pay the proceeds (less any charges and expenses) into the ARF. At that point, the unitholder will cease to have any rights as an investor in the authorised fund, but instead will have a legal claim against the ARF.
- 3.8** The former unitholder or their representative will be entitled to receive the 'reclaim amount' for their units from the ARF at any time in the future. The aim is to give the claimant the amount the units would now be worth, as if they had never been 'converted' under the scheme. This amount will be calculated by reference to the day on which the ARF accepts the claim. The number of units the investor would now be entitled to will be multiplied by the price per unit on that day, together with the value of any distributions or allocations of income attributable to the units between the time they were 'converted' and the date of the claim less any charges and expenses.
- 3.9** Section 21 of the Act applies when a person has a right to repayment of an amount of money representing one of the investment assets described above. If that person does not wish to receive the payment (for example, because it is of minimal value), they can inform the participant firm of their wishes and the amount can be transferred to the ARF instead of being repaid to them. Their right to repayment of the amount is then extinguished permanently.

Client Money

CASS regime

- 3.10** The Client Assets Sourcebook ('CASS') provides detailed rules for a firm to follow when it holds or controls client money and/or custody assets (collectively 'client assets') as part of their business. This is to ensure adequate protection for client assets while a firm is responsible for them and allow for them to be returned as quickly and as whole as possible to clients if a firm enters an insolvency process. The CASS regimes for client money currently apply to authorised firms undertaking the following types of business: investment business, insurance distribution activity, debt management and claims management¹.
- 3.11** The CASS regime supports our objectives and underpins FCA Principle 10 by requiring firms to arrange adequate protection for client assets when they are responsible for them. Protecting client assets is fundamental to consumers' rights and the trust they place in firms that are often acting as their agents, fiduciaries and/or counterparties; it is at the heart of ensuring a well-functioning and robust marketplace.

¹ See CASS 5 (insurance distribution activity), CASS 7 (designated investment business), CASS 11 (debt management activity), and CASS 13 (claims management).

Unclaimed client money

- 3.12** As with other types of firms, circumstances may arise where a firm subject to the CASS rules is unable to contact a client, for example, the client may have changed address and not contacted the firm to update their details. Such unclaimed money remains client money for the purposes of CASS, meaning that the firm must continue to comply with all relevant CASS rules in respect of this money.
- 3.13** At present, CASS 7, which applies to investment firms², permits firms holding client money to pay away unclaimed client money to charity³. The rules require a firm to wait at least six years, with no activity on the client's account before the firm may implement a procedure to pay or transfer client money to a registered charity. A firm must also take reasonable steps to trace the client and return the unclaimed client money before paying the money away to charity.
- 3.14** Firms are required to take into account the arrangements they have in place with their clients before paying away unclaimed client money and only do so if permitted by law.
- 3.15** Where a firm pays away client money to charity, the rules require a firm to unconditionally undertake to make good any valid claim or to ensure that an unconditional undertaking to make good any valid claim is made by a member of the firm's group (ie an affiliate). Firms are also required retain the requisite records indefinitely.

Option to use the DAS for CASS firms

- 3.16** Client money, as defined in section 12 of the DAA 2022, may be held by firms as client money for the purposes of CASS, and therefore be subject to the CASS rules. We also note that eligible pension benefits and eligible amounts owing by virtue of a collective scheme investment, as defined in sections 6 and 9 of the DAA 2022, may also constitute client money for the purposes of CASS.
- 3.17** The expansion of the DAS will provide firms subject to the CASS rules with an option for the transfer of unclaimed client money to the DAS, providing it meets the relevant dormancy conditions set out in the DAA 2022⁴.
- 3.18** Participation in the DAS is voluntary and subject to the ARF's decision whether to accept an applicant as a new participant to the scheme. Participants are also required to put in place adequate arrangements for the ARF to accept transfers of assets. Firms subject to the CASS rules will be able to decide whether they wish to apply to participate.

2 CASS 7.10.3R contains provisions allowing general insurance intermediaries to opt-in to applying CASS 7 in certain circumstances.

3 See CASS 7.11.50R.

4 See sections 7, 10 and 13 DAA 2022.

3.19 Participation in the DAS by firms subject to the CASS rules offers potential benefits to clients and firms. These include:

- Dormant clients will be able to reclaim their money in perpetuity from the DAS, avoiding the risk a firm ceases business.
- All types of firms subject to the CASS rules will be able to participate in the DAS (subject to the ARF's approval of individual firms' applications and certain exclusions in the DAA eg client money in a lifetime ISA). We note below RFL's staged approach to expansion.

Staged expansion

3.20 As stated in 2.5 above, HM Government and RFL had agreed the expansion of the DAS will be staggered.

3.21 We are aware that for phase 2 of the expansion RFL intends initially to accept eligible participants in relation to pension assets and investment assets (some of which will constitute client money for the purposes of CASS and covered by CASS 7).

3.22 At a later date, RFL intends to consider acceptance of all remaining eligible client money, as defined in section 12 of the DAA 2022, allowing insurance distribution firms, claims management companies and debt management firms to participate.

3.23 We are consulting on proposed amendments to the CASS rules that will permit all firms subject to the CASS rules to participate in the DAS to the fullest extent possible under the DAA 2022 once RFL is in a position to accept transfers of client money. This will avoid unnecessary delay between RFL opening the DAS to client money and firms being able to apply to participate.

Other provisions: Unwanted Assets

3.24 An unwanted asset is an asset which the customer authorises to be transferred to an AFM, such as RFL. As defined under section 21 of the DAA, this includes a person who has a right to payment to the following amounts:

- the balance of a bank or building society account (see section 8 of the 2008 Act);
- eligible insurance proceeds;
- eligible pension benefits;
- an amount owing by virtue of a collective scheme investment;
- eligible client money;
- eligible proceeds or distribution.

3.25 Our proposed rules in this consultation will allow firms that become participants to transfer dormant investment assets and client money, including unwanted assets. In the draft amendments to client money rules, we have included guidance to clarify that payment of client money under s.21 of the DAA is already permitted by existing CASS rules. The draft investment asset rules also expressly cover the possibility that AFMs transfer unwanted assets to RFL where investors agree.

3.26 S.21 of the DAA makes provisions for persons who no longer want their assets to make a set of declarations before a participant transfers the unwanted balance to an ARF. In order to accept unwanted assets, an ARF must have FCA permission to carry on the regulated activity of 'dealing with unwanted asset money'. At present, there is no firm (including RFL) that has this permission, and we are not aware that any firm intends to apply for it before the launch of the expanded scheme.

Chapter 4

Investment Assets

- 4.1** This chapter sets out the specific changes to FCA rules we are proposing to make provisions to take account of the expansion of the DAS to investment assets as defined in the Dormant Assets Act 2022.

Scope of the proposal

- 4.2** We propose that authorised fund managers (AFMs) and depositaries should be able to become participants in the DAS in relation to their UCITS schemes and non-UCITS retail schemes. We are not proposing to make rules relating to qualified investor schemes, as we think AFMs would normally be able to trace unitholders in such funds so it is very unlikely that holdings have become, or would ever become, dormant. Similarly, we believe that any firms choosing to launch long-term asset funds will put procedures in place from the outset to maintain regular contact with their investors over a prolonged period, so rules for DAS participation will not be needed.
- 4.3** To allow firms to become DAS participants, we need to make changes to the Collective Investment Schemes sourcebook (COLL). Current rules do not allow AFMs or depositaries to make payments from the assets of the scheme to third parties except where this is expressly permitted by the fund's constitution or is required by law.
- 4.4** So, since participation in the DAS is optional, an AFM wishing to do so must first amend the scheme documents (the instrument constituting the fund and the prospectus) to authorise and empower the AFM and the depositary to make payments to the DAS of money attributable to its customers. We propose amendments to COLL 3.2.6R and 4.2.5R specifying what statements and information need to be set out in the instrument constituting the fund and the prospectus.
- 4.5** Our proposed rules will allow firms that become participants to transfer dormant investment assets (as defined under sections 8 to 9 of the Act), and any such assets that are unwanted assets (as defined under section 21 of the Act). The unwanted assets provisions are not expected to be operational at the launch of the expanded scheme.

Contents of the prospectus

- 4.6** The prospectus must explain the conditions for classing assets as dormant, the basis on which units can be sold and amounts transferred to the ARF, and that a former unitholder (or their legal representative) can make a claim for repayment of the amount due. Such claims normally have to be made to the AFM of the fund, although as explained below there are provisions for what should happen when that firm is no longer operating.

- 4.7** We propose that the prospectus should also explain clearly what right if any the successful claimant has to apply to reinvest the proceeds in the fund. The Act does not grant any specific right of reinvestment and it is for the AFM to decide whether to accept any request for reinvestment.
- 4.8** We would expect the AFM to state clearly in the prospectus when and how it intends to use its rights as a participant in practice. It might decide to make the widest possible use of the power, or to apply it in a narrower way – for example, paying dormant amounts of repurchase monies and unclaimed distributions to the ARF, but not proceeding with converting dormant holdings of units. Or it might decide that participation is appropriate for some funds in its range but not others.
- 4.9** Where the AFM takes and uses the power to transfer dormant assets, we propose that it should do so in preference to any other available power for disposing of unclaimed assets. For example, the existing rules require any unclaimed distribution amounts to be transferred to the fund's capital account after six years. Where an AFM decides to become a DAS participant and states in a fund's prospectus that it will transfer unclaimed income distribution amounts to the ARF, we would require it to pay all such unclaimed distributions to the ARF, so that all individual unitholders will have a right to reclaim the outstanding amount due to them in future. We propose similar rules for dealing with orphan monies belonging to 'gone away' investors, that remain when a fund is wound up, in preference to paying those monies into court as the current rules require.
- 4.10** We consider that a change to the instrument and prospectus to allow payments to be made to the ARF is likely to be a significant change under COLL 4.3.6R, requiring at least 60 days' written notice to unitholders. This is because the power to be given to the AFM and depositary to pay investors' monies to another entity instead, without their knowledge or explicit consent, could be considered to affect unitholders' ability to exercise their rights in relation to their investments. So we propose to add further guidance to COLL 4.3.7G explaining this point.
- 4.11** An alternative would be to say that prior written notice of the change is unlikely to reach the investors who have 'gone away' and who will thus be more likely to have their assets transferred to the ARF and that accordingly the change could be categorised as a notifiable change under COLL 4.3.8R. However, we think there is a benefit to all investors in making them aware through a general announcement that the AFM intends to participate in the dormant assets scheme.

Rules to enable payment to the DAS

- 4.12** We propose several modifications to rules in COLL 6.2 to enable the AFM to repurchase units under the 'conversion' power of section 9(3)(b) of the Act, and to authorise the depositary to release monies it holds so they can be paid to the ARF. We propose that any units repurchased in this way must be cancelled and not held by the AFM for resale to another investor. This is to avoid any doubt that the former unitholder's right to those units has been extinguished and replaced by a repayment claim against the ARF.

- 4.13** We propose changes to COLL 6.8 to allow unclaimed distributions of income to be classed as dormant and paid into the DAS, as an alternative to the existing power to return the unclaimed amounts into the capital property of the scheme.
- 4.14** We propose a series of amendments to the sections in COLL 7 that relate to the winding-up of the different types of authorised fund structure, including the termination of a sub-fund of an umbrella. These will allow the AFM to transfer residual orphan monies to the ARF after a scheme has been substantially wound up, but only where the monies are attributable to unitholders who can be regarded as 'gone away' (that is, there has been no contact with them for at least six years). Therefore, orphan monies cannot be transferred in their entirety if some or all of the unitholders in the fund are still contactable by the AFM and depositary.

