

# **CASS 7A & the Special Administration Regime Review**

Feedback to CP17/2 and final rules

**Policy Statement**

PS17/18

July 2017

## This relates to

Consultation Paper 17/2  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Summary

## Introduction

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- 1.1** Following the failure of Lehman Brothers International (Europe) (LBIE) in 2008, Her Majesty's Treasury (the Treasury) created an insolvency regime for investment firms called the 'Special Administration Regime' (SAR). The SAR works with the Client Assets sourcebook (CASS), and in particular the client money distribution rules (CASS 7A), to provide a mechanism under which client assets<sup>1</sup> can be returned to clients in the event of an investment firm failure.
- 1.2** In our consultation paper CP17/2: *CASS 7A & the Special Administration Regime Review*<sup>2</sup> (CP) we proposed changes to CASS in relation to an investment firm failure and its interaction with the SAR. Collectively, these proposals aim to speed up the distribution of client assets, improve consumer outcomes and reduce the market impact of an investment firm failure.
- 1.3** This policy statement (PS) summarises the feedback we received to the CP and our responses and includes final rules.

## Who does this affect?

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- 1.4** This PS is relevant to all regulated firms that hold custody assets and/or client money in relation to investment business and in particular:
- their clients
  - their banks and custodians
  - market infrastructure firms, including central counterparties (CCPs), exchanges and other intermediaries with whom a firm may place client assets, and
  - insolvency practitioners (IPs) and their advisers

## Is this of interest to consumers?

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- 1.5** The topics discussed in this PS will affect investment firms and their clients in the event of an investment firm failure, as well as other pooling events.

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<sup>1</sup> References in this paper to client assets refer to both client money and custody assets unless otherwise stated

<sup>2</sup> [www.fca.org.uk/publication/consultation/cp17-02.pdf](http://www.fca.org.uk/publication/consultation/cp17-02.pdf)



## Context

- 1.6** The Banking Act 2009 required the Treasury to review the SAR within two years of its coming into force. The Treasury commissioned Peter Bloxham to undertake this review (Bloxham Review).<sup>3</sup>
- 1.7** In March 2016, we published discussion paper DP16/2<sup>4</sup> providing feedback on the speed proposal<sup>5</sup> and discussing possible changes to CASS, in particular CASS 7A, as a result of the Bloxham Review recommendations and other lessons learned from firm failures. The Treasury also published a consultation paper<sup>6</sup> on proposed changes to the SAR Regulations.<sup>7</sup> The amended SAR Regulations were made by Parliament on 16 March 2017 and came into force on 6 April 2017.<sup>8</sup>
- 1.8** In January 2017, we published the CP detailing the feedback we received to DP16/2 and our proposed changes to CASS. We also proposed consequential changes to the client money rules (CASS 7) and CASS 7A to address the forthcoming indirect clearing requirements under the European Market Infrastructure Regulation (EMIR) and Markets in Financial Instruments Regulation (MiFIR) Regulatory Technical Standards (RTS).
- 1.9** This PS sets out our response to the CP and the final rules and guidance. This PS is also the conclusion of our review of the distribution regime under CASS.
- 1.10** We are not at this time proceeding with the proposals consulted on the EMIR and MiFIR RTS. This is because the RTS have not been adopted by the European Commission yet and are currently in draft form.<sup>9</sup> We will respond to the feedback and publish the final rules in a separate publication after the RTS have been adopted by the European Commission.

## Summary of feedback and our response

- 1.11** We received 17 written responses to the CP, including submissions from IPs, firms, CCPs and trade bodies. Descriptions of the feedback are included with each topic in this PS and have shaped the final rules that we are making which are published in Appendix 1.
- 1.12** We would like to thank all respondents for their feedback.

## Equality and diversity considerations

- 1.13** We have considered the equality and diversity issues that may arise from the proposals in this PS.
- 1.14** Overall, we do not consider that the proposals in this PS adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

3 Review of the Investment Bank Special Administration Regulations 2011 by Peter Bloxham, the output of which was the Bloxham Interim Report 2013 and the Bloxham Final Report 2014

4 DP16/2 'CASS 7A & the Special Administration Regime Review' [www.fca.org.uk/publication/discussion/dp16-02.pdf](http://www.fca.org.uk/publication/discussion/dp16-02.pdf)

5 The Speed Proposal was set out in CP13/5 and suggested an initial, rapid distribution of an insolvent firm's client money pool based on the records of the firm, favouring speed of distribution over accuracy

6 HM Treasury 'Reforms to the investment bank special administration regime' [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/506136/\\_PU1896\\_\\_SAR\\_Consultation.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506136/_PU1896__SAR_Consultation.pdf)

7 The Investment Bank Special Administration Regulations 2011 No. 245

8 The Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017, SI 2017/443

9 As published by ESMA in its final report on indirect clearing arrangements under EMIR and MiFIR (ESMA/2016/725)

## Next steps

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### What do you need to do next?

#### 1.15

The rules set out in Appendix 1 will come into force on 26 July 2017 and investment firms to which CASS applies will need to comply with them from that date in the event of failure or other pooling events. We recommend the final rules are read alongside the amended SAR Regulations.

## 2 Amendments affecting the return of client assets

- 2.1** In this chapter we summarise and respond to the feedback received to our proposed changes to CASS affecting the return of client assets following a firm's failure or other pooling events.

### Transfers

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#### Transfers of client money under CASS 7A

- 2.2** We consulted on allowing a firm, following a primary pooling event (PPE), to transfer the client money pool (CMP), in whole or in part, to another entity providing certain conditions are met. These conditions would include:
- the transfer does not result in other clients receiving less than they would otherwise receive in a distribution or transfer
  - subject to the SAR Regulations<sup>10</sup>, the transferor obtains specific client consent to the transfer or have in place a written client agreement which provides that the firm may transfer the client's client money to another person
  - the transferor either obtains a contractual undertaking from the transferee stating that the money transferred will be held as client money in accordance with CASS 7 or is satisfied, after exercising all due skill, care and diligence in its assessment, that the transferee will apply adequate measures to protect the client money following the transfer, and
  - certain client notifications are made (see 'Post-transfer notifications to clients' below)
- 2.3** We also proposed to change the name of the CASS 7A chapter from 'client money distribution' rules to 'client money distribution or transfer' rules.

In CP17/2 we asked:

**Q1:** *Do you agree with this proposal relating to the post-PPE transfer of client money? If not, please provide reasons.*

- 2.4** Most respondents agreed with this proposal. Although no respondents were against the proposal, some raised concerns and suggestions.
- 2.5** A few respondents were concerned about practical challenges in preserving equivalent outcomes for clients when the CMP is transferred in parts, requesting guidance on how to assess clients are not disadvantaged in such a transfer. A few respondents requested clarity on the term 'adequate measures'. One respondent suggested adopting de minimis values of client money entitlements below which obtaining

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10 SAR Regulation 10B

client consent would not be required by the rules. Three respondents noted that the renaming of the CASS 7A chapter could lead to repapering client notifications for firms using the banking exemption.<sup>11</sup>

### Our response

We are introducing these rules as consulted on.

We believe that allowing a firm to transfer the CMP in whole or in part, following a PPE, equips the firm or its IP with the tools it needs to achieve the best outcome for clients in all possible situations. We expect that in some failure situations there will be practical challenges in ensuring that equivalent distributions to clients are preserved if only part of the CMP is transferred, so it will not be suitable in all cases. Where the failed firm's business involves thousands of clients and a complex book of business, it is likely to be more difficult to be certain, at the point of a partial transfer, that equivalent outcomes for clients will be preserved. For example, previously unknown clients may subsequently come forward and make valid claims on the un-transferred portion of the CMP. Alternatively, for a firm with very few clients and very little chance of unknown clients coming forward to make a claim after a transfer has been made, equivalent outcomes for clients may be preserved if a proportion of the CMP is transferred and the residual CMP is distributed to remaining clients. A partial transfer may also result in cost savings to the benefit of all parties if it simplifies the administration of the remaining estate.

It is for the firm to assess that the transferee will apply 'adequate measures' to protect client money following a transfer, in the particular circumstances of the transfer. The rules permit transfers to non-CASS firms (as well as CASS firms).

We are not adopting de minimis values on obtaining client consent. A firm can include consent provisions in its terms of business with clients, which means that it does not need to obtain consent at the time of the transfer. The SAR Regulations also override client consent (and other) requirements where all assets of a failed firm are being transferred.

The rules do not require firms to repaper their existing client notifications under the banking exemption to reflect the title change in CASS 7A and we would not consider a firm to be in breach if its legacy client documentation was not updated to reflect this change. Therefore, a risk of civil default under legacy contracts as a result of the change of a title of a Handbook chapter seems unlikely. We would expect that firms adopt the new chapter name for any client notifications or contracts made after the rules come into force.

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11 CASS 7.10.19R(2)



## Transfers and distribution of custody assets

- 2.6** We consulted on creating a new section in the custody rules (CASS 6) setting out rules on the treatment of custody assets post-failure (CASS 6.7). We proposed that the rules in this chapter would be limited to: (i) communication requirements that must be observed by a firm or its IP in the context of a post-failure transfer of custody assets; and (ii) requirements to ensure that clients are given ample opportunity to claim their custody assets post-failure (see 'Treatment of unclaimed client assets and de minimis balances' below).

In CP17/2 we asked:

**Q2:** *Do you agree with our proposal to create a new section containing post-failure custody rules for transfers and the treatment of unclaimed custody assets? If not, please provide reasons.*

- 2.7** Most respondents supported this proposal. Although no respondents were against the proposal, some raised questions and concerns.
- 2.8** One respondent requested clarity on whether the new rules are a proposed course of action for the firm or its IP to follow in the event of a firm failure. They also suggested that the application of the rules could be clarified by the FCA providing a template letter on the contractual undertaking between the transferor and transferee. One respondent noted that the proposed rules were silent on the proceeds of disposed assets, tracing and establishment of title, treatment of shortfalls and allocation of costs, especially for firms that are not subject to the SAR. One respondent queried whether the proposed rules restrict transfers of custody assets to entities based in foreign jurisdictions. Another respondent suggested restricting transfers to an FCA or PRA regulated firm only. One respondent questioned whether the post-failure custody rules should be included in the scope of the annual client assets report ('CASS audit').

### Our response

We are introducing these rules as consulted on.

The custody rules relating to the treatment of custody assets post-failure provide additional safeguards to ensure that clients are given an opportunity to claim their assets. The rules on disposal of safe custody assets only apply where a firm is in a position to dispose of a safe custody asset. The rules themselves do not give permission for disposals of safe custody assets. Instead, it is for the firm to consider whether its obligations under law or contract permit it to dispose of a safe custody asset.

We are not introducing a custody distribution regime. We asked whether there was a need for this in DP16/2.<sup>12</sup> Most respondents either disagreed with introducing a regime or questioned whether it would lead to unintended costs and legal uncertainty in light of existing court judgments.<sup>13</sup> Therefore, we did not take the proposal any further.

<sup>12</sup> DP16/2, Question 31, page 31

<sup>13</sup> CP17/2, paragraphs 2.18 to 2.20



The custody rules relating to the treatment of custody assets post-failure are not a proposed course of action for a firm or IP, but prescribe safeguarding measures for clients that the firm or IP must adhere to at the point of a transfer of assets or the closure of the client estate. We are not prescribing an insolvency or administration procedure for non-SAR cases, as this is for insolvency law.

We are not introducing a template on the contractual undertaking between a transferor and transferee, as this is something that the parties can agree to and may differ depending on the nature of the transferor or transferee. The rules permit transfers to non-UK firms.<sup>14</sup>

We disagree with restricting transfers to an FCA or PRA regulated firm, as we consider such a limitation would narrow the field of potential transferees and this may not be in the best interest of clients. The rules provide other safeguards for clients in the event of a transfer of client assets. This includes certain post-transfer notifications to clients on how their assets will be held, including an option for the client to request its client assets are returned to it (see 'Post-transfer notifications to clients' below).

We have amended our rules to clarify that the custody rules relating to the treatment of custody assets post-failure are not within the scope of the annual CASS audit. This is consistent with the treatment of the CASS 7A rules under the CASS audit.<sup>15</sup>

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### Post-transfer notifications to clients

**2.9** We consulted on requiring the transferor, following a post-failure transfer of client business, to obtain a contractual undertaking from the transferee that it would make certain notifications to the transferred clients within seven days of the transfer commencing. The notifications to the transferred clients include:

- the applicable regulatory regime under which the client assets will be held
- the relevant compensation scheme limits that apply, and
- informing the client that it has the option of requesting that its client assets are returned to it

In CP17/2 we asked:

**Q3:** *Do you agree with our proposal regarding post-transfer communications with clients? If not, please provide reasons.*

**2.10** Most respondents supported the proposal. Although no respondents were against the proposal, some raised suggestions and concerns.

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<sup>14</sup> CASS 6.7.8R(2)(b)

<sup>15</sup> SUP 3.10.5R



- 2.11** A few respondents were concerned that the seven day timeframe was too short, with one recommending that this be extended to 14 days as a maximum and another noting that it should be seven 'business' days. One respondent suggested an additional communication to clients, including on the transferee's website. The same respondent suggested enabling the transferee to impose a timeframe on clients communicating their request to a return of their assets.
- 2.12** One respondent noted that facilitating a reverse transfer is likely to lead to additional costs and might disadvantage vulnerable clients who may not understand the implications of transferring back to a failed firm, and requested clarity on the benefits.

### Our response

We are implementing the proposal, broadly as consulted on with some minor changes.

Where there has been a transfer of business including client assets and particularly where clients have not been given the opportunity to consent to the specific transfer, clients should be made aware of the transfer and its implications quickly. In response to feedback, we have extended the period for providing clients notifications to 14 days, as this achieves a balance between ensuring clients receive notifications and allowing the transferee sufficient time to draft and send these notifications.

The rules do not prohibit additional client communications or communications in different forms (such as on the transferor or transferee's website) from being given to clients. Our expectation is that following such a transfer, the relationship between transferred clients and the transferee will be governed by terms of business and other regulatory requirements applicable to the transferee, and that those terms will set out how the clients can communicate with the transferee and terminate the relationship should they so wish.

Furthermore, we disagree with imposing a timeframe on a client for communicating its request to a return of its assets, as this should be left to the contractual terms between the client and the transferee.

We understand the comment regarding reverse transfers relates more specifically to the requirement under SAR Regulation 10C(3). This is a Treasury regulation that offers protection to groups of transactions that should not be separated in the context of a partial property transfer. The analogous provision in the CASS rules allowing clients to request that their assets be returned to them by the transferee is, in particular, important to protect the interests of clients who provided consent to potential future transfers in their client contracts, but not to the specific transferee.

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## Contacting clients prior to the closure of the client estate

**2.13** At some point following a firm failure, the IP will need to close the client estate. If the firm has entered special administration, the SAR's bar date mechanisms may be applied. These provisions will not be available to firms in other types of insolvency or administration. In either case, the courts are able to set a final cut-off date, on application by an IP, after which the client estates can be closed to future claims (a 'hard bar date').

**2.14** We consulted on requiring a failed firm to take reasonable steps to notify all clients of the fact they may have a valid claim for client assets, prior to the closure of the client estate or a hard bar date under the SAR Regulations taking effect. We also proposed an evidential provision outlining the minimum client contact required.

In CP17/2 we asked:

**Q4:** *Do you agree with this proposal to safeguard clients' proprietary rights? If not, please provide reasons.*

**2.15** All respondents supported this proposal, but some raised concerns.

**2.16** One respondent felt the requirement to keep records on the treatment of unclaimed client assets "indefinitely"<sup>16</sup> would result in costs in perpetuity or after the point at which all clients could have been paid out and is unduly burdensome. Several respondents commented that the expectations on taking "reasonable steps" on client contact need to be proportionate, to avoid the costs incurred being in excess of benefits to clients. Another respondent requested additional detail and clarity on the requirements of the proposal.