Record keeping requirements

- 4.15** AFMs (and in some cases, depositaries) will need to keep sufficient records of the amounts transferred to enable the rightful owners to reclaim them. COLL 6.6.6R requires the AFM to keep specific records for a period of six years, but this will not by itself be sufficient to cover assets transferred to the ARF because the former unitholder's right to repayment will exist in perpetuity.
- 4.16** The high-level record-keeping requirements in SYSC 9.1.1R (which reflects the provisions of the UCITS Directive) and in the Alternative Investment Fund Managers Directive level 2 Regulation, require a firm to ensure that orderly records are kept of its business, including all services and transactions undertaken by it. This might be sufficiently broad in scope to cover a firm's ongoing obligations to investors whose assets were paid over to the ARF, but it does not give any clarity about the specific information that should be kept. So we think that a new rule in COLL, specifying which records should be retained in case of an application for a repayment claim, is the best way to ensure investors are treated fairly and consistently.
- 4.17** We therefore propose to amend COLL 6.6.6R by adding new provisions where the AFM or the depositary are participants in the DAS. The rule specifies the types of information that should be retained in each case, so that any future repayment claims can be verified and the amount can be accurately calculated. This is especially important for repayment claims relating to converted units, where the customer is entitled to the current market value as if the units had never been sold, together with any amounts of income distributed from the fund (less any appropriate adjustments that would have been paid such as fees and charges).
- 4.18** AFMs and firms who administer client records on their behalf will need to consider how best to capture the information currently recorded in the register of unitholders and other records, so that it can be stored safely for an indefinite period, but retrieved easily if a repayment claim is received. The new consumer duty rule PRIN 2A.6.2R(4)(e), effective from July 2023, will require AFMs to ensure that retail customers do not face unreasonable barriers during the lifecycle of a product, which would include when they want to submit a claim.

- 4.19** It is not uncommon for the management of an authorised fund to be transferred from one firm to another as the result of takeovers and restructurings. In these circumstances, the records of any investors whose dormant assets have been transferred to the ARF must be properly protected. The agreement which participant firms enter into with the ARF foresees that the former will make all reasonable efforts to ensure the successor firm is also a participant. However, ultimately it remains the outgoing AFM's responsibility to maintain the records, to transfer them to the successor AFM or to arrange for another authorised person (such as the depositary) to assume the responsibility, with the agreement of the ARF.
- 4.20** In the event of the AFM becoming insolvent, the firm's agreement with the ARF foresees that the latter will assume responsibility for the records of the investors whose monies have been transferred to the scheme.

- Q1:** Do you agree that these proposals are necessary and proportionate to allow AFMs and depositaries to be participants in the DAS?
- Q2:** In particular, do you have any comments on the proposal to treat changes to the instrument and prospectus of the fund as significant changes requiring prior written notice to unitholders?
- Q3:** Are there any other steps we should take to enable participation, or to protect the rights of fund investors whose dormant assets are transferred to the ARF?

Chapter 5

Client Money

- 5.1** This chapter sets out the specific changes to FCA rules we are proposing to facilitate the expansion of the DAS to client money as defined in the Dormant Assets Act 2022.

Discharge of client money responsibilities

- 5.2** When firms hold money on behalf of clients in accordance with the CASS rules, client money is protected under a statutory trust, established by the CASS rules⁵. Under the CASS rules, a firm discharges its client money responsibilities to its client when it has returned the client money to the client or to another party in accordance with the instruction of the client. We propose to amend existing rules⁶ so that firms may cease to treat money as client money if it is paid to an ARF in accordance with the relevant provisions in Part 1 of the DAA 2022.
- 5.3** This means that a firm will no longer have responsibility for client money that is transferred to the ARF and the money would cease to be client money for the purposes of CASS. This reflects the effect of the DAA 2022 in transferring liability from the firm to the ARF.

Q4: Do you agree that the proposed amendments provide sufficient certainty that the requirement to hold the money as client money is extinguished for all relevant chapters of CASS? If not, what else should we consider?

Existing CASS provisions for dormant client money

- 5.4** Under CASS 7 there are existing provisions that allow an investment firm to pay away allocated but unclaimed client money to a registered charity. We propose to amend CASS 7 to require firms which are participants in the DAS to first attempt to transfer the balance in question to the ARF (where the relevant dormancy requirements in the DAA 2022 are met), before paying the balance away to charity under the existing CASS rules.

Q5: Do you agree that payments to the DAS should be given preference to paying away to charity where the firm is already a participant in the DAS?

⁵ Or in some circumstances under CASS 5, a non-statutory trust.

⁶ See CASS 5.5.80R, CASS 7.11.34R, CASS 11.4.2R and CASS 13.9.2R

Tracing requirements

- 5.5** The DAA 2022 imposes a statutory requirement that participating firms must attempt to reunite dormant clients with their assets before a transfer can be made to an ARF. The arrangements made between the ARF and the firm must include provisions on tracing and verifying the identity of the asset owner.
- 5.6** We propose to require firms to take reasonable steps to trace a client prior to transferring client money balances to the ARF. We also propose to introduce evidential provisions setting out the reasonable steps that could be taken to comply with the rule. We propose that these steps would be consistent with the existing provisions in CASS 7 for tracing clients prior to paying away dormant client money balances to charity, including proportionate steps for de minimis amounts of dormant client money, and consistent across all relevant CASS chapters.

Q6: Do you agree that the CASS rules should be amended to include tracing requirements in addition to firms' contractual obligations with the ARF?

Q7: Do you agree the requirements are proportionate? If not, what should we consider?

Client money distribution and payment to the DAS

- 5.7** In the event of a firm failure or primary pooling event⁷ (PPE), the CASS rules include provisions for distributing client money.
- 5.8** For client money held under CASS 5, CASS 11 and CASS 13, we propose to amend the rules to require firms which, prior to the PPE, are participants in the DAS, to attempt to transfer any allocated but unclaimed client money that meets the dormancy criteria set out in the DAA 2022, to the ARF.
- 5.9** Under CASS 7A, firms are required to apply allocated but unclaimed client money entitlements towards a shortfall in the client money pool after payment of costs in accordance with the statutory trust waterfall provision.⁸ This rule was introduced to create certainty on how to treat unclaimed client money in firm failure situations in cases where there is legal basis to apply client money towards the firm itself at the end of that waterfall provision (such as where its administrator is using regulation 12C of the Investment Bank Special Administration Regulations 2011⁹ to set a 'hard bar date'). These provisions were introduced before the expansion of the DAA to client money.

⁷ An event that occurs in the circumstances described in CASS 5.6.5 R, CASS 7A.2.2, CASS 11.13.3R or CASS 13.11.3R (failure of an authorised firm).

⁸ CASS 7.17.2R

⁹ [\(SI 2011/245\)](#)

5.10 We propose to require those firms to whom this rule would be applicable and that were participants in the DAS prior to the PPE, to attempt to transfer dormant client money to the ARF before any remaining balances are applied towards making good any outstanding shortfall in the client money pool. This proposal will (where such transfers are possible under the DAA 2022 and the ARF is prepared to accept them notwithstanding the failure of the participant) enable the individual claims to client money of dormant clients to be preserved now that transfers to the ARF will be possible, allowing dormant clients to reclaim their money in the future.

Q8: Do you agree that firms holding dormant client money held under CASS 5, CASS 11 and CASS 13 must attempt to transfer the balance to the ARF?

Q9: Do you agree that dormant client money held under CASS 7 should, where possible, be paid to the ARF in preference to applying it to any shortfall in the client money pool following a PPE?

Chapter 6

Dispute Resolution

- 6.1** The Financial Ombudsman Service (Financial Ombudsman) is an independent body set up by Parliament to resolve certain complaints between eligible complainants and businesses that provide financial services. Its role is to resolve these disputes quickly and with minimum formality, on the basis of what is fair and reasonable in all the circumstances of the case.
- 6.2** The FCA is responsible for setting the rules for the complaints under the 'compulsory jurisdiction' (CJ) of the Financial Ombudsman. Rules in our 'Dispute resolution: Complaints' sourcebook (DISP) cover (amongst other things) what kinds of complaints the Financial Ombudsman can consider under the CJ and who is eligible to complain.
- 6.3** RFL is already subject to the CJ and is required to comply with DISP, including the complaint handling rules in DISP 1, which contains rules and guidance on how firms should deal promptly and fairly with complaints from eligible complainants.
- 6.4** To be an 'eligible complainant' for the purposes of the CJ a person must be a 'consumer' or one of the other categories of eligible complainant set out in DISP 2.7.3R. The person must also have a complaint which arises from a matter relevant to one or more of the relationships listed in DISP 2.7.6R.
- 6.5** Under the original scheme, a customer who is (or was) a customer of a bank or building society which transferred any balance from a dormant account to the dormant asset fund operator (previously known as a dormant account fund operator) is eligible to refer a complaint about a dormant asset fund operator to the Financial Ombudsman (DISP 2.7.6R(14)).
- 6.6** Last year we made rules to cover the expansion of the DAS to the securities, insurance and pensions sector as defined in the Dormant Assets Act 2022. When consulting on the first stage of the expansion we explained that we do not regulate companies that may contribute securities assets to the dormant asset scheme except insofar as these are regulated financial services firms. We did not, therefore, introduce new rules in this area. Persons who have dormant securities assets transferred to a dormant asset fund operator are not eligible to refer a complaint about the dormant asset fund operator to the Financial Ombudsman.
- 6.7** However, we added provisions in DISP 2.7.6R(14A) and (14B) to ensure that a person would be eligible to complain to the Financial Ombudsman about the dormant asset fund operator where: (i) they were a person to whom the proceeds of certain insurance contracts were payable by an insurer or (ii) they were a person who was a member of a personal pension scheme to whom any eligible pension benefits were due, but those assets were instead transferred to a dormant asset fund operator.
- 6.8** In this consultation we propose to make further amendments to DISP 2.7.6R so that persons who were entitled to certain dormant investment assets owing to them, or client money held for them, are able to complain to the Financial Ombudsman about the

dormant asset fund operator where these assets are instead transferred to the dormant asset fund operator.

- 6.9** We are not proposing to amend the Handbook Glossary definition of a regulated activity to include 'dealing with unwanted asset money' in article 63N(1)(c) of the Regulated Activities Order. This is because we are not intending to apply any Handbook requirements in relation to this activity, and we cannot foresee any harm arising from a dormant asset fund operator's receipt of an unwanted asset.
- 6.10** As we are not proposing to amend the Glossary definition of a 'regulated activity' to include 'dealing with unwanted asset money' it follows that the Financial Ombudsman will not be able to consider a complaint against a dormant asset fund operator in relation to 'dealing with unwanted asset money'.
- 6.11** We think there is little risk of harm arising in this scenario due to the set of declarations in place at s.21(2) Dormant Assets Act. Consumers who have unwanted assets transferred to a dormant asset fund operator will be able to refer a complaint to the Financial Ombudsman about the firm that made the transfer, if the firm was authorised by the FCA at the time the transfer was made and all other eligibility criteria are met.

Q10: Do you agree with our proposal not to amend the Handbook Glossary definition of a regulated activity to include dealing with 'unwanted asset money'?

Q11: Do you agree with our proposal to enable persons who were entitled to certain dormant investment assets owing to them, or client money held for them, to refer a complaint about the dormant asset fund operator to the Financial Ombudsman Service?

The voluntary jurisdiction

- 6.12** The Financial Ombudsman also has its own voluntary jurisdiction (VJ) which covers some types of complaints not covered by the CJ and which financial services firms may choose to participate in and which the Financial Ombudsman oversees.
- 6.13** As the Financial Ombudsman explained in CP22/09 (Expansion of the Dormant Assets Scheme), given the nature of the regulated activities in question, the fact that RFL was the only entity that had been authorised to carry them out, and that RFL was already subject to the CJ, the Financial Ombudsman considered it unnecessary to mirror the changes which were made to the CJ in 2022 in the VJ at that time.
- 6.14** For similar reasons, and to ensure consistency with the position adopted at that time, the Financial Ombudsman is similarly not planning to mirror our proposed further changes to the CJ in the VJ on this occasion.

- 6.15** As a result, the Financial Ombudsman is proposing to make certain amendments to the VJ rules, guidance and standard terms, to make it clear that the changes which we are making to the CJ in relation to the further categories of assets in question will not be mirrored in the VJ. This will mean that complaints about dormant asset fund operators will only be covered by the CJ, not the VJ.
- 6.16** As regards complaints against a dormant asset fund operator in relation to dealing with unwanted asset money, as noted above, because of the low risk of harm envisaged in this scenario, the Financial Ombudsman will not be able to consider such complaints against dormant asset fund operators under the CJ. For like reasons, and because it is not currently anticipated that any dormant asset fund operators intend to apply to be voluntarily subject to the Financial Ombudsman's jurisdiction in relation to this activity in any event, the Financial Ombudsman is similarly not planning to make provision for the VJ to be expanded to cover such complaints. However, the Financial Ombudsman invites representations on this proposal, especially from prospective dormant asset fund operators.
- 6.17** As such, this part of the consultation is issued jointly by the FCA and the Financial Ombudsman.