### Our response

We are introducing these rules as consulted on.

The requirement to keep records "indefinitely" applies until the firm cancels its FCA permissions, at which point it will no longer be an authorised person subject to the FCA Handbook.

In response to the concerns on proportionality, given the consequences for the clients, we believe it is reasonable for a firm to make two contact attempts using different methods (for example, an email and a phone call) for a professional client and three contacts attempts for a retail client. In our experience, firms and their IPs make at least this number of attempts to contact clients in such situations, but the rules now clearly set out our minimum expectations.

The costs of this requirement are also reduced by the introduction of a de minimis provision (see 'Treatment of unclaimed client assets and de minimis balances' below).

We do not consider that additional clarification is needed, given that the evidential provision outlines the reasonable steps and minimum level of client contact required.

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## Treatment of unclaimed client assets and de minimis balances

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- 2.17** In the event of a firm failure or PPE, we consulted on allowing a firm or its IP to use allocated but unclaimed (or declined) client money entitlements and unallocated client money towards a shortfall in the CMP after payment of costs in accordance with the statutory trust waterfall provision.<sup>17</sup>

In CP17/2 we asked:

**Q5:** *Do you agree with our proposed treatment of allocated but unclaimed (or declined) and unallocated client monies? If not, please provide reasons.*

- 2.18** The majority of respondents supported this proposal, several made comments and two were against the proposal.
- 2.19** Two respondents suggested the proposal should be consistent with the forthcoming dormant assets regime proposed by the Dormant Assets Commission (DAC).<sup>18</sup> Another respondent noted that unclaimed balances could be significant and therefore the proposal could incentivise firms to become insolvent. Whilst supporting the proposal, one respondent was concerned that the retention of prudent segregation balances in the CMP could excessively advantage the CMP at the expense of the general estate, resulting in claims by the general estate and delays in the distribution of client money.

### Our response

We are introducing these rules as consulted on.

We are aware of the DAC's work and considered the recommendations made in their final report to Government.<sup>19</sup> However, it is not clear when any legislation in this area will be drafted. In the meantime, firms and IPs need certainty on how to treat unclaimed client money in firm failure situations. We are, therefore, proceeding with the rules as consulted on. We will review our rules in connection with any further work on dormant assets and work with the Treasury on any required changes to the SAR.

We acknowledge that some unclaimed balances could be significant. However, there are safeguards in our rules and in the SAR or other requirements on firms to prevent such balances incentivising a failure. For example, the final CASS rules require two or three attempts to get

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<sup>17</sup> CASS 7.17.2R

<sup>18</sup> See [www.gov.uk/government/organisations/dormant-assets-commission](https://www.gov.uk/government/organisations/dormant-assets-commission)

<sup>19</sup> Tackling Dormant Assets: recommendations to benefit consumers and society (3 March 2017), [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/596228/Tackling\\_dormant\\_assets\\_-\\_recommendations\\_to\\_benefit\\_investors\\_and\\_society\\_\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596228/Tackling_dormant_assets_-_recommendations_to_benefit_investors_and_society__1_.pdf)

in touch with clients; setting a hard bar date under the SAR or closing the client estate outside of the SAR requires court approval; and IPs are under duties to return assets to clients as soon as reasonably practicable and to act in the best interests of creditors, including clients.

The existing rules<sup>20</sup> require prudent segregation balances to be treated as client money for the purposes of CASS 7 and CASS 7A. The statutory trust waterfall provision (CASS 7.17.2R) requires any residual client money following the payment of distribution costs and client entitlements to be paid to the firm estate. We have inserted guidance to make it clear that client money in client bank accounts included in the CMP includes any prudent segregation amounts.

- 2.20** We consulted on allowing a firm or its IP to not have to notify clients with de minimis balances of client money. We proposed that the de minimis levels would be £25 for retail clients and £100 for professional clients.

In CP17/2 we asked:

**Q6:** *Do you agree with our proposals regarding the treatment of clients with de minimis client money balances? If not, please provide reasons why.*

- 2.21** Nearly all respondents supported this proposal. Two disagreed as they felt that the de minimis levels were too low and recommended a larger de minimis for complex insolvencies, such as £1000 for professional clients and eligible counterparties. They were also concerned that clients will lose out if the IP spends more than the value of the client balance by trying to distribute it.
- 2.22** One respondent suggested unclaimed de minimis balances should be stated in the rules to be net of reasonable direct transaction costs (e.g. bank transfer costs). The respondent also noted that the proposed rules<sup>21</sup> could require an IP to consider whether there is evidence at the PPE of each client's classification, which could prove counter-productive in the context of the cost savings the rule is trying to achieve. The same respondent requested that claimed balances are subject to a de minimis.

### Our response

We are introducing these rules as consulted on.

We note the concerns, in particular that the proposed de minimis levels are too low, but consider that these balance the interests of clients who stand to lose their proprietary rights to their assets against the costs of tracing and contacting clients which impact on all claimants to the CMP. We do not consider that the proposals will require significant additional client classification work in the majority of firm failures, as firms should hold this information in their records.

<sup>20</sup> CASS 7.13.41R, CASS 7.13.65R and CASS 7.13.73R

<sup>21</sup> CASS 7A.2.6AR

We are not applying a de minimis to claimed balances. Our policy has never been aimed at permitting firms to disregard small client money entitlements. Instead, our policy addresses the situation in which clients have not come forward (i.e. unclaimed balances), or clients who have specifically disclaimed their balances, and as a result the IP does not need to contact those clients under CASS for the purpose of closing the client estate. In most cases there will have been some opportunity for such clients to become aware of the firm's failure, for example via the firm's website (which is an insolvency law requirement), Companies House and/or the FCA register, or purely as a result of the firm no longer being able to carry out business for the client.

This contrasts with 'claimed balances' where the client has actually claimed its entitlement during the failure process. For claimed balances, the client money rules do not set out a materiality threshold below which firms need not protect client money. Similarly, for claimed balances we are not setting such a materiality threshold in the client money distribution and transfer rules.

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## Hindsight

- 2.23** For the purpose of determining clients' entitlements to the CMP, we consulted on requiring firms to apply the value achieved on close out to all cleared open margin transactions. That is, hindsight should be applied (the 'Hindsight Principle'). For all other open transactions at PPE, we retained our existing rules on requiring these to be valued using the notional closing or settlement prices prevailing at the PPE.

In CP17/2 we asked:

**Q7:** ***Do you agree with this proposal on the application of the Hindsight Principle? If not, please provide reasons.***

- 2.24** All respondents supported this proposal. One respondent agreed with using the close out value as the valuation method for applying the Hindsight Principle as CCPs use close out values in their own calculations following a default of a clearing member. Two respondents said the proposed narrow application of the Hindsight Principle was more helpful than applying it to other asset classes. In contrast, two respondents, whilst supporting the proposal, suggested applying it to other types of transactions.

### Our response

We are introducing these rules as consulted on.

We are not extending the application of the Hindsight Principle to other types of margin transactions. This is because the firm does not place client money in client transaction accounts for such transactions, so there can be no change in balance of client money held by the firm for such transactions post-PPE. We also disagree with applying the Hindsight Principle to other types of transactions

because of the risk that the counterparty could keep the transaction open for a long time after PPE, whereas a CCP is likely to close a transaction quickly after the firm enters into PPE.

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## Post-PPE reconciliations

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- 2.25** We consulted on including guidance in CASS 7A on the post-administration client money reconciliation required under the SAR Regulations<sup>22</sup> to: (i) remind a firm or its IP of the requirement; and (ii) clarify that the reconciliation requirements in CASS 7.15 continue to apply to a firm after a PPE. We proposed to make it clear in the rules that any top ups resulting from the post-administration reconciliation in the SAR must be included in the CMP and any drawdowns can be excluded from the CMP.
- 2.26** As set out in paragraph 2.48 below, we also consulted on making it clear which CASS 6 and 7 rules will cease to apply following a firm failure or other PPE. We did not exclude failed firms from the requirements to carry out internal and external reconciliations in accordance with CASS.

In CP17/2 we asked:

**Q8:** *Do you agree with our proposed clarifications in CASS 7A relating to the post-administration reconciliation under the SAR? If not, please provide reasons.*

- 2.27** Most respondents supported our provisions on the post-administration reconciliation under the SAR. However, one respondent requested guidance to clarify that the IP may need to develop an alternative reconciliation method for the reconciliation after the post-administration reconciliation under the SAR. This would be in case the latter reconciliation involved a non-compliant CASS reconciliation method.
- 2.28** One respondent disagreed with requiring a failed firm to perform reconciliations under CASS 6 and 7 to the same frequency as going concern firms. The respondent felt these reconciliations would be an unnecessary additional burden on the basis that there is little movement in transactions following failure and a PPE, and noted that IPs are subject to cash handling procedures which mandate bank reconciliation on a regular basis. Another respondent agreed with a failed firm performing reconciliations, provided the required systems capability and operational assets can be maintained, including on-going support from relevant third party service providers.

### Our response

We are introducing these provisions with some minor amendments.

We have introduced guidance in the final rules to make it clear that notwithstanding the fact that (where applicable) a firm or its IP will be required to carry out a reconciliation pursuant to the SAR Regulations,



following a PPE, ongoing compliant record keeping is required. This will include, for example, internal client money reconciliations.

We have considered the feedback on the frequency of a failed firm performing reconciliations under CASS 6 and 7. In light of this feedback, we have adjusted the rules to require that:

- (i) client money and custody asset reconciliations must be performed to reflect the time of the firm's failure or PPE. The rules make it clear that clients' entitlements to the CMP are calculated with reference to the client money reconciliation that relates to the time of a firm's failure. Unlike other client money reconciliations that are carried out one day to reflect the position as at the close of business on the previous business day, the time of failure client money reconciliation should be carried out as soon as reasonably practicable after the firm's failure and should reflect the client money position at the precise time of the firm's failure; and
  - (ii) further client money and custody asset reconciliations are carried out as regularly as necessary. The final rules and guidance set out requirements on how this frequency should be determined.
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## Annotated sample statements

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- 2.29** The Bloxham Final Report recommended<sup>23</sup> the provision of a detailed explanation of client statements including the particular methodology used by a firm. This would be to better equip clients to understand their statements and assist the claims process in the event of a firm's failure. We consulted on requiring a firm to make an annotated sample of its client statement available to its clients. We proposed that the annotations must explain the meaning of the information that the firm presents in such statements. We also proposed to allow firms to decide how they make this available to their clients, for example, on the firm's website.

In CP17/2 we asked:

**Q9:** *Do you agree with this proposal on annotated client statements? If not, please provide reasons.*

- 2.30** A considerable number of respondents disagreed with this proposal. Respondents argued that this type of information could give rise to fraudulent activity and potentially confuse clients. Respondents also felt that clients were provided sufficient information under other Handbook requirements, including COBS 4 and 16, CASS 9, Principle 7<sup>24</sup>, and new disclosure rules required by Markets in Financial Instruments Directive II (MiFID II). Some respondents noted that the proposal would add little value to professional clients given their knowledge and that clients already receive bespoke statements in the private banking space. Additionally, there was concern that without

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<sup>23</sup> Final report of the Investment Bank Special Administration Regulations 2011: by Peter Bloxham, January 2014, recommendation 31

<sup>24</sup> PRIN (Principles for Businesses)



the FCA being prescriptive on the level of detail required for the sample statements, interpretation could vary between firms and auditors.

**2.31** A number of respondents provided evidence of clients indicating that they are already provided with sufficient information in respect of their investments and that the current amount of detail is adequate for their understanding. One respondent noted that the absence of a requirement does not preclude firms from providing annotated statements where appropriate.

**2.32** Some respondents supported that retail customers should have a source of information explaining how their statement is presented and flexibility on how this is provided, such as the firm's website. However, the general consensus was that requiring this information in the form of an annotated client statement would not be the best source of ensuring that clients understood their statements.

#### Our response

We are not proceeding with our proposal at this time, as we agree that the potential costs outweigh the benefits in light of the existing information provided to clients.

In CP17/2 we asked:

**Q10:** *Do you anticipate that this proposal will have significant cost implications? If so, please explain this further.*

**2.33** Responses to this question were broadly divided. Many acknowledged that the cost of the proposal was likely to vary depending on the approach taken by different firms. One respondent noted there would be significant cost implications for wholesale firms. A few respondents commented that most of their statements are paper based and to provide an example statement to each client would have a considerable cost implication. Additional costs anticipated by respondents included the design, production, maintenance, increased client queries and training for staff to deal with such queries.

#### Our response

We are not proceeding with this proposal.

The potential cost implications were considered persuasive in the decision not to continue with the proposal.

### Triggers to a PPE

**2.34** We consulted on enabling the FCA to place a requirement on all client money without automatically triggering a PPE event.

In CP17/2 we asked:

**Q11:** *Do you agree with our proposal to enable the FCA to place a requirement over client money without triggering a PPE event? If not, please provide reasons.*

**2.35** All respondents supported our proposal. One respondent noted that this flexibility has been deployed (by way of rule modifications) in a recent insolvency. A few respondents, whilst supporting the proposal, requested clarity on what the requirement on client money would entail and in what circumstances such a requirement would be used by us.

#### Our response

We are introducing these rules as consulted on.

The terms of a requirement on client money will depend on the specific circumstances of the firm. We might impose such a requirement on a firm to undertake or cease a particular action in relation to client money, in order to advance our operational objectives. For example, the requirement may prevent the firm transferring client money from client bank accounts to ensure that the client money is protected from loss.

**2.36** Currently, a PPE is triggered by a firm notifying, or being in breach of its duty to notify, the FCA that it is unable to comply with its record keeping requirements following a secondary pooling event. We consulted on deleting the reference to a 'breach of duty to notify the FCA' so that **only** a notification by a firm that it is unable to comply with its record keeping requirements following a secondary pooling event constitutes a PPE.

In CP17/2 we asked:

**Q12:** *Do you agree with our proposal to remove the breach of duty to notify the FCA that it is unable to comply with its record keeping requirements following a secondary pooling event from triggering a PPE event? If not, please provide reasons.*

**2.37** Nearly all respondents supported this proposal. One respondent agreed with our proposal on the basis that it was difficult to identify the point at which the firm was in breach of its duty to notify the FCA and that the point of the breach was key in this context.

**2.38** A few respondents disagreed with the proposal. One suggested it could encourage firms to influence the PPE date to their own benefit. Another noted the risk of a firm not being clear when it failed to comply with the record keeping requirements and reliance on the firm to promptly notify the regulator.

#### Our response

We are introducing these rules as consulted on.

Under these rules, the PPE date is the point at which the firm notifies the FCA that it has breached its record keeping requirements (and not when the firm realises it has breached its record keeping requirements). We expect firms' records to, in most cases, change regularly (for example, following reconciliations), so the period between a secondary pooling event taking place and the firm realising it cannot recalibrate its records and its notification to the FCA should not be prolonged.