Q12: Do you agree with the Financial Ombudsman's proposal not to mirror the changes we are making to the CJ in the VJ and not to expand the VJ to cover complaints against dormant asset fund operators relating to dealing with unwanted asset money?

Financial Services Compensation Scheme (FSCS)

- 6.18** The Dormant Assets Act makes provision for the Treasury to make loans to any specified 'authorised reclaim fund operator' where the fund is or is likely to become unable to meet its liabilities. RFL is specified for these purposes. This makes the FSCS's role in covering defaults by RFL obsolete and, in recognition of that, the Act removes the power of the FCA or PRA to make FSCS scheme rules in respect of any specified 'authorised reclaim fund operator'.
- 6.19** Following consultation, the Prudential Regulation Authority (PRA) removed rules relating to the DAS from the PRA Rulebook as PRA no longer has the power to provide FSCS protection of repayment claims under the Scheme. It said that following removal of the DAS rules from the PRA Rulebook, the FCA will make associated changes.
- 6.20** We are now proposing to make those associated changes by removing reference to operating a dormant asset fund in FEES 6 Annex3AR and amending the definition of a participant firm so that dormant asset fund operators are removed from FSCS cover.

Q13: Do you agree with the proposal to remove obligations relating to dormant asset fund operators from the FSCS?

Annex 1

Questions in this paper

- Q1:** Do you agree that these proposals are necessary and proportionate to allow AFMs and depositaries to be participants in the DAS?
- Q2:** In particular, do you have any comments on the proposal to treat changes to the instrument and prospectus of the fund as significant changes requiring prior written notice to unitholders?
- Q3:** Are there any other steps we should take to enable participation, or to protect the rights of fund investors whose dormant assets are transferred to the ARF?
- Q4:** Do you agree that the proposed amendments provide sufficient certainty the requirement to hold the money as client money is extinguished for all relevant chapters of CASS? If not, what else should we consider?
- Q5:** Do you agree that payments to the DAS should be given preference to paying away to charity where the firm is already a participant in the DAS?
- Q6:** Do you agree that the CASS rules should be amended to include tracing requirements in addition to firms' contractual obligations with the ARF?
- Q7:** Do you agree the requirements are proportionate? If not, what should we consider?
- Q8:** Do you agree that firms holding dormant client money held under CASS 5, CASS 11 and CASS 13 must attempt to transfer the balance to the ARF?
- Q9:** Do you agree that dormant client money held under CASS 7 should, where possible, be paid to the ARF in preference to applying it to any shortfall in the client money pool following a PPE?
- Q10:** Do you agree with our proposal not to amend the Handbook Glossary definition of a regulated activity to include dealing with 'unwanted asset money'?

- Q11:** Do you agree with our proposal to enable persons who were entitled to certain dormant investment assets owing to them, or client money held for them to refer a complaint about the dormant asset fund operator to the Financial Ombudsman Service?
- Q12:** Do you agree with the Financial Ombudsman's proposal not to mirror the changes we are making to the CJ in the VJ and not to expand the VJ to cover complaints against dormant asset fund operators relating to dealing with unwanted asset money?
- Q13:** Do you agree with the proposal to remove obligations relating to dormant asset fund operators from the FSCS?

Annex 2

Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
2. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so.

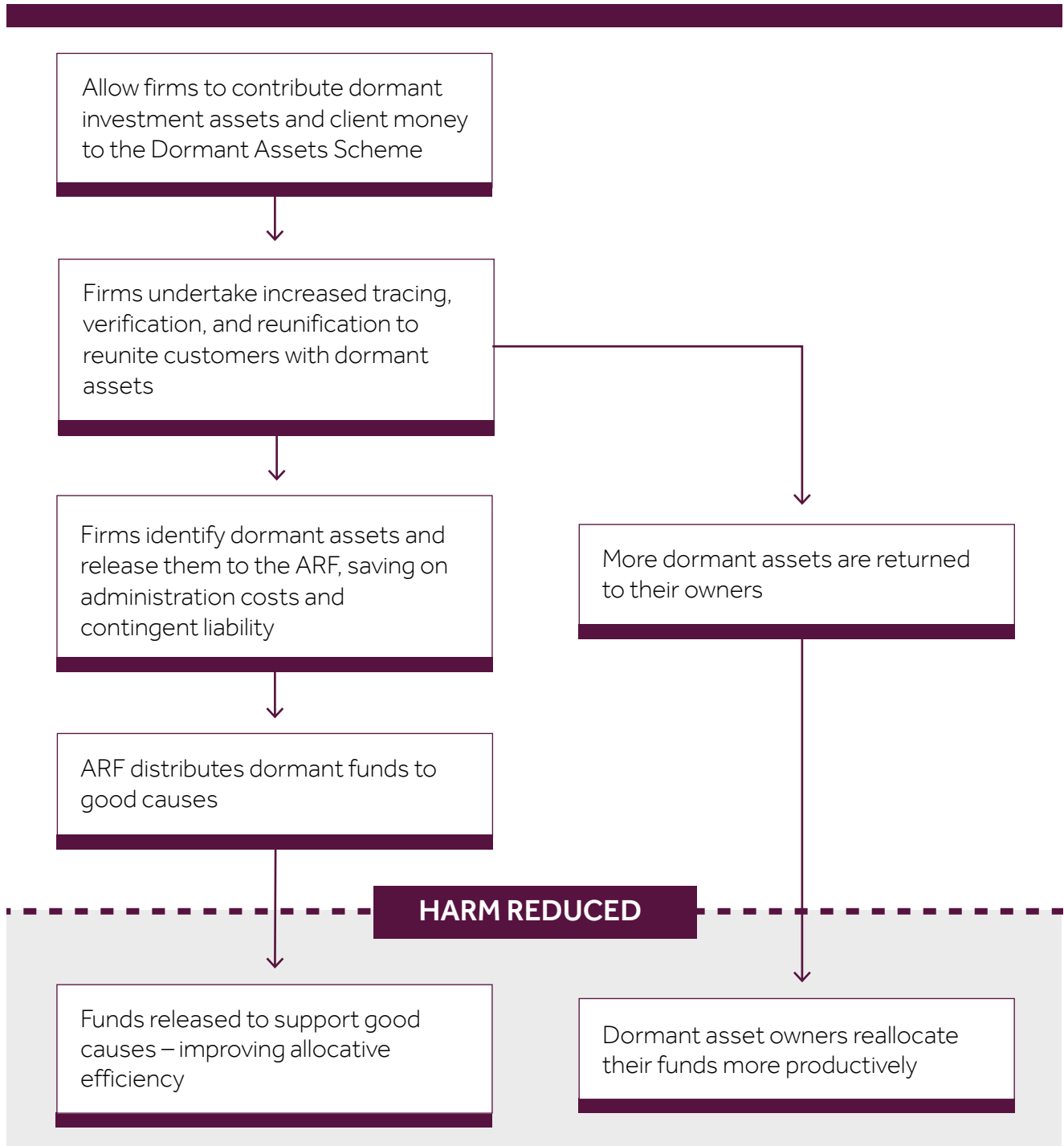
Harm and drivers of harm

3. Dormant assets are inefficiently allocated as assets are not placed where the risk adjusted returns are greatest. That is, assets are left in client accounts or in legacy investments when an active choice in where to invest these assets would likely to bring about larger benefits to society, especially when invested in socially beneficial projects. This means that socially beneficial investments which may improve overall wellbeing are not pursued.

Our intervention

4. The Dormant Assets Act 2022 expanded the current Dormant Assets Scheme (DAS) to facilitate the inclusion of assets from new sectors. The full list of assets in scope, new definitions of dormancy, and reclaim values can be found in the [Dormant Assets Act 2022](#).
5. As agreed with HM Government and RFL, the expansion of the DAS will be done in phases. We previously [consulted](#) on expansion to three asset classes: insurance, pensions, and securities. This consultation will facilitate expansion for investment assets and client money.
6. The causal chain below outlines how our proposals would result in an increase of funds being released to support good causes.

Figure 1: Causal Chain for expansion of Dormant Assets Scheme



Baseline and key assumptions

7. The baseline for this CBA is that firms holding dormant investment assets and client money are unable to sign up for the DAS. The Government has estimated that there is around £1.4 billion of eligible dormant assets in the investment and wealth management sector, which would not otherwise be returned to the rightful owners and would remain uninvested in good causes when reunification with the owner is not possible. Firms

would continue to pay client administration costs for their dormant accounts and earn fees where applicable.

Costs

Familiarisation costs for firms

- 8.** There will be one-off familiarisation costs for firms subject to the specific changes to FCA rules we are proposing to facilitate the expansion of the DAS to Investment Assets and Client Money. In total, we assume that all of the 204 firms potentially impacted by our proposed changes to Investment Asset rules, and all of the 3,242 firms potentially impacted by our proposed changes to Client Money rules, will likely seek to understand our proposals.
- 9.** However, we note that as participation in the DAS is voluntary, the number of firms who seek to familiarise themselves with the rule changes may be much lower than this. Additionally, some firms will be affected by changes to both the Investment Asset rules and the Client Money rules. Due to this overlap, the total number of firms affected across both sets of rules changes, and subsequently the total costs estimated for industry across both sets of rules changes, will potentially be lower than we have estimated.
- 10.** We estimate the familiarisation costs for market participants based on assumptions on the time required to read the approximately 30 relevant consultation pages excluding the legal instruments. We assume 300 words per page and a reading speed of 100 words per minute and estimate that it would take around 1.5 hours to read the document. It is further assumed that 20 staff at each large firm, 5 staff at each medium firm and 2 staff at each small firm will read the text.
- 11.** We convert this to a monetary value by applying an estimate of the cost of time to market participants, based on the Willis Towers Watson 2016 Financial Services Report, adjusted for subsequent annual wage inflation and including 30% overheads.
- 12.** Following familiarisation, we expect firms to conduct a legal review of the proposals and a gap analysis to check their current practices against expectations. We estimate the legal costs for market participants based on assumptions on the time required to read the 60 pages-long legal instruments. Following a similar approach as above, we convert this into a monetary value by applying an estimate of the cost of time to firms.
- 13.** Using the above assumptions we estimate total industry-wide familiarisation and legal review costs being approximately £782,000 for firms affected by changes to the Investment Assets rules and approximately £4,105,000 for firms affected by changes to the Client Money rules. However, as noted above, the total cost to industry accounting for both sets of rule changes, would likely be lower than the sum of these two figures. We summarise the costs by size of firm in the tables below.

Table 1: estimates of familiarisation costs to review the CP and legal instrument for changes to the Investment Assets Rules

Size of firm	Total one-off costs for all firms	Cost per firm
Small firms	£60,000	£700
Medium firms	£376,000	£4,400
Large firms	£346,000	£12,400

Table 2: estimates of familiarisation costs to review the CP and legal instrument for changes to the Client Money Rules

Size of firm	Total one-off costs for all firms	Cost per firm
Small firms	£1,905,000	£700
Medium firms	£1,310,000	£4,400
Large firms	£890,000	£12,400

Systems, processes and IT costs for firms

14. Each firm that wishes to participate in the DAS will have to apply to an ARF. These firms, whether affected by changes to the Investment Asset or Client Money rules, will incur a one-off cost in order to apply and, if accepted, participate in the scheme. This would include costs related to putting in place the necessary systems and processes to enable the transferring of money and processing of reclaims. We consider these costs are attributable to our rule changes as our rule changes empower firms to participate in this scheme. In other words, absent our rule changes, firms would be less likely to participate in the DAS. However, we note that these costs are 'permissive' and that firms will only incur them if they believe the private benefits of participation outweigh the costs.
15. In addition to this, firms affected by changes to the Investment Asset rules will incur an ongoing cost in relation to the record keeping requirement which places a greater standard of record keeping on firms. Firms affected by changes to the Client Money rules will incur ongoing costs in relation to taking reasonable steps to tracing and verifying the identity of the asset owner. However, we note that in some cases, these costs may simply replace other costs that would be incurred as a result of following an existing course of action, for example, the same or similar tracing and verification efforts may be undertaken where a firm intends to pay away unclaimed client money to charity under the current rules. We would not expect the additional record-keeping or tracing costs to be significant.
16. We note that the ARF will only have the capacity to onboard a limited number of firms per annum. As such, we assume that the ARF will onboard between 10 – 40 firms per year, across both of the areas where we are making rule changes. We consider that larger firms are more likely to opt into the DAS and so we assume all of the onboarded firms are large.