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### Client money received by the firm after a PPE

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#### 2.39 We consulted on:

- where the firm has operated the normal approach, allowing post-PPE receipts of client money to be placed in (i) client bank accounts that are opened following PPE; or (ii) client bank accounts of the firm that existed at the time of the PPE, provided the money constituting the CMP has been transferred out of those client bank accounts
- allowing an exception to the requirement to place post-PPE receipts in a client bank account where the firm has operated the alternative approach to client money<sup>25</sup> or the normal approach in relation to certain regulated clearing arrangements pre-PPE<sup>26</sup>
- allowing a firm to use monies relating to transactions entered into before the PPE, which had not settled at the time of PPE, to settle that transaction
- to the extent client money relates to one or more cleared margined transactions that had not closed out as at the PPE, then provided that the firm has not failed, allowing it to transfer that client money to the relevant client transaction account for the purpose of collateralising those transactions, and
- allowing a firm to retain costs properly attributable to the distribution of post-PPE client money from these monies, but allocate these costs per individual client rather than on a mutualised basis

In CP17/2 we asked:

**Q13:** *Do you agree with our proposal to allow client monies received post-PPE to be placed in an existing client bank account? If not, please provide reasons.*

#### 2.40 Most respondents agreed with this proposal. One respondent agreed on the basis that it would permit post-PPE monies to be deposited in a client bank account quickly without the additional burden and associated delays of opening a new account. Another respondent supported other parts of the proposal that were relevant to clearing on the basis that it would align with other law relevant in this context.

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<sup>25</sup> CASS 7.13.62R

<sup>26</sup> CASS 7.13.72R

- 2.41** One respondent, whilst supporting the proposal, requested clarification to ensure that post-PPE receipts into an existing client bank account must not be disadvantageous to the client. Another respondent questioned the exception for firms operating the alternative approach and whether client money received post-PPE will be required to be segregated in a client bank account after performing a reconciliation.

#### Our response

We are introducing these rules as consulted on.

The rules require that a firm must return all post-PPE client money (regardless of whether it was received in a new or existing client bank account) promptly to each relevant client.<sup>27</sup> In response to the comment on firms operating the alternative approach, to the extent that such a firm makes any transfers from its own account to a client bank account<sup>28</sup>, these transfers must be made into a client bank account that does not contain any client money that forms part of the notional pool.<sup>29</sup> As set out above, the rules will require reconciliations to be carried out as regularly as necessary following a pooling event.

In CP17/2 we asked:

**Q14:** *Do you agree with our proposal to allow firms to retain costs properly attributable to the distribution of post-PPE client money? Should these deductions be allocated per individual rather than on a mutualised basis? If not, please provide reasons.*

- 2.42** Most respondents supported our proposal to allow firms to retain costs properly attributable to the distribution of post-PPE client money. However, one respondent felt this proposal may unfairly penalise retail clients whose receipts are received by the firm post-PPE, when the costs themselves were incurred as a result of the overall failure in the first place.
- 2.43** The feedback in response to our proposal to require deductions be allocated per individual rather than on a mutualised basis was mixed. Some respondents suggested this proposal may be complex and expensive to administer. Others questioned whether it was possible for a firm or its IP to allocate and measure such costs accurately, and another suggested forcing the IP to use the individual costs method may cause unnecessary time delays and costs to be borne by the CMP.

#### Our response

The existing rules<sup>30</sup> enable firms to retain costs properly attributable to the distribution of post-PPE client money. We have inserted guidance in CASS 7A to ensure this is clear. We consider it fair that clients whose post-PPE receipts are caught up in the firm failure share an element

<sup>27</sup> CASS 7A.2.7-AR(4)

<sup>28</sup> CASS 7.13.62R(3) or CASS 7.13.72(2)(b)

<sup>29</sup> CASS 7A.2.7-AR(3)(b)

<sup>30</sup> CASS 7.17.2R(4)

of the distribution costs, given that verifying and returning these client assets will incur distribution costs.

In light of the feedback regarding allocating post-PPE distribution costs to individual clients, the final rules do not require costs to be allocated on an individual client basis.

In CP17/2 we asked:

**Q15:** *Do you agree with our proposed approach to clarifying the treatment of client monies received post-PPE? If not, please provide reasons.*

**2.44** All those who responded to this question supported this proposal. One requested clarity on the treatment of cheques or physical payments following PPE.

#### Our response

We are introducing these rules as consulted on.

The rules apply to any form of client money received by the firm after a PPE, including cheques and other payable orders.

### Redistribution of client money following a secondary pooling event

**2.45** Broadly speaking, if a bank or a third party holding client money on behalf of a firm fails, this constitutes a secondary pooling event for the firm. If the firm does not choose to make good any shortfall that results from this event, the secondary pooling event rules<sup>31</sup> require a firm to:

- ensure that any shortfall resulting from the third party failure is shared rateably among all the firm's clients in accordance with their entitlements, and
- calculate new entitlements for clients reflecting any shortfall and update the firm's records to reflect the new entitlements.

**2.46** We consulted on (i) extending the secondary pooling event rules to apply to an exchange or CCP failure; and (ii) any shortfall in client money that arises in certain client transaction accounts at a CCP on the failure of that CCP is shared only amongst the clients making use of that account.

In CP17/2 we asked:

**Q16:** **Do you agree with the proposals to include CCPs in the scope of a secondary pooling event, and to exclude from secondary pooling amounts in certain client transaction accounts, including where relating to sub-pools? If not, please provide reasons.**

- 2.47** Most respondents supported this proposal. One respondent also suggested further exclusions from the secondary pooling amount, such as the legally segregated operationally commingled (LSOC) customer accounts for CASS firms that are dual UK/US regulated should be expressly carved out in the rules, in a manner similar to the way that the proposed rules carve out individual or certain omnibus client accounts.

### Our response

A secondary pooling event may merely be an internal record keeping matter for a firm.

The final rules mean that a firm holding client money at a CCP will be required to consider the failure of that CCP to be a secondary pooling event and the implications of this for the client money entitlements of its clients. Any shortfalls in client money that arise in individual segregated accounts (ISAs) or certain omnibus segregated accounts (OSAs) on the failure of the relevant CCP will be shared only amongst those clients that use those particular accounts.

As set out in CP17/2 our policy rationale is as follows:

- (i) in respect of ISAs, in the event that the firm itself fails all clients do not share in the benefits of these accounts (e.g. in relation to porting and direct return to clients of their monies). We therefore consider that only the clients of these accounts should share in any shortfall arising from a secondary pooling event on the failure of an authorised CCP, and
- (ii) for the same reasons, we also propose to exclude gross OSAs and OSAs in respect of which the firm maintains a sub-pool.

We understand that in respect of so called 'LSOC' accounts or other similar third country CCP account constructs, legislation provides that collateral provided by one client must not be used to cover losses other than those of that client. The final rules make it clear that in the cases of client transaction accounts at CCPs which are (i) ISAs, then any shortfalls arising on those accounts on a CCP failure should be borne by the client using that account; and (ii) OSAs (but not net margined omnibus accounts), then any shortfalls arising in those accounts on a CCP failure should be borne by the clients using that account or allocated as required by applicable law.

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## CASS and SUP rules applying post-failure and PPE

- 2.48** We consulted on disapplying certain CASS rules following a firm failure or a PPE, including:
- following a firm's failure, rules relating to the annual firm classification exercise

- following a firm's failure or PPE, provisions in CASS 6 and CASS 7 relating to the treatment of unclaimed client assets
- following a PPE, provisions in CASS 7 relating to transfers of business
- following a firm's failure, certain provisions in CASS 6 and 7 relating to the treatment of shortfalls (including associated notification requirements) on payment or withdrawal of client money
- following a PPE, provisions in CASS 7 relating to money due to a client from a firm, and
- following a PPE, provisions in CASS 7 relating to procedures and record keeping of prudent segregation of client money, except the requirement to retain the prudent segregation record for a period of five years after the firm ceases to prudently segregate

**2.49** We also consulted on disapplying the requirement under SUP 3.10 on an auditor to produce an annual CASS audit of compliance for the period following a firm's failure. If the firm fails during its CASS audit year, we clarified that an audit report is required covering matters up to the day of the firm's failure.

In CP17/2 we asked:

**Q17:** *Do you agree with our proposed application of the CASS and SUP going concern rules following failure or PPE? If not, please provide reasons.*

**2.50** The majority of respondents supported this proposal in its entirety. However, some respondents disagreed with applying the annual CASS audit given the cost and challenge of funding the audit following failure and PPE and there being no benefit to clients. One respondent indicated that there could be a conflict of interest by employing the auditor used prior to PPE and suggested the IP would be better placed to report on CASS compliance. Another respondent suggested disapplying CASS 8, 9 and 10.