- 17.** We assume that in order to participate in the scheme and make the required changes firms will have to incur costs in relation to IT changes and in relation to the formation of a dedicated project management team. We assume that the IT changes will typically require 46 days of labour and the formation of a project management team 45 days of labour. We convert this into a monetary value by applying an estimate of the cost of time to firms for the relevant types of employees that are required for each of these tasks.
- 18.** Using this approach, we estimate the total systems processes and IT costs for the 10 – 40 firms that are onboarded in the first year is between £381,000 – £1,526,000 and the cost per firm is £38,100. We note that to the extent that firms which onboard in later years are smaller, the costs for later years would be lower. In addition to this, firms will also incur minimal ongoing costs in relation to record-keeping and tracing.

Indirect costs for firms

- 19.** In addition to the direct costs noted above, firms affected by the changes to Investment Asset rules may also incur indirect costs in the form of a reduction in the fee revenue that they receive for the management of accounts. We do not believe it is reasonably practicable to quantify these costs as the number and value of dormant accounts held with these firms is unclear.

Costs to consumers

- 20.** We do not anticipate material costs to consumers. In the event that they wish to reclaim their money they would still continue to contact the firm in the same way as if their money had not been transferred to DAS.
- 21.** Where a participating firm becomes insolvent (and ceases to exist), the dormant customer would have to reclaim their money from the ARF. This may result in a lengthier process to reclaim their money, but no additional material costs are anticipated.

Benefits

Benefits to firms

- 22.** In moving dormant assets off their books, firms that sign up for the DAS may reduce costs associated with client administration. For example, reconciliations for firms that operate under CASS would no longer be required. This may also result in efficiency gains for participating firms.
- 23.** We do not believe it is reasonably practicable to quantify these benefits. The volume of clients and quantity of dormant assets held by firms, and therefore the costs associated with administration, are unclear which makes estimation impracticable. It is noted that, given the voluntary nature of the scheme, participants are likely to have determined it is a net benefit for them to use the DAS.

- 24.** Where firms pay away dormant assets to charity under current CASS rules, they carry a contingent liability in that they are required to pay back the money from their own funds should the dormant client come forward to claim. Under the DAS, this liability will fall away as the reclaim risk transfers to the ARF, so the firm will never be called upon to make good the claim from its own funds. RFL returned £15m of dormant assets to their owners in 2021/22, which may provide an indication of the level of contingent liabilities expected to be returned, although it is unclear how applicable this level of returns would be to investment assets and client money.
- 25.** Firms may also receive reputational benefits from participating in the scheme through enabling investment in social and environmental causes.

Benefits to consumers

- 26.** Consumers will be able to reclaim their dormant assets from the ARF at any point in the future, meaning they do not stand to lose from the transfer of assets into DAS. In addition, there may be benefits arising from:
- further tracing, verification, and reunification (TVR) efforts by firms,
 - increased publicity about the scheme leading to consumers reclaiming their assets,
 - in the event a firm becomes insolvent, consumers being able to reclaim their assets from the DAS in perpetuity, avoiding any risk funds will be unavailable. This may lead to reduced claims to the FSCS.
- 27.** In the Government's response to the consultation on expanding the Dormant Assets Scheme, it is estimated that £781m 'could be reunited with rightful owners through enhanced TVR' in the investment and wealth management sector, representing a significant benefit to consumers.
- 28.** We do not consider it reasonably practicable to quantify benefits arising from increased publicity or access to funds in perpetuity. To estimate the impact of publicity we would require information on the reach of the news to clients with dormant assets and behavioural information on consumer response. Moreover, it is likely many consumers have forgotten or are unaware of the existence of these assets, so would be unaffected by publicity. Similarly, estimating the number of assets eligible for reclamation from firms which are yet to become insolvent would require predicting both insolvencies and the level of reclaims, both of which are highly uncertain. It is also noted that current DAS participants are large institutions which are unlikely to become insolvent in the near future.
- 29.** These benefits beyond those from increased TVR are anticipated to be negligible as levels of reclaims from the fund are low (c.£15m in 21/22), behavioural change as a result of publicity is unlikely due to the dormant nature of the assets, and there is a great deal of uncertainty for any future insolvencies.

Wider benefits

30. The government has estimated that around £240m in total will be made available from the expansion of the DAS to fund social and environmental initiatives. This is likely to provide further benefits to society that it is not practicable to quantify due to the complexity of measuring the outcomes of the interventions and uncertainty in future investment plans by ARFs.

Summary of costs and benefits

Stakeholder	One-off/ ongoing	Costs	Benefits
Firms	One-off	Familiarisation and legal – Approximately £782,000 for firms affected by changes to the Investment Assets rules and approximately £4,105,000 for firms affected by changes to the Client Money rules	
		Systems, processes and IT costs to enable participation in the scheme – £381,000 – £1,526,000 for the 10 – 40 firms which are able to onboard each year.	
	Ongoing	Systems, processes and IT costs to comply with increased burden of record-keeping and client tracing – minimal costs	
		Indirect costs of reduced management fee revenue	Reduction in client administration costs
Consumers	Ongoing		Enhanced TVR leading to more consumers being reunited with their money – Initially estimated at £781 million
			Increased publicity leading to greater reclamation
			Full reclamation possible after firm insolvency
Society	Ongoing		£240m made available to fund social and environmental initiatives

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments are compatible with our strategic objective and advance our operational objectives of securing an appropriate degree of consumer protection, promoting market integrity and promoting effective competition in the interests of consumers. Our proposals aim to give certainty to firms and investors that the potentially complex process of reclaims will be carried out properly.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
5. This letter from the Treasury (originally known as the 'remit letter') is required to be issued at least once a Parliament; the most recent one was published by the Chancellor of the Exchequer on 9 December 2022 and can be found here: <https://www.gov.uk/government/publications/recommendations-for-the-financial-conduct-authority-december-2022>. The FCA must have regard to it when the FCA discharges general functions, including giving general guidance and making rules.
6. This Annex includes our assessment of the equality and diversity implications of these proposals.

7. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

8. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of consumer protection. They are also relevant to the FCA's protecting the integrity of the UK financial system.
9. As set out above, we consider the proposed updates to the FCA Handbook will support firms in contributing assets to the dormant assets scheme (DAS).
10. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they facilitate expansion of the DAS. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s. 1F FSMA.
11. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.
- The need to use our resources in the most efficient and economic way
 - The principle that a burden or restriction should be proportionate to the benefits
12. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). This was not relevant for this consultation.

Expected effect on mutual societies

13. Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. The proposed changes are not expected to have a significantly different impact on mutual societies.

Equality and diversity

- 14.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.

- 15.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. Whilst assets transferred to the DAS will likely come from older demographics, overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. This is because the DAS ensures all money contributed can be repaid fully in perpetuity. However, we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.

Annex 4

Abbreviations used in this paper

Abbreviation	Description
ARF	Authorised Reclaim Fund
AFM	Authorised Fund Manager
CASS	Client Asset Sourcebook of the FCA Handbook
CBA	Cost Benefit analysis
COLL	Collective Investment Schemes Sourcebook of the FCA Handbook
DAA 2022	Dormant Asset Act 2022
DAS	Dormant Asset Scheme
HMT	HM Treasury
DISP	The Dispute Resolution: Complaints Sourcebook of the FCA Handbook
FOS	Financial Ombudsman Service
FSMA	Financial Services and Markets Act 2000
FSCS	Financial Service Compensation Scheme
LTAFs	Long term asset funds
QIS	Qualified investor schemes
RFL	Reclaim Fund Limited

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

Draft Handbook text

DORMANT ASSETS (COLLECTIVE INVESTMENT SCHEMES AND CLIENT MONEY) INSTRUMENT 2023

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137B (FCA general rules: clients’ money, right to rescind etc)
 - (c) section 137T (General supplementary powers);
 - (d) section 138D (Action for damages);
 - (e) section 139A (Power of the FCA to give guidance);
 - (f) section 213 (The compensation scheme);
 - (g) section 214 (General);
 - (h) section 226 (Compulsory jurisdiction);
 - (i) section 247 (Trust scheme rules);
 - (j) section 248 (Scheme particulars rules);
 - (k) section 261I (Contractual scheme rules);
 - (l) section 261J (Contractual scheme particulars rules);
 - (2) regulation 6 (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- C. The FCA consents to and approves the rules and guidance and standard terms made and amended and fixed and varied by the Financial Ombudsman Service Limited, as set out Annex D.

Powers exercised by the Financial Ombudsman Service Limited

- D. The Financial Ombudsman Service Limited makes and amends the rules and guidance for the Voluntary Jurisdiction and fixes and varies the standard terms for Voluntary Jurisdiction participants, as set out in Annex D to this instrument, and to incorporate the changes to the Glossary as set out in Annex A to this instrument, in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17;
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and

(4) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17.

E. The making and amendment of the rules and guidance and the fixing and varying of the standard terms by the Financial Ombudsman Service Limited, as set out at paragraph D above, is subject to the consent and approval of the Financial Conduct Authority.

Commencement

F. This instrument comes into force on *[date]*.

Amendments to the Handbook

G. 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) below.

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Client Assets sourcebook (CASS)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D
Collective Investment Schemes sourcebook (COLL)	Annex E

Amendments to material outside the Handbook

H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument

Confirmation and restatement of Glossary definitions

I. The FCA confirms and remakes in the Glossary of definitions:

- (1) the defined expression “Regulated Activities Order”; and
- (2) to the extent that they appear in the Glossary of definitions, the defined expressions relating to any other secondary legislation referred to in the Schedule 1 of the Dormant Assets Act 2022.

Notes

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

Citation

K. This instrument may be cited as the Dormant Assets (Collective Investment Schemes and Client Money) Instrument 2023.

By order of the Board of the Financial Conduct Authority

[Date]

By order of the Board of the Financial Ombudsman Service Limited

[Date]

Annex A

Amendments to the Glossary of definitions

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

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

eligible CIS amount an “eligible amount owing by virtue of a collective scheme investment” as defined in section 9 of the Dormant Assets Act 2022, but excluding an amount within section 9(4) of the Dormant Assets Act 2022.

[**Note:** section 9(4) of the Dormant Assets Act 2022 excludes from an “eligible amount owing by virtue of a collective scheme investment” an amount held in a *lifetime ISA* which, if transferred to a *dormant asset fund operator*, would result in a liability to pay a withdrawal charge to HM Revenue and Customs.]

eligible distribution of income an *eligible CIS amount* within section 9(3)(c) of the Dormant Assets Act 2022.

eligible redemption proceeds an *eligible CIS amount* within section 9(3)(b) of the Dormant Assets Act 2022.

orphan monies an *eligible CIS amount* within section 9(3)(d) and (6) of the Dormant Assets Act 2022.

unwanted asset money an *eligible CIS amount* which is an unwanted asset for the purposes of section 21 of the Dormant Assets Act 2022.

Amend the following definitions as shown.

client ...
(B) in the *FCA Handbook*:
...
(6) (in relation to a ~~*dormant account money*~~ transferred to a ~~*dormant account fund operator*~~ *dormant asset fund operator*) a person entitled to the ~~balance in the dormant account held with a bank or building society which was transferred to a dormant account fund operator.~~ make a repayment claim.
...

dormant asset ...

(3) ...

(4) (in relation to an eligible amount owing by virtue of a collective scheme investment (see section 9(2) of the Dormant Assets Act 2022)) an eligible CIS amount which is dormant in accordance with section 10 of the Dormant Assets Act 2022.

managing dormant asset funds (including the investment of such funds) relevant parts of the *regulated activity* in article 63N(1)(b) of the *Regulated Activities Order* which means:

(a) the acceptance of transfers of amounts as mentioned in:

(i) section 1(1)(a) or 2(1)(a) of the Dormant Bank and Building Society Accounts Act 2008; or

(ii) ~~section~~ sections 2(1)(a) or 5(1)(a), 8(1)(a) or 12(1)(a) of the Dormant Assets Act 2022; and

...

participant firm (1) a *firm* (including a *TP firm*) other than:

...

(n) ...

(o) a dormant asset fund operator;

...

repayment claim a claim for repayment made by virtue of:

(1) sections 1(2)(b) or 2(2)(b) of the Dormant Bank and Building Society Accounts Act 2008; ~~or of~~

(2) sections 2(2)(b), ~~(3)(b)~~, 5(2)(b), 5(3)(b), 8(2)(b) and 11, 12(2)(b) or 14(2)(b) of the Dormant Assets Act 2022.

Delete the following definition. The text is not shown struck through.

dormant asset funds (1) (in relation to a *bank* or *building society*) has the meaning given in section 5(6) of the Dormant Bank and Building Society Accounts

Act 2008, which is *money* paid to a *dormant asset fund operator* by a *bank* or *building society* in respect of a *dormant asset*; or

- (2) (in relation to *long-term insurance contract*, and an insurance institution as defined in section 2 of the Dormant Assets Act 2022) is *money* paid to a *dormant asset fund operator* by an *insurer* in accordance with section 2(1) of the Dormant Assets Act 2022; or
- (3) (in relation to a *personal pension scheme*, and a pensions institution as defined in section 5 of the Dormant Assets Act 2022) is *money* paid to a *dormant asset fund operator* by an *operator* of a *personal pension scheme* in accordance with section 5(1) of the Dormant Assets Act 2022.

Annex B

Amendments to the Fees manual (FEES)

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

6 Financial Services Compensation Scheme Funding

...

6 Annex 3AR Financial Services Compensation Scheme - classes and categories

...

Class 2	Investment Intermediation Claims
...	
Category 2.4	Structured deposits provision
Firms with permission for:	<i>accepting deposits and/or operating a dormant asset fund. BUT does not include any fee payer who either effects or carries out <i>contracts of insurance</i>.</i>
...	

Class 6	Deposit acceptors' contribution
Firms with permission for:	<i>accepting deposits and/or operating a dormant asset fund. BUT does not include any fee payer who either effects or carries out <i>contracts of insurance</i>.</i>
...	

Annex C

Amendments to the Client Assets sourcebook (CASS)

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

5 Client money: insurance distribution activity

...

5.5 Segregation and the operation of client money accounts

...

Discharge of fiduciary duty

...

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

...

(5) to the *firm* itself, when it is an excess in the *client bank account* as set out in CASS 5.5.63R(1)(b)(ii); ~~or~~

(6) to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 5.5.85R.

5.5.81 G ...

(4) ...

(5) A payment of *client money* under section 21 of the Dormant Assets Act 2022 to a *dormant account fund operator* that has *Part 4A permission for dealing with unwanted asset money* would amount to a payment to a third party with the instruction of the *client* for the purposes of CASS 5.5.80R(2).

...

5.5.84 R ...

Transfers of client money to a dormant account fund operator under Part 1 of the Dormant Assets Act 2022

5.5.85 R A *firm* may transfer a *client money* balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and if it does so the transferred balance will cease to be *client money* under CASS 5.5.80R(6), provided that the *firm* can demonstrate it

took reasonable steps to trace the *client* concerned and to return the balance prior to making such a transfer.

- 5.5.86 E (1) (a) This paragraph applies where the balance of *client money* in question is of a minimal amount. For these purposes, a minimal amount means either:
- (i) in respect of a balance held for a *consumer*, £25 or less in aggregate; or
 - (ii) in respect of a balance held for a *commercial customer*, £100 or less in aggregate.
- (b) Where the balance of *client money* in question is of a minimal amount, taking reasonable steps in CASS 5.5.85R includes the *firm* making 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 allowing the *client* 28 days to respond.
- (2) This paragraph applies in all other cases where paragraph (1) does not apply. In all other such cases, taking reasonable steps in CASS 5.5.85R 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 transfer the sums concerned to a *dormant account fund operator* if the *firm* does not receive instructions from the *client* within 28 days (naming the specific relevant *dormant account fund operator*);
 - (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:
 - (i) that as the *firm* did not receive a claim for the relevant *client money* balance, it will in 28 days transfer the balance to a *dormant account fund operator* (naming the specific relevant *dormant account fund operator*); and

- (ii) of the steps that they must take to make a *repayment claim*;
- (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 transferring the balance to the *dormant account fund operator*.
- (3) Compliance with (1) or (2) (as applicable) may be relied on as tending to establish compliance with CASS 5.5.85R.
- (4) Contravention of (1) or (2) (as applicable) may be relied on as tending to establish contravention of CASS 5.5.85R.
- 5.5.87 G (1) Unless the *firm* has *failed* and CASS 5.3.2R(4) or CASS 5.4.7R(4) applies (as applicable), any costs associated with a *firm* ceasing to treat unclaimed *client money* balances as *client money* pursuant to CASS 5.5.85R should be paid for from the *firm's* own funds.
- (2) When transferring a *client money* balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022, a *firm* will need to consider its obligations under any contractual or other arrangements of the sort described at section 23 of the Dormant Assets Act 2022 in addition to meeting its obligations under the *client money rules* and the *client money (insurance) distribution rules*.

5.6 Client money distribution

...

Pooling and distribution

5.6.7 R If a *primary pooling event* occurs:

...

(3) ...

(4) (a) Subject to (b), as an alternative to distributing a *client's client money* to them under (2), a *firm* may transfer all of that

client's client money to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 5.5.85R; and

- (b) as a consequence of any such transfer to a dormant account fund operator, the firm must not distribute to any other client an amount of money that would be less than that which such other client was entitled to have distributed under this rule.

...

5.6.12 G ...

Closing a client money pool - transfers to dormant account fund operator

5.6.12A R (1) This rule applies to a firm which, prior to a primary pooling event, had put in place contractual or other arrangements with a dormant account fund operator of the sort described at section 23 of the Dormant Assets Act 2022.

- (2) If, having attempted to, a firm is unable to distribute a balance of client money in accordance with CASS 5.6.7R to the relevant client, it must attempt to transfer the balance to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 5.5.85R.

5.6.12B G (1) A firm may be unable to distribute a balance of client money in accordance with CASS 5.6.7R for reasons including that:

- (a) the firm is unable to trace the relevant client; or
(b) despite the firm making enquiries, the relevant client has not provided the firm with instructions that would enable the firm to make a distribution.

- (2) Where the firm transfers a balance to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 5.5.85R, it may cease to treat the balance as client money under CASS 5.5.80R(6).

- (3) In attempting to transfer the balance to a dormant account fund operator under CASS 5.6.12AR(2), the firm should begin by seeking confirmation from the relevant dormant account fund operator as to whether or not it would be in a position to accept the balance.

...

7 Client money rules

...

7.11 Treatment of client money

...

Discharge of fiduciary duty

...

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

...

- (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 7.11.37R(2); ~~or~~
- (10) it is paid to charity under CASS 7.11.50R or CASS 7.11.57R; or
- (11) it is transferred to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 7.11.57AR.

...

Allocated but unclaimed client money

7.11.47A R CASS 7.11.48G to CASS 7.11.58G do not apply to a *firm* following a *primary pooling event*, except for CASS 7.11.57AR to CASS 7.11.57CG and CASS 7.11.58G (insofar as it is relevant to CASS 7.11.57AR).

...

7.11.49 G ...

- 7.11.49A R
- (1) This rule applies to a *firm* which has put in place contractual or other arrangements with a *dormant account fund operator* of the sort described at section 23 of the Dormant Assets Act 2022.
 - (2) A *firm* must not pay a *client money* balance away to charity under CASS 7.11.50R or CASS 7.11.57R unless it has first attempted to transfer the balance in question to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 7.11.57AR.

...

7.11.57 R ...

Transfers of client money to a dormant account fund operator under Part 1 of the Dormant Assets Act 2022

7.11.57A R A firm may transfer a client money balance to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and if it does so the transferred balance will cease to be client money under CASS 7.11.34R(11), provided that the firm can demonstrate it took reasonable steps to trace the client concerned and to return the balance prior to making such a transfer.

7.11.57B E (1) (a) This paragraph applies where the balance of client money in question is of a minimal amount. For these purposes, a minimal amount means either:

- (i) in respect of a balance held for a retail client, £25 or less in aggregate; or
- (ii) in respect of a balance held for a professional client, £100 or less in aggregate.

(b) Where the balance of client money in question is of a minimal amount, taking reasonable steps in CASS 7.11.57AR includes the firm making 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 allowing the client 28 days to respond.

(2) This paragraph applies in all other cases where paragraph (1) does not apply. In all other such cases, taking reasonable steps in CASS 7.11.57AR 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 transfer the sums concerned to a dormant account fund operator if the firm does not receive instructions from the client within 28 days (naming the specific relevant dormant account fund operator);
- (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;

- (i) that as the *firm* did not receive a claim for the relevant *client money* balance, it will in 28 *days* transfer the balance to a *dormant account fund operator* (naming the specific relevant *dormant account fund operator*); and
- (ii) of the steps that they must take to make a *repayment claim*;
- (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 transferring the balance to the *dormant account fund operator*.
- (3) Compliance with (1) or (2) (as applicable) may be relied on as tending to establish compliance with CASS 7.11.57AR.
- (4) Contravention of (1) or (2) (as applicable) may be relied on as tending to establish contravention of CASS 7.11.57AR.

7.11.57C G When transferring a *client money* balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022, a *firm* will need to consider its obligations under any contractual or other arrangements of the sort described at section 23 of the Dormant Assets Act 2022 in addition to meeting its obligations under the *client money rules* and the *client money distribution and transfer rules*.

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~~ CASS 7.11.57BE 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 7.11.51G ~~or~~ CASS 7.11.57R(3) or CASS 7.11.57AR; and

...

Unwanted client money

7.11.59 G A payment of *client money* under section 21 of the Dormant Assets Act 2022 to a *dormant account fund operator* that has *Part 4A permission for dealing with unwanted asset money* would amount to a payment to a third party with the instruction of the *client* for the purposes of CASS 7.11.34R(2)(a).

...

7A Client money distribution and transfer

...

7A.2 Primary pooling events

...

Pooling and distribution or transfer

7A.2.4 R If a *primary pooling event* occurs, then:

...

(2) the *firm* must, as soon as reasonably practicable:

- (a) (subject to paragraph (4) and (5)) distribute *client money* comprising a notional *pool* in accordance with CASS 7.17.2R, so that each *client* who is a beneficiary of that *pool* receives a sum which is rateable to the *client money* entitlement calculated in accordance with CASS 7A.2.5R (Client money entitlements); or

...

...

(4) ...

(e) ...

...

- (iii) where regulation 10C(3) of the *IBSA Regulations* does not apply, that the *client* has the option of having its *money* returned to it by Firm B-; and

(5) (a) subject to (b), as a further alternative to distributing a *client's client money* in a notional *pool* to the relevant *client* under CASS 7A.2.4R(2)(a) and in respect of *client money* that is not required to be transferred under CASS 7A.2.4R(2)(b), a *firm* may transfer all of that *client's client money* in the relevant notional *pool* to a *dormant account fund operator* under the

applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 7.11.57AR;

- (b) as a consequence of any such transfer to a dormant account fund operator, the firm must not distribute to any other client whose client money is in that notional pool, or transfer on behalf of any such other client to another person, an amount of money that would be less than that which such other client was entitled to have distributed or transferred under this rule.

...

Closing a client money pool

- 7A.2.6A R (1) Before a firm ceases to treat a balance of *client money* in a notional pool as *client money* by transferring it to itself under CASS 7.17.2R(5) it must:

...

- (d) immediately before transferring the balances of *client money* under paragraph (1)(c) to the firm itself, ~~apply them towards making good any outstanding shortfall in the notional pool, and subsequently distribute or transfer them in accordance with CASS 7A.2.4R to or on behalf of clients for whom the firm is able to make such distributions or transfers.~~ in the following order:

- (i) attempt to transfer them to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 7.11.57AR (but this only applies if, prior to a primary pooling event, the firm had put in place contractual or other arrangements with a dormant account fund operator of the sort described at section 23 of the Dormant Assets Act 2022); and
- (ii) apply any remaining balances towards making good any outstanding shortfall in the notional pool, and subsequently distribute or transfer them in accordance with CASS 7A.2.4R to or on behalf of clients for whom the firm is able to make such distributions or transfers.