### Our response

We have considered the feedback on requiring the CASS audit. We have removed our proposed clarification and retained the existing rules on this requirement on the basis that we agree that funding an audit following failure and PPE would be costly, challenging and give rise to potential conflict of interest issues. We consider the relevant CASS 8 provisions<sup>32</sup> that apply following failure or PPE to be helpful for a firm to keep track of its mandates and that these would not be a significant burden. We disagree with disapplying CASS 9 and 10 provisions as these are either required under MiFID/MiFID II or redundant at the point of failure or PPE.

**2.51** In CP17/2 we explained that the proposed rules will not be applicable to firms that have already failed, entered the SAR or experienced another type of PPE before these rules

32 CASS 8.3 (records and internal controls)

come into force. We considered this approach necessary as we did not wish to disturb any pooling, client entitlement calculations, claims processing and planning that had taken place before these rules come into force.

In CP17/2 we asked:

**Q18:** *Do you agree with this proposed approach? If not, please provide reasons.*

**2.52** All respondents supported this approach.

#### Our response

We are proceeding with this approach as consulted on.

### Placement of client money in client transactions at CCPs

**2.53** In CP17/2<sup>33</sup> we noted feedback that, in order to minimise the ability of third parties to successfully assert proprietary claims over assets and positions in accounts at CCPs, it would be helpful for the client money rules to expressly set out that firms can only transfer client money to accounts which are made available by the recipient CCPs for usage as client transaction accounts. We responded to this feedback by stating that the client money rules, as currently drafted, only permit firms to place client money in client transaction accounts.

**2.54** Following CP17/2, we received further feedback on this issue. The feedback noted that the definition of 'client transaction account' is potentially wide enough to include other types of customer accounts at CCPs, including those not considered by the CCP to be a CASS offering. A clearing member firm could therefore issue an acknowledgement letter under CASS<sup>34</sup> in respect of such accounts. There is a concern that this could cause confusion as to the status of the money in such an account in the event of a firm's failure.

#### Our response

We have considered this feedback. Subject to very limited exceptions, the CASS rules do not allow client money and non-client money to be co-mingled. This means that if a firm enters into a contract with certain clients under title transfer collateral arrangements (TTCAs) but provides other clients with client money protection under CASS 7, the firm will need to maintain one or more client transaction account for CASS 7 clients and one or more other account for clients providing money to the firm under a TTCA. This ensures that for these different types of clients, client money is never co-mingled with other monies.

<sup>33</sup> CP17/2, paragraphs 4.41 to 4.42

<sup>34</sup> CASS 7 Annex 4R



Under EMIR, a firm entering into a transaction on behalf of its client must offer that client the choice between individual and omnibus client segregation at a CCP. However, the point was made in PS12/23<sup>35</sup> and we reiterate it here that it must not be inferred from the terminology of EMIR that an individual client account and an omnibus client account necessarily hold client money under CASS, despite the protections of Articles 39 and 48 of EMIR applying to all accounts opened by a firm on behalf of its clients at a CCP. A CASS acknowledgement letter should therefore only be in place over accounts at a CCP which the firm and the CCP intend to be client transaction accounts for the purposes of compliance with CASS.

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## 3 Feedback on cost benefit analysis and compatibility statement

### Cost benefit analysis

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- 3.1** In CP17/2 we set out a cost benefit analysis (CBA) of our proposed rules, as required by section 138I(2)(a) of Financial Services and Markets Act 2000. The CBA assessed the costs and benefits of each proposal and explained why we expect the incremental costs of the proposals to be of minimal significance.

In CP17/2 we asked:

**Q20:** *Do you have any comments on our cost benefit analysis? Please provide explanations and quantitative evidence to support your response where appropriate.*

- 3.2** Most respondents agreed with our CBA, however a minority disagreed. Some respondents suggested the proposal on annotated statements had significant costs. A few respondents noted that renaming the CASS 7A chapter would lead to costly repapering of client notifications for firms using the banking exemption.<sup>36</sup>

#### Our response

We are not introducing the proposal on annotated statements. We are not requiring firms to repaper their existing client notifications under the banking exemption as a result of renaming the CASS 7A chapter.

As the amended rules do not differ materially from the draft on which we consulted, we believe the CBA set out in CP17/2 remains valid.

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### Compatibility statement

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- 3.3** Nearly all respondents either agreed with or made no comments on our compatibility statement. One respondent noted that the equality and diversity statement does not mention visually impaired clients affected by the proposal of an annotated statement being on a firm's website.

In CP17/2 we asked:

**Q21:** *Do you have any comments on the compatibility statement?*

## Our response

We are not introducing the proposal on annotated statements.

As the amended rules do not differ materially from the draft on which we consulted, we believe the compatability statement set out in CP17/2 remains valid.

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# Annex 1

## List of non-confidential respondents

Association for Financial Markets in Europe (AFME)

British Bankers' Association (BBA)

Ernst & Young LLP (EY)

Eurex Clearing

Elevate Portfolio Services Limited

Invesco Perpetual

Investec Wealth & Investment Limited

KPMG LLP

Pershing Securities Limited

The Royal Bank of Scotland Plc (RBS)

Standard Life Savings Limited

Tax Incentivised Savings Association (TISA)

Trade Association Forum (TA Forum)

## Annex 2

### Abbreviations used in this paper

<b>Bloxham Final Report</b>	Final report of the Investment Bank Special Administration Regulations 2011: by Peter Bloxham, January 2014
<b>Bloxham Review</b>	Review of the Investment Bank Special Administration Regulations 2011 by Peter Bloxham, the output of which was the Bloxham Interim Report 2013 and the Bloxham Final Report 2014
<b>CASS</b>	Client Assets sourcebook
<b>CBA</b>	Cost benefit analysis
<b>CCP</b>	Central counterparty
<b>CMP</b>	Client money pool
<b>COBS</b>	Conduct of Business sourcebook
<b>CP</b>	Consultation paper
<b>DP</b>	Discussion paper
<b>EMIR</b>	Regulation (EU) No 648/2012 on over-the-counter derivatives, central counterparties and trade repositories, commonly referred to as the 'European Market Infrastructure Regulation'
<b>FCA</b>	Financial Conduct Authority
<b>FSA</b>	Financial Services Authority
<b>IP</b>	Insolvency practitioner
<b>ISA</b>	Individual segregated accounts
<b>LBIE</b>	Lehman Brothers International (Europe)
<b>LSOC</b>	Legal segregation with operational commingling
<b>MiFID II</b>	European Parliament and Council Directive on markets in financial instruments (No. 2014/65/EU), commonly referred to as the 'Markets in Financial Instruments Directive II'
<b>MiFIR</b>	Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, commonly referred to as the 'Markets in Financial Instruments Regulation'
<b>OSA</b>	Omnibus segregated accounts

<b>PPE</b>	Primary pooling event
<b>PRA</b>	Prudential Regulation Authority
<b>PRIN</b>	Principles for Businesses
<b>PS</b>	Policy statement
<b>RTS</b>	Regulatory Technical Standards
<b>SAR</b>	The Investment Bank Special Administration Regulations 2011 No. 245, the Investment Bank Special Administration (England and Wales) Rules 2011 No. 1301 and the Investment Bank Special Administration (Scotland) Rules 2011 No. 2262, commonly referred to as the 'Special Administration Regime'
<b>SAR Regulations</b>	The Investment Bank Special Administration Regulations 2011 No. 245, the Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017, SI 2017/443
<b>the Treasury</b>	Her Majesty's Treasury
<b>TTCA</b>	Title transfer collateral arrangement
<b>UK</b>	United Kingdom
<b>US</b>	United States of America

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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# Appendix 1

## Made rules (legal instrument)

**CLIENT ASSETS (CLIENT MONEY AND CUSTODY ASSETS DISTRIBUTION  
AND TRANSFERS) INSTRUMENT 2017**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 26 July 2017.