...

...

...

11 Debt management client money chapter

...

11.4 Definition of client money and the discharge of fiduciary duty

...

11.4.2 R *Money ceases to be client money if:*

...

(5) it is paid to the *firm* as an excess in the *client bank account* (see CASS 11.11.12R(2) and CASS 11.11.23R(3)); or

(6) it is transferred to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 11.4.5R.

...

11.4.4 G ...

11.4.4A G A payment of *client money* under section 21 of the Dormant Assets Act 2022 to a *dormant account fund operator* that has *Part 4A permission* for *dealing with unwanted asset money* would amount to a payment to a third party with the instruction of the *client* for the purposes of CASS 11.4.2R(2)(a).

Transfers of client money to a dormant account fund operator under Part 1 of the Dormant Assets Act 2022

11.4.5 R A *firm* may transfer a *client money* balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and if it does so the transferred balance will cease to be *client money* under CASS 11.4.2R(6), provided that the *firm* can demonstrate it took reasonable steps to trace the *client* concerned and to return the balance prior to making such a transfer.

11.4.6 E (1) Taking reasonable steps in CASS 11.4.5R 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 transfer the sums concerned to a *dormant account fund operator* if the *firm* does not receive instructions from the *client* within 28 days (naming the specific relevant *dormant account fund operator*);

- (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:
 - (i) that as the *firm* did not receive a claim for the relevant *client money* balance, it will in 28 *days* transfer the balance to a *dormant account fund operator* (naming the specific relevant *dormant account fund operator*); and
 - (ii) of the steps that they must take to make a *repayment claim*;
 - (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 transferring the balance to the *dormant account fund operator*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with CASS 11.4.5R.
- (3) Contravention of (1) may be relied on as tending to establish contravention of CASS 11.4.5R.
- 11.4.7 G (1) Unless the *firm* has failed and CASS 11.6.1R(3) applies, any costs associated with a *firm* ceasing to treat unclaimed *client money* balances as *client money* pursuant to CASS 11.4.5R should be paid for from the *firm's* own funds.
- (2) When transferring a *client money* balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022, a *firm* will need to consider its obligations under any contractual or other arrangements of the sort described at section 23 of the Dormant Assets Act 2022 in addition to meeting

its obligations under the *debt management client money rules* and the *debt management client money distribution rules*.

...

11.13 Client money distribution in the event of a failure of a firm or approved bank

...

Distribution if client money not transferred to another firm

11.13.5 R ...

11.13.5A R (1) Subject to (2), as an alternative to distributing a *client's client money* to them under CASS 11.13.5R, a *firm* may transfer all of that *client's client money* to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 11.4.5R.

(2) As a consequence of any such transfer to a *dormant account fund operator*, the *firm* must not distribute to any other *client* an amount of *money* that would be less than that which such other *client* was entitled to have distributed under CASS 11.13.5R.

...

11.13.9 R ...

Closing a client money pool - transfers to dormant account fund operator

11.13.9A R (1) This rule applies to a *firm* which, prior to a *primary pooling event*, had put in place contractual or other arrangements with a *dormant account fund operator* of the sort described at section 23 of the Dormant Assets Act 2022.

(2) If, having attempted to, a *firm* is unable to distribute a balance of *client money* in accordance with CASS 11.13.5R to the relevant *client*, it must attempt to transfer the balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 11.4.5R.

11.13.9B G (1) A *firm* may be unable to distribute a balance of *client money* in accordance with CASS 11.13.5R for reasons including that:

(a) the *firm* is unable to trace the *client*; or

(b) despite the *firm* making enquiries, the relevant *client* has not provided the *firm* with instructions that would enable the *firm* to make a distribution.

- (2) Where the *firm* transfers a balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 11.4.5R, it may cease to treat the balance as *client money* under CASS 11.4.2R(6).
- (3) In attempting to transfer the balance to a *dormant account fund operator* under CASS 11.13.9AR(2), the *firm* should begin by seeking confirmation from the relevant *dormant account fund operator* as to whether or not it would be in a position to accept the balance.

...

13 Claims management: client money

...

13.9 Discharge of fiduciary duty

...

13.9.2 R *Money* ceases to be *client money* if:

...

- (4) it is due and payable to the *firm* for its own account (see CASS 13.7.1R to 13.7.2G); ~~or~~
- (5) it is paid to the *firm* as an excess in the *client bank account* (see CASS 13.10.15R(3)); or
- (6) it is transferred to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 13.9.4R.

13.9.3 R ...

Transfers of client money to a dormant account fund operator under Part 1 of the Dormant Assets Act 2022

13.9.4 R A *firm* may transfer a *client money* balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and if it does so the transferred balance will cease to be *client money* under CASS 13.9.4R(6), provided that the *firm* can demonstrate it took reasonable steps to trace the *client* concerned and to return the balance prior to making such a transfer.

13.9.5 E (1) Taking reasonable steps in CASS 13.9.4R 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 transfer the sums concerned to a *dormant account fund operator* if the *firm* does not receive instructions from the *client* within 28 days (naming the specific relevant *dormant account fund operator*);
 - (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:
 - (i) that as the *firm* did not receive a claim for the relevant *client money* balance, it will in 28 days transfer the balance to a *dormant account fund operator* (naming the specific relevant *dormant account fund operator*); and
 - (ii) of the steps that they must take to make a *repayment claim*;
 - (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 transferring the balance to the *dormant account fund operator*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with CASS 13.9.4R.

(3) Contravention of (1) may be relied on as tending to establish contravention of CASS 13.9.4R.

13.9.6 G (1) Unless the *firm* has *failed* and CASS 13.3.1R(3) applies, any costs associated with a *firm* ceasing to treat unclaimed *client money* balances as *client money* pursuant to CASS 13.9.4R should be paid for from the *firm*'s own funds.

(2) When transferring a *client money* balance to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022, a *firm* will need to consider its obligations under any contractual or other arrangements of the sort described at section 23 of the Dormant Assets Act 2022 in addition to meeting its obligations under the *claims management client money rules* and the *claims management client money distribution rules*.

...

13.11 Client money distribution in the event of a failure of a firm or approved bank

...

Distribution if client money not transferred to another firm

13.11.5 R ...

13.11.5A R (1) Subject to (2), as an alternative to distributing a *client's client money* to them under CASS 13.11.5R, a *firm* may transfer all of that *client's client money* to a *dormant account fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 13.9.4R.

(2) As a consequence of any such transfer to a *dormant account fund operator*, the *firm* must not distribute to any other *client* an amount of *money* that would be less than that which such other *client* was entitled to have distributed under CASS 13.11.5R.

...

13.11.10 R ...

Closing a client money pool - transfers to dormant account fund operator

13.11.10 R (1) This *rule* applies to a *firm* which, prior to a *primary pooling event*, had put in place contractual or other arrangements with a *dormant account fund operator* of the sort described at section 23 of the Dormant Assets Act 2022.

A

(2) If, having attempted to, a *firm* is unable to distribute a balance of *client money* in accordance with CASS 13.11.5R to the relevant

client, it must attempt to transfer the balance to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 13.9.4R.

13.11.10 G (1)
B

A firm may be unable to distribute a balance of client money in accordance with CASS 13.11.5R for reasons including that:

- (a) the firm is unable to trace the client; or
- (b) despite the firm making enquiries, the relevant client has not provided the firm with instructions that would enable the firm to make a distribution.

(2) Where the firm transfers a balance to a dormant account fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with CASS 13.9.4R, it may cease to treat the balance as client money under CASS 13.9.2R(6).

(3) In attempting to transfer the balance to a dormant account fund operator under CASS 13.11.10AR(2), the firm should begin by seeking confirmation from the relevant dormant account fund operator as to whether or not it would be in a position to accept the balance.

...

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2 Jurisdiction of the Financial Ombudsman Service

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) ...

(a) ...

...

(c) activities, other than *regulated claims management activities*, activities ancillary to *regulated claims management activities*, *meeting of repayment claims* and *managing dormant asset funds (including the investment of such funds)*, which (at ~~1 August 2022~~) [date TBD] would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

...

2.7 Is the complainant eligible?

...

Eligible complainants

...

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(14A) (where the *respondent* is a *dormant asset fund operator*) subject to ~~DISP 2.7.6AR~~ DISP 2.7.6AR(1), the complainant is (or was) a *person* to whom the proceeds of a *long-term insurance contract* were payable by an *insurer*, but which instead were transferred by the *insurer* to the *respondent*;

(14B) ...

(14C) (where the *respondent* is a *dormant asset fund operator*) the complainant is (or was) a *person* to whom an *eligible CIS amount* was owing immediately before it was transferred to the *respondent* by the *authorised fund manager* or *depository* of an *authorised fund*;

(14D) (where the *respondent* is a *dormant asset fund operator*) subject to DISP 2.7.6AR(2), the complainant is (or was) a *person* for whom a *firm* was holding *client money* immediately before it was transferred to the *respondent* by that *firm*;

...

2.7.6A R (1) DISP 2.7.6R(14A) does not include proceeds of a *contract of insurance* held in a *lifetime ISA* if their transfer to a *dormant asset fund operator* resulted in (or would result in) liability to pay a *lifetime ISA government withdrawal charge*.

(2) DISP 2.7.6R(14D) does not include *client money* held in a *lifetime ISA* if its transfer to a *dormant asset fund operator* resulted in (or would result in) liability to pay a *lifetime ISA government withdrawal charge*.

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at ~~1 August 2022~~ [date TBC]

This table belongs to *DISP 2.5.1R*

The activities which were covered by the Compulsory Jurisdiction (at ~~1 August 2022~~ [date TBC]) were:

(1) for *firms*:

...

(9) ...

The activities which (at ~~1 August 2022~~ [date TBC]) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II and Parts 3A and 3B of the

Regulated Activities Order (with the addition of auction regulation bidding and administering a benchmark):

...

4 Standard terms

...

4.2 Standard terms

...

Application of DISP 1 to DISP 3

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

...

(2) *DISP 2* (Jurisdiction of the Financial Ombudsman Service),
except:

...

(d) *DISP 2.7.6(14B)*; and

(e) *DISP 2.7.6(14C)*;

(f) *DISP 2.7.6(14D)*; and

...

...

Annex E

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

3 Constitution

...

3.2 The instrument constituting the fund

...

Table: contents of the instrument constituting the fund

3.2.6 R This table belongs to *COLL 3.2.4R* (Matters which must be included in the instrument constituting the fund).

...		
		Investment in overseas property through an intermediate holding vehicle
28		...
		<u>Transfers to a dormant asset fund operator</u>
29	(1)	Where relevant, a statement that the <i>authorised fund manager</i> and the <i>depository</i> may transfer an <i>eligible CIS amount</i> which is a <i>dormant asset</i> to a <i>dormant asset fund operator</i> , specifying the particular types of <i>eligible CIS amounts</i> which may be so transferred.
	(2)	Where relevant, a statement detailing the power of the <i>authorised fund manager</i> and <i>depository</i> to convert one or more <i>units</i> into a right to payment of an amount for transfer to a <i>dormant asset fund operator</i> , and a description of a <i>person's</i> right to make a <i>repayment claim</i> in relation to the amount transferred.
	(3)	Where relevant, a statement that the <i>authorised fund manager</i> and the <i>depository</i> may transfer <i>unwanted asset money</i> to a <i>reclaim fund</i> , and a description of the circumstances in which such <i>money</i> may be transferred.
		[Note: In relation to transfers to a <i>dormant asset fund operator</i> , see <i>COLL 3.2.6AR</i> .]

Transfers to a dormant asset fund operator

3.2.6A R If the *authorised fund manager* and the *depository* intend to make transfers of *eligible CIS amounts* that are *dormant assets* or *unwanted asset money* to a *dormant asset fund operator*, or intend to take a power of the type referred to in *COLL 3.2.6R(29)(2)*, the applicable statements in *COLL 3.2.6R(29)(1)*, (2) and (3) must be included.

...

4 Investor Relations

...

4.2 Pre-sale notifications

...

Table: contents of the prospectus

4.2.5 R This table belongs to *COLL 4.2.2R* (Publishing the prospectus).

...			
Reporting, distributions and accounting dates			
4	Relevant details of the reporting, accounting and distribution information which includes:		
	...		
	(b)	procedures for:	
		...	
		(ii)	<u>unclaimed or unwanted distributions; and, including any arrangements for the transfer of:</u>
		(A)	<u>an unclaimed <i>eligible distribution of income</i> that is a <i>dormant asset</i> (see <i>COLL 6.8.4R (Unclaimed, de minimis and joint unitholder distributions)</i>); or</u>
		(B)	<u><i>unwanted asset money</i> (see <i>COLL 6.8.4AR (Unwanted asset money)</i>); and</u>
		...	
	...		
...			

Dealing	
17	The following particulars:
	...
	(d) ...
	(da) <u>if applicable, a statement that the <i>authorised fund manager</i> must arrange for the <i>cancellation of units</i> in accordance with <i>COLL 6.2.17BR (Conversion of units into a right to payment under the Dormant Assets Act 2022)</i> when any <i>units</i> are converted into a right to payment in accordance with sections 8 to 10 of the Dormant Assets Act 2022;</u>
	...
<u>Transfers to a dormant asset fund operator</u>	
17A	<u>If the <i>authorised fund manager</i> and the <i>depository</i> of the <i>authorised fund</i> have a power under the <i>instrument constituting the fund</i> to transfer an <i>eligible CIS amount</i> that is a <i>dormant asset</i> to a <i>dormant asset fund operator</i> in accordance with sections 8 to 10 of the Dormant Assets Act 2022, particulars as to:</u>
	(a) <u>the types of such <i>eligible CIS amounts</i> which the <i>authorised fund manager</i> and the <i>depository</i> may transfer;</u>
	(b) <u>the circumstances in which an amount in (a) is a <i>dormant asset</i>, and any steps that the <i>authorised fund manager</i> or <i>depository</i> must take before making a transfer;</u>
	(c) <u>if the <i>authorised fund manager</i> or the <i>depository</i> has a power to convert a <i>unit</i> into a right to payment of an amount in accordance with section 9(3) and (5) of the Dormant Assets Act 2022, an explanation of that power including the circumstances in which the power may be exercised;</u>
	(d) <u>the consequences for the <i>unitholder</i> of a transfer of an <i>eligible CIS amount</i>, including how the amount of a <i>repayment claim</i> will be determined;</u>
	(e) <u>information about the steps a <i>person</i> would need to take to establish and make a <i>repayment claim</i>, and to receive payment of the <i>money</i>; and</u>
	(f) <u>the basis on which a <i>person</i> who has made a <i>repayment claim</i> may apply for the repaid amount or any part of it to be reinvested in <i>units</i>.</u>

17B	<u>If the <i>authorised fund manager</i> and the <i>depository</i> have a power under the <i>instrument constituting the fund</i> to transfer <i>unwanted asset money</i> to a <i>dormant asset fund operator</i> in accordance with section 21 of the Dormant Assets Act 2022, particulars as to:</u>	
	(a)	<u>the circumstances in which a <i>person</i> may inform the <i>authorised fund manager</i> or the <i>depository</i> that they wish an <i>eligible CIS amount</i> to be transferred as <i>unwanted asset money</i> to a <i>dormant asset fund operator</i>;</u>
	(b)	<u>how a <i>person</i> in (a) may obtain information from the <i>authorised fund manager</i> or the <i>depository</i> about the procedure by which they may ask for such <i>money</i> to be transferred;</u>
	(c)	<u>the declaration that the <i>person</i> will need to make before the <i>money</i> can be transferred as <i>unwanted asset money</i>;</u>
	(d)	<u>the consequences of the <i>money</i> being transferred to a <i>dormant asset fund operator</i>; and</u>
	(e)	<u>what happens if the <i>dormant asset fund operator</i> does not consent to the transfer of the <i>money</i>.</u>
...		

...

4.3 Approvals and notifications

...

Guidance on significant changes

4.3.7 G ...

(2) For the purpose of *COLL* 4.3.6R a significant change is likely to include:

...

- (c) an increase in the *preliminary charge* where *units* are purchased through a *group savings plan*; ~~or~~
- (d) a change in the *pricing* arrangements for *units* of the *scheme* so as to cause a *single-priced authorised fund* to become a *dual-priced authorised fund*, or vice versa; or
- (e) a change to enable the *authorised fund manager* and the *depository* to pay an *eligible CIS amount* that is a *dormant*

asset, or unwanted asset money, to a dormant asset fund operator.

...

...

6 Operating duties and responsibilities

...

6.2 Dealing

...

Payment for cancelled units

- 6.2.14 R (1) On cancelling *units* the *authorised fund manager* must, before the expiry of the fourth *business day* following the *cancellation* of the *units* or, if later, as soon as practicable after delivery to the *depository* of the *AUT* or *ACS* or the *ICVC* of such evidence of title to the *units* as it may reasonably require, require the *depository* to pay:

...

- (c) in the case of a *regulated money market fund*, the sum required pursuant to article 33 of the *Money Market Funds Regulation*;

~~to the *authorised fund manager* or, where relevant, the *unitholder* or, for a *relevant pension scheme*, in accordance with the relevant provisions of the *trust deed* or *contractual scheme deed*.~~ in accordance with (1A).

(1A) The *depository* must pay the amount in (1):

- (a) to the *authorised fund manager*;
- (b) where relevant, to the *unitholder*;
- (c) for a *relevant pension scheme*, in accordance with the relevant provisions of the *trust deed* or *contractual scheme deed*; or
- (d) where the amount relates to an *eligible CIS amount* that is a *dormant asset* arising from the conversion of *units* (see section 9(3)(a) of the Dormant Assets Act 2022), either:
- (i) to the *authorised fund manager* (for onward payment to a *dormant asset fund operator*); or

(ii) where relevant, to the *dormant asset fund operator*.

...

...

Sale and redemption

6.2.16 R ...

(10) ...

(11) Paragraph (4) does not apply where *COLL 6.2.17AR* (Transfers under the Dormant Assets Act 2022) applies.

6.2.17 G ...

Transfers under the Dormant Assets Act 2022

6.2.17 R (1) This rule applies where the *authorised fund manager* or the *depository* of an *authorised fund* transfers to a *dormant asset fund operator* a *dormant asset* that is:
A

(a) an amount owing by virtue of the conversion of one or more *units* into a right to payment (see section 9(3)(a) of the Dormant Assets Act 2022); or

(b) *eligible redemption proceeds*.

(2) Before effecting a transfer in (1), the *authorised fund manager* must:

(a) take reasonable steps to reunite the relevant *eligible CIS amounts* to be transferred with their owners (see section 23 of the Dormant Assets Act 2022); and

(b) be satisfied that the *eligible CIS amount* is a *dormant asset*.

(3) Upon effecting a transfer in (1), the *authorised fund manager* (or, where relevant, the *depository*) must ensure that such records as are specified in *COLL 6.6.6R(6)* (Maintenance of records) are retained.

Conversion of units into a right to payment under the Dormant Assets Act 2022

6.2.17 R (1) This rule applies where the *authorised fund manager* or *depository* converts one or more *units* into a right to payment for transfer to a *dormant asset fund operator* in accordance with *COLL 6.2.17AR* and sections 8 to 10 of the Dormant Assets Act 2022.
B

(2) On conversion of *units* into a right to payment:

- (a) the authorised fund manager must effect a redemption of units and ensure that they are cancelled; and
- (b) the authorised fund manager or the depositary must transfer the eligible CIS amount to a dormant asset fund operator.

- 6.2.17 C **G** (1) Section 10 of the Dormant Assets Act 2022 specifies when an eligible CIS amount is dormant and may be transferred to a dormant asset fund operator in accordance with the dormant assets scheme.
- (2) An eligible CIS amount that is a dormant asset should be transferred to a dormant asset fund operator only as provided for in the instrument constituting the fund and the prospectus.
- (3) When taking reasonable steps to reunite owners with their eligible CIS amounts under COLL 6.2.17AR(4), the authorised fund manager (or, where relevant, the depositary) should comply with any arrangements they have entered into with the dormant asset fund operator (see section 23 of the Dormant Assets Act 2021) and have regard to industry standards of good practice.

...

6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

...

Table of application

6.6.2 **R** This table belongs to COLL 6.6.1R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	Any other directors of an <i>ICVC</i>	Depositary of an <i>ICVC</i>	Authorised fund manager of an <i>AUT</i> or <i>ACS</i>	Depositary of an <i>AUT</i> or <i>ACS</i>
...						
6.6.6R		x		<u>x</u>	x	<u>x</u>
...						
Notes:	...					
	(7)	...				
	(8)	<u>*COLL 6.6.6R(5) and (6) applies to the depositary of an authorised fund only if it makes transfers of a dormant</u>				

		<u>asset which is orphan monies to a dormant asset fund operator.</u>
--	--	---

...

Maintenance of records

- 6.6.6 R (1) The Subject to (5) and (6), the authorised fund manager must make and retain for six years such records as enable:
- ...
- (2) The Subject to (5) and (6), the authorised fund manager must make and retain for six years a daily record of the units in the scheme held, acquired or disposed of by the authorised fund manager, including the classes of such units, and of the balance of any acquisitions and disposals.
- ...
- (4) ...
- (5) Where the authorised fund manager or the depositary transfers an eligible CIS amount which is a dormant asset or unwanted asset money to a dormant asset fund operator, the authorised fund manager (or, where the transfer is of a dormant asset which is orphan monies, the depositary) must retain the relevant records specified in (6) for a period of six years from the date on which:
- (a) (in relation to the transfer of a dormant asset) the person to whom those records relate made a repayment claim; or
- (b) (in relation to unwanted asset money) the person confirmed their wish for the unwanted asset money to be transferred.
- (6) (a) Whenever an eligible CIS amount is transferred to a dormant asset fund operator, the records to be retained under (5) include:
- (i) the full names of each relevant unitholder; and
- (ii) the name of the scheme to which the converted units relate including, where the scheme is a sub-fund, the name of its umbrella.
- (b) Where the eligible CIS amount falls within section 9(3)(a) of the Dormant Assets Act 2022 (an amount owing by virtue of the conversion of one or more units into a right to payment), the records must also include:
- (i) the number and class of units converted;

- (ii) the date on which the *units* were converted and the *price per unit*;
- (iii) a record of any interest due, *fees* and *charges* that would have been paid and any other adjustments (such as a *dilution levy*) in respect of the converted *units* that would affect the amount of a *repayment claim*; and
- (iv) for the period beginning with the date of the conversion of *units* and ending with the date on which a *person* establishes a *repayment claim* in respect of the *units*:
- (A) in the case of a *class* of *units* which pays income, a record of the distribution rate per *unit* for each distribution of income paid;
 - (B) in the case of any sub-division or consolidation of *units*, or any mandatory conversion of *units* from one *class* to another *class* of the same *authorised fund* or *sub-fund*, a record of the basis of calculation for the action; and
 - (C) in the case of the *cancellation* of all *units* in the *authorised fund* or *sub-fund* under a *scheme of arrangement* by which new *units* are issued in another *authorised fund* or *sub-fund* in exchange, a record of the basis of calculation for the exchange.
- (c) Where the transfer is of *eligible redemption proceeds*, an *eligible distribution of income* or *orphan monies*, the records must include:
- (i) a note of whether the transfer relates to *eligible redemption proceeds*, an *eligible distribution of income*, or *orphan monies*;
 - (ii) the following:
 - (A) where the transfer is of *eligible redemption proceeds*, the date on which the *units* were redeemed;
 - (B) where the transfer is of an *eligible distribution of income*:
 - (I) the distribution date, and the number and *class* of *units* to which the transfer relates; and

- (II) the distribution rate per *unit* for each distribution paid;
- (C) for *orphan monies*, the number of *units*;
- (iii) the value of the relevant *eligible CIS amount* transferred; and
- (iv) a record of the interest due, *fees* and *charges* that would have been paid and any other adjustments that would affect the amount of the *repayment claim* in respect the transferred *eligible CIS amount*.
- (d) Where the transfer is of *unwanted asset money*, the records must include:
 - (i) a note that the transfer relates to *unwanted asset money*;
 - (ii) the value of the *unwanted asset money* transferred;
 - (iii) details of the *unitholder's* confirmation that they wish the *unwanted asset money* to be transferred to a *dormant asset fund operator*; and
 - (iv) details of the declaration required by section 21(2)(a)(ii) of the Dormant Assets Act 2022.