**Amendments to the Handbook**

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

**Citation**

- G. This instrument may be cited as the Client Assets (Client Money and Custody Assets Distribution and Transfers) Instrument 2017.

By order of the Board  
20 July 2017



## Annex A

### Amendments to the Glossary of definitions

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

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

<i>IBSA Regulations</i>	the Investment Bank Special Administration Regulations 2011 (SI 2011/245).
<i>secondary pooling shortfall</i>	<p>(in CASS 7A.3) the amount by which the <i>client money</i> held by a <i>firm</i> is:</p> <p>(a) insufficient to satisfy the claims of the <i>firm's clients</i> in respect of that <i>money</i>, or</p> <p>(b) not immediately available to satisfy such claims,</p> <p>in either case following the <i>failure</i> of a <i>person</i> at which <i>client money</i> of the <i>firm</i> had been held under CASS 7.13.3R(1) to CASS 7.13.3R(3) (Depositing client money) or CASS 7.14.2R (Client money held by a third party).</p>

Amend the following definitions as shown.

<i>client money distribution and transfer rules</i>	CASS 7A.
<i>failure</i>	the appointment of a liquidator, receiver, <del>or</del> administrator, <u>special administrator</u> or trustee in bankruptcy, or any equivalent procedure in any relevant jurisdiction.
<i>general pool</i>	<p>the discrete pool of <i>client money</i> held for all <i>clients</i> of the <i>firm</i> for whom the <i>firm</i> receives or holds <i>client money</i> in accordance with CASS 7.10.1R other than:</p> <p>(a) <i>client money</i> received or held in accordance with CASS 7.10.1R in respect of a <i>sub-pool</i>; <u>and</u></p> <p>(b) <u><i>client money</i> received by the <i>firm</i> after a <i>primary pooling event</i> that is not required by CASS 7A.2.4R(1A) to be included in the pool.</u></p>
<i>individual client</i>	as the context requires, either:

<i>account</i>	<p>(a) an <del>account</del> <u>account</u> maintained by a <i>firm</i> at an <i>authorised central counterparty</i> for a <i>client</i> of the <i>firm</i> in respect of which the <i>authorised central counterparty</i> has agreed with the <i>firm</i> to provide <i>individual client segregation</i>; or</p> <p>(b) an <del>account</del> <u>account</u> maintained by a <i>firm</i> for an <i>indirect client</i> at a <i>clearing member</i> of an <i>authorised central counterparty</i> in respect of which the <i>clearing member</i> has agreed with the <i>firm</i> to provide segregation arrangements that satisfy the requirements of article 4(2)(b) of the <i>EMIR L2 Regulation</i>.</p>
<i>omnibus client account</i>	<p>as the context requires, either:</p> <p>(a) an <del>account</del> <u>account</u> maintained by a <i>firm</i> at an <i>authorised central counterparty</i> for more than one <i>client</i> of the <i>firm</i> in respect of which the <i>authorised central counterparty</i> has agreed with the <i>firm</i> to provide <i>omnibus client segregation</i>; or</p> <p>(b) an <del>account</del> <u>account</u> maintained by a <i>firm</i> for more than one <i>indirect client</i> at a <i>clearing member</i> in respect of which that <del>clearing member</del> <u>clearing member</u> has agreed with the <i>firm</i> to provide segregation arrangements that satisfy the requirements of article 4(2)(a) of the <i>EMIR L2 Regulation</i>.</p>
<i>secondary pooling event</i>	<p>...</p> <p>(3) (in CASS 7 and CASS 7A) an event that occurs in the circumstances described in CASS 7A.3.1R (Failure of a bank, intermediate broker, settlement agent, <del>or</del> OTC counterparty, <u>exchange or clearing house</u>; secondary pooling events).</p> <p>...</p>
<i>sub-pool</i>	<p>a discrete <i>pool</i> of <i>client money</i> established under CASS 7.19, <u>which after a primary pooling event includes the client money that is required to be included in the pool under CASS 7A.2.4R(1A).</u></p>

## Annex B

### Amendments to the Client Assets sourcebook (CASS)

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

#### 1A CASS firm classification and operational oversight

##### 1A.1 Application

...

1A.1.2     R     The *rules* and *guidance* in CASS 1A.2 (CASS firm classification) do not apply to a *firm* following its *failure*.

...

#### 6 Custody rules

...

##### 6.2 Holding of client assets

...

Allocated but unclaimed safe custody assets

6.2.7A     R     CASS 6.2.8G to CASS 6.2.16G do not apply to a *firm* following its *failure*.

6.2.7B     G     CASS 6.7.2R to CASS 6.7.7R (Disposal of safe custody assets) applies to a *firm* following its *failure* in respect of allocated but unclaimed *safe custody assets*.

...

##### 6.6 Records, accounts and reconciliations

...

6.6.10A     R     CASS 6.6.11R does not apply to a *firm* following its *failure*.

6.6.10B     G     CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure*.

- 6.6.11     R     (1)     A *firm* must perform an *internal custody record check*:
- (a)     subject to paragraph (2), as regularly as is necessary but without allowing more than one month to pass between each *internal custody record check*; and
  - (b)     as soon as reasonably practicable after the date to which the

*internal custody record check* relates.

...

...

6.6.21A    R    CASS 6.6.22R does not apply to a *firm* following its *failure*.

6.6.21B    G    CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure*.

...

6.6.36A    R    CASS 6.6.37R does not apply to a *firm* following its *failure*.

6.6.36B    G    CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure*.

...

Frequency of checks and reconciliations under this section

6.6.43A    R    CASS 6.6.44R to CASS 6.6.46R do not apply to a *firm* following its *failure*.

6.6.43B    G    CASS 6.6.46AR (Frequency of checks and reconciliations after failure) applies to a *firm* following its *failure* in respect of the frequency at which the *firm* undertakes its *internal custody record checks* under CASS 6.6.11R, *physical asset reconciliations* under CASS 6.6.22R, and *external custody reconciliations* under CASS 6.6.37R.

...

Frequency of checks and reconciliations after failure

6.6.46A    R    (1)    This *rule* applies to a *firm* following its *failure*.

(2)    A *firm* must perform an *internal custody record check* and a *physical asset reconciliation* that relates to the time of its *failure* as soon as reasonably practicable after its *failure*.

(3)    (a)    A *firm* must perform an *external custody reconciliation* that relates to the time of its *failure* as soon as reasonably practicable after its *failure*.

(b)    If any records and accounts of the relevant third parties under CASS 6.6.35R relating to the time of the *firm's failure* are unavailable, the *firm* must use the next available records and accounts to perform the *external custody reconciliation* under sub-paragraph (a).

(4)    A *firm* must perform further *internal custody record checks* and *physical asset reconciliations*:

- (a) as regularly as is necessary to ensure that the *firm* remains in compliance with CASS 6.6.2R, CASS 6.6.3R and CASS 6.6.4R (Records and accounts); and
    - (b) as soon as reasonably practicable after the date to which the *internal custody record check* or *physical asset reconciliation* relates.
  - (5) A *firm* must perform further *external custody reconciliations* on a regular basis:
    - (a) as regularly as is necessary; and
    - (b) as soon as reasonably practicable after the date to which the *external custody reconciliation* relates.
  - (6) A *firm* must determine the frequency at which it will undertake its *internal custody record checks* and *physical asset reconciliations* under paragraph (4), and its *external custody reconciliations* under paragraph (5) with regard to:
    - (a) the frequency, number and value of transactions which the *firm* undertakes in respect of *clients' safe custody assets*;
    - (b) the risks to which *clients' safe custody assets* are exposed, such as the nature, volume and complexity of the *firm's* business, and where and with whom *safe custody assets* are held; and
    - (c) the need to comply with CASS 6.7.
- 6.6.46B    G    (1)    The reference point for the *internal custody record check* and *physical asset reconciliation* under CASS 6.6.46A(2) and the *external custody reconciliation* under 6.6.46A(3)(a) should be the precise point in time at which the *firm's* failure occurred.
- (2)    The reference point for any further *internal custody record checks* and *physical asset reconciliations* under CASS 6.6.46A(4) and any further *external custody reconciliations* under 6.6.46A(5) can be determined by the *firm*.