...

6.8 Income: accounting, allocation and distribution

...

Unclaimed, de minimis and joint unitholder distributions

- 6.8.4 R (1) ~~Any~~ Unless (4) or COLL 6.8.4AR apply, any distribution remaining unclaimed after a period of six years, or such longer time specified by the *prospectus*, must become part of the *capital property*.

...

- (3) ...

- (4) (a) This paragraph applies where:

- (i) an *eligible distribution of income* remaining unclaimed is a *dormant asset*; and
- (ii) the *instrument constituting the fund* and the *prospectus* permit the transfer of such *money* to a *dormant asset fund operator*.

- (b) Where this paragraph applies:
 - (i) the authorised fund manager and the depositary must seek to transfer the unclaimed distribution to a dormant asset fund operator in accordance with the instrument constituting the fund and the prospectus; and
 - (ii) if the depositary makes such a transfer, the requirement in (1) (that the unclaimed distribution becomes part of the capital property) does not apply.

Unwanted asset money

- 6.8.4A R (1) This rule applies where:
- (a) an eligible distribution of income is unwanted asset money; and
 - (b) the instrument constituting the fund and the prospectus permit the transfer of such money to a dormant asset fund operator.
- (2) Where (1) applies, the depositary may transfer the unwanted asset money to a dormant asset fund operator in accordance with the instrument constituting the fund, the prospectus and section 21 of the Dormant Assets Act 2022.

...

7 Suspension of dealings, termination of authorised funds and side pockets

...

7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

...

When an ICVC is to be wound up or a sub-fund terminated or wound up

- 7.3.4 R ...
- (3) An ICVC must not be wound up or a sub-fund terminated under this section:
 - (a) unless and until effect may be given, under regulation 21 of the OEIC Regulations, to proposals to wind up the affairs of the ICVC or to proposals to make the alterations to the ICVC's instrument of incorporation and prospectus that will be required if a sub-fund is terminated; ~~and~~

- (b) unless a statement has been prepared and sent or delivered to the *FCA* under *COLL 7.3.5R* (Solvency statement) and received by the *FCA* prior to satisfaction of the condition in (a)-; and
- (c) where a *person* may have a right to make a *repayment claim* under sections 9 to 11 of the Dormant Assets Act 2022 in respect of an *eligible CIS amount* relating to the *authorised fund* or *sub-fund*, the *ACD* and the *depository* have ensured that any records required under *COLL 6.6.6R(5)* and *COLL 6.6.6R(6)* (Maintenance of records) are:
 - (i) accessible by the *ACD* or the *depository* and will be preserved; or
 - (ii) transferred to a *dormant asset fund operator* or to another *authorised person* that has undertaken to preserve them.

...

...

Manner of winding up or termination

7.3.7 R ...

- (10) Where any sum of *money* stands to the account of the *ICVC* at the date of its dissolution or a *sub-fund* at the date of its termination, the *ACD* must arrange for the *depository* to pay or lodge that sum within one *month* after that date in accordance with regulation 33(4) ~~or~~, (5) or (6) of the *OEIC Regulations* (Dissolution in other circumstances), where relevant, as applied by regulation 33C of the *OEIC Regulations* (Winding up of sub-funds).

7.3.7A G ...

Transfers of orphan monies to a dormant asset fund operator

- 7.3.7B G (1) Under regulation 33 of the *OEIC Regulations*, where an *ICVC* is dissolved otherwise than by the court, any sum of *money* (including unclaimed distributions) standing to the account of the *ICVC* at the date of the dissolution must be paid into court. This duty does not apply if (or to the extent that) it is transferred to a *dormant asset fund operator* as *orphan monies*.
- (2) Under the Dormant Assets Act 2022, *orphan monies* may be transferred to a *dormant asset fund operator* where they are a *dormant asset*. This means that only the proportion of outstanding *money* that is attributable pro rata to a ‘gone-away’ *person* (see section 10 of the Dormant Assets Act 2022) can be transferred as a

dormant asset. However, a person with whom the ACD or the depositary is still in contact could be invited to donate de minimis amounts as unwanted asset money for transfer to the dormant asset fund operator (see COLL 6.8.4AR (Unwanted asset money)).

- (3) Where a transfer of orphan monies to a dormant asset fund operator is possible in accordance with the instrument constituting the fund, the prospectus and sections 8 and 9 of the Dormant Assets Act 2022, the FCA would expect this to be the preferred option for the ICVC.

...

7.4 Winding up an AUT and terminating a sub-fund of an AUT

...

When an AUT is to be wound up or a sub-fund terminated

7.4.3 R ...

(1A) ...

(1B) (a) This paragraph applies where a person may have a right to make a repayment claim under sections 9 to 11 of the Dormant Assets Act 2022, in respect of an eligible CIS amount relating to the authorised fund or sub-fund.

(b) The AUT must not be wound up nor the sub-fund terminated under this section unless and until the manager and trustee have ensured that any records required under COLL 6.6.6R(5) and COLL 6.6.6R(6) (Maintenance of records) are:

(i) accessible by the manager or the trustee and will be preserved; or

(ii) transferred to a dormant asset fund operator or to another authorised person that has undertaken to preserve them.

...

Manner of winding up or termination

7.4.4 R ...

(2) In any other case falling within COLL 7.4.3R:

...

(c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the trustee after

one year from the date on which they became payable must be paid by the *trustee* ~~into court (or, in Scotland, as the court may direct)~~; in accordance with (2A) or (2B), in either case subject to the *trustee* having a right to retain any expenses properly incurred by him relating to that payment.

(2A) The *trustee* must transfer the unclaimed net proceeds or cash referred to in (1)(c) to a *dormant asset fund operator* in accordance with sections 8 and 9 of the Dormant Assets Act 2022 where:

- (a) the *instrument constituting the fund* and the *prospectus* permit the transfer of unclaimed net proceeds or cash as referred to in (1)(c) to a *dormant asset fund operator* as *orphan monies*; and
- (b) the *manager* is satisfied that the *orphan monies* are a *dormant asset*.

(2B) Where, and to the extent that, (2A) does not apply, the unclaimed net proceeds or cash (see (1)(c) above) must be paid by the *trustee* into court (or, in Scotland, as the court may direct).

...

7.4.4A G ...

Transfers of orphan monies to a dormant asset fund operator

- 7.4.4B G (1) Under the Dormant Assets Act 2022, *orphan monies* may be transferred to a *dormant asset fund operator* where they are a *dormant asset*. This means that only the proportion of outstanding *money that is attributable pro rata to a 'gone-away' person* (see section 10 of the Dormant Assets Act 2022) can be transferred in this way.
- (2) However, a *person with whom the manager or the trustee* is still in contact could be invited to donate de minimis amounts as *unwanted asset money* for transfer to the *dormant asset fund operator* (see *COLL 6.8.4AR (Unwanted asset money)*).

...

7.4A Winding up a solvent ACS and terminating a sub-fund of a co-ownership scheme

...

When an ACS is to be wound up or a sub-fund of a co-ownership scheme terminated

7.4A.4 R ...

- (4) An ACS must not be wound up nor a *sub-fund* terminated under this section unless the requirements of ~~both (a), and (b)~~ and (where applicable) (c) are satisfied:

...

(b) ...

(c) (i) This sub-paragraph applies where a *person* may have a right to make a *repayment claim* under sections 9 to 11 of the Dormant Assets Act 2022, in respect of an *eligible CIS amount* relating to the *authorised fund* or *sub-fund*.

(ii) The ACS must not be wound up nor the *sub-fund* terminated under this section unless and until the *authorised contractual scheme manager* and the *depository* have ensured that any records required under *COLL 6.6.6R(5)* and *COLL 6.6.6R(6)* (Maintenance of records) are:

(A) accessible by the *authorised fund manager* or the *depository* and will be preserved; or

(B) transferred to a *dormant asset fund operator* or to another *authorised person* that has undertaken to preserve them.

...

...

Manner of winding up or termination

7.4A.6 R ...

- (2) In any other case falling within *COLL 7.4A.4R*:

...

(c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *depository* after one year from the date on which they became payable must be paid by the *depository* ~~into court (or, in Scotland, as the court may direct)~~, in accordance with (2A) or (2B), in either case subject to the *depository* having a right to retain any expenses properly incurred by him relating to that payment.

(2A) The *depository* must transfer the unclaimed net proceeds or cash referred to in (1)(c) to a *dormant asset fund operator* in accordance with sections 8 and 9 of the Dormant Assets Act 2022 where:

- (a) the *instrument constituting the fund* and the *prospectus* permit the transfer of unclaimed net proceeds or cash as referred to in (1)(c) to a *dormant asset fund operator* as *orphan monies*; and
- (b) the *authorised contractual scheme manager* is satisfied that the *orphan monies* are a *dormant asset*.

(2B) Where, and to the extent that, (2A) does not apply, the unclaimed net proceeds or cash referred to in (1)(c) must be paid by the *depository* into court (or, in Scotland, as the court may direct).

...

7.4A.7 G ...

Transfers of orphan monies to a dormant asset fund operator

- 7.4A.7 A G (1) Under the Dormant Assets Act 2022, *orphan monies* may be transferred to a *dormant asset fund operator* where they are a *dormant asset*. This means that only the proportion of outstanding money that is attributable pro rata to a ‘gone-away’ person (see section 10 of the Dormant Assets Act 2022) can be transferred in this way.
- (2) However, a person with whom the *authorised contractual scheme manager* or the *depository* is still in contact could be invited to donate de minimis amounts as *unwanted asset money* for transfer to the *dormant asset fund operator* (see COLL 6.8.4AR (Unwanted asset money)).

...

7.5 Schemes or sub-funds that are not commercially viable

...

Information to be provided to the FCA

7.5.2 G The information referred to in COLL 7.5.1G is listed below:

...

- (9) ...
- (9A) where a person who is or was a *unitholder* in the *authorised fund* or *sub-fund* may have a right to make a *repayment claim* under sections 9 to 11 of the Dormant Assets Act 2022, in respect of an

eligible CIS amount relating to that authorised fund or sub-fund, details as to the steps taken by the authorised fund manager to ensure that the relevant records (see COLL 6.6.6R(5) and COLL 6.6.6R(6) (Maintenance of records)) are preserved;

...

...

7.6 Schemes of arrangement

...

7.6.2 R ...

Prior transfers under the Dormant Assets Act 2022

7.6.3 R (1) This rule applies where:

- (a) a scheme of arrangement is entered into in relation to a transferor fund or a transferor sub-fund;
- (b) a person who is or was at any time the authorised fund manager or depositary of the transferor fund or transferor sub-fund transferred eligible CIS amounts as dormant assets to the dormant assets fund operator; and
- (c) such dormant assets are or were attributable to the transferor fund or transferor sub-fund.

(2) The authorised fund manager of the transferor fund or transferor sub-fund must ensure that under the terms of the scheme of arrangement the records required under COLL 6.6.6R(5) and COLL 6.6.6R(6):

- (a) will be properly maintained;
- (b) will be updated, where appropriate; and
- (c) will remain accessible,

so that the amount of any repayment claim can be readily calculated and verified by the appropriate person.

(3) In this rule, “transferor fund” and “transferor sub-fund” have the same meanings as in COLL 7.6.2R.

7.7 UCITS mergers

...

7.7.8 G ...

Prior transfers under Dormant Assets Act 2022

- 7.7.8A R (1) This rule applies where:
- (a) a person who is or was at any time the authorised fund manager or depositary of a merging UCITS transferred eligible CIS amounts as dormant assets to the dormant assets fund operator; and
 - (b) such dormant assets are or were attributable to the merging UCITS.
- (2) The authorised fund manager of the merging UCITS must ensure that under the terms of the proposed UCITS merger the records required under COLL 6.6.6R(5) and COLL 6.6.6R(6):
- (a) will be properly maintained;
 - (b) will be updated, where appropriate; and
 - (c) will remain accessible,
- so that the amount of any repayment claim can be readily calculated and verified by the appropriate person.
- (3) In this rule, “transferor fund” and “transferor sub-fund” have the same meanings as in COLL 7.6.2R.

...

Annex F

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.7 Activities: a broad outline

...

Dormant ~~account~~ asset funds

...