...

## Treatment of shortfalls

- 6.6.54    R    (1)    ...
- (2)    Subject to paragraphs (3) and (4), until the discrepancy is resolved a *firm* must do one of the following:
- ...

...

- (4) A firm that has failed is not required to take steps under paragraph (2) in relation to the firm's own applicable assets or money in so far as the legal procedure for the firm's failure prevents the firm from taking any such steps.

...

- 6.6.56A G CASS 6.6.54R(4) recognises that a failed firm is required to investigate and resolve discrepancies, but the extent to which it is able to address shortfalls pending the resolution of discrepancies may be limited by insolvency law, for example.

...

## **6.7 Treatment of custody assets after a failure**

### Application

- 6.7.1 R This section applies to a firm following its failure.

### Disposal of safe custody assets

- 6.7.2 R (1) Before a firm takes any steps to dispose of a safe custody asset it must:
- (a) (subject to paragraph (2)) attempt to return it to the relevant client or transfer it to another person for safekeeping on behalf of the client in accordance with CASS 6.7.8R; and
  - (b) (subject to paragraph (3)) take reasonable steps to notify the client of the firm's proposed course of action for disposing of the safe custody asset.
- (2) A firm is not required to attempt to return or transfer a safe custody asset under paragraph (1)(a) where the client to whom the safe custody asset belongs has confirmed to the firm that it disclaims all its interests in the safe custody asset.
- (3) A firm is not required to notify a client under paragraph (1)(b) where:
- (a) the firm is able to return the safe custody asset to the relevant client or transfer it to another person on behalf of the client in accordance with CASS 6.7.8R; or
  - (b) the client to whom the safe custody asset belongs has confirmed to the firm that it disclaims all its interests in the safe custody asset.
- 6.7.3 G (1) The disposal of a safe custody asset referred to under CASS 6.7.2R(1) includes cases where the firm is using the procedure under regulation

12B of the *IBSA Regulations* to set a ‘hard bar date’ by giving a ‘hard bar date notice’, or is using another similar procedure in accordance with the legal procedure for the *firm’s failure*.

- (2) In any case, a *firm* should consider whether its obligations under law or any agreement permit it to dispose of a *safe custody asset* in the way in which it proposes to do so.

- 6.7.4      E      (1)      Reasonable steps in CASS 6.7.2R(1)(b) include the following course of conduct:
- (a)      determining, as far as reasonably possible, the correct contact details for the relevant *client*;
  - (b)      for a *client* for whom the *firm* has evidence that it was a *professional client* for the purposes of the *custody rules* at the time of the *failure*:
    - (i)      writing to the *client* at its last known address either by post or by electronic mail:
      - (A)      to inform it of the *firm’s* intention to dispose of the *safe custody asset*;
      - (B)      to inform it of the consequences of the *firm’s* proposed course of action in relation to the *client’s* ability to assert a claim in respect of that *safe custody asset*; and
      - (C)      to invite the *client* to submit a claim for that *safe custody asset*;
    - (ii)      where the *client* has not responded within 28 days of the communication under sub-paragraph (i), attempting to communicate the information in (i) to the *client* on at least one further occasion by any means other than that used in sub-paragraph (i) including by post, electronic mail, telephone or media advertisement; and
  - (c)      for any other *client*:
    - (i)      the same steps as under sub-paragraphs (b)(i) and (b)(ii); and
    - (ii)      where the *client* has not responded within 28 days of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the *client* on at least one further occasion by any means other than one in respect of which the *firm* has obtained positive confirmation that the *client* is not receiving such

communications.

- (2) Compliance with paragraph (1) may be relied on as tending to establish compliance with CASS 6.7.2R(1)(b).
- (3) Contravention of paragraph (1) may be relied on as tending to establish contravention of CASS 6.7.2R(1)(b).

6.7.5     G     For the purposes of CASS 6.7.4E(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including:

- (1)     telephoning the *client*;
- (2)     searching internal and/or public records;
- (3)     media advertising;
- (4)     mortality screening; and
- (5)     using credit reference agencies or tracing agents.

6.7.6     R     If the *firm* undertook a tracing exercise for the purposes of CASS 6.2.10R(4) (Allocated but unclaimed safe custody assets) before its *failure* but had not made the charity payment under that *rule* by the time of its *failure* then the findings of that exercise may be relied on for the purposes of CASS 6.7.4E(1)(a).

6.7.7     R     (1)     A *firm* must make a record of any *safe custody asset* disposed of in accordance with CASS 6.7.2R at the time of the disposal.

(2)     The record under paragraph (1) must state:

- (a)     the *safe custody asset* that was disposed of;
- (b)     the value of the consideration received for the *safe custody asset* disposed of;
- (c)     the name and contact details of the *client* to whom the *safe custody asset* was allocated, according to the *firm's* records at the time of making the record under this *rule*; and
- (d)     either:
  - (i)     the efforts applied by the *firm* to determine the *client's* correct contact details under CASS 6.7.4E(1)(a); or
  - (ii)    if being relied on under CASS 6.7.6R, the efforts applied by the *firm* to determine the *client's* correct contact details for the purposes of CASS 6.2.10R(4) (Allocated but unclaimed safe custody assets).

(3)     A *firm* must keep the record under paragraph (1) indefinitely.



Transfers of safe custody assets

- 6.7.8 R (1) This rule applies where, instead of returning a *safe custody asset* to a *client*, a *firm* (Firm A) is able to transfer the *safe custody asset* to another *person* (Firm B) for safekeeping on behalf of the *client*.
- (2) Firm A may only effect such a transfer if, in advance of the transfer, it has obtained a contractual undertaking from Firm B that:
- (a) where regulation 10C(3) of the *IBSA Regulations* does not apply, Firm B will return the *safe custody asset* to the *client* at the *client's* request; and
- (b) Firm B will notify the *client*, within 14 days of the transfer of that *client's safe custody asset* having commenced:
- (i) of the applicable regulatory regime under which the *safe custody asset* will be held by Firm B;
- (ii) either:
- (A) of any relevant compensation scheme limits that may apply in respect of Firm B's handling of the *safe custody asset*; or
- (B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and
- (iii) where regulation 10C(3) of the *IBSA Regulations* does not apply, that the *client* has the option of having its *safe custody asset* returned to it by Firm B.
- 6.7.9 G Where regulation 10C(3) of the *IBSA Regulations* does apply, Firm A should, in advance of the transfer under CASS 6.7.8R, obtain a contractual undertaking from Firm B that:
- (1) Firm B will comply with the *client's* request for a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*; and
- (2) Firm B will notify the *client*, within 14 days of the transfer of that *client's safe custody asset* having commenced, that the *client* can demand a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*.

...

**7 Client money rules**

...

**7.10 Application and purpose**

...

7.10.19 R ...

- (2) if the *firm fails*, the ~~*client money distribution rules*~~ *client money distribution and transfer rules* will not apply to these sums and so the *client* will not be entitled to share in any distribution under the ~~*client money distribution rules*~~ *client money distribution and transfer rules*.

...

7.10.22 R ...

- (3) that, if the *firm fails*, the ~~*client money distribution rules*~~ *client money distribution and transfer rules* will apply to money held in relation to the business in question.

...

**7.11 Treatment of client money**

...

## Discharge of fiduciary duty

7.11.33A R (1) CASS 7.11.34R(2)(c), CASS 7.11.34R(2)(d) and CASS 7.11.34R(10) do not apply to a *firm* following a *primary pooling event*.

- (2) CASS 7.11.34R(2)(e) only applies to a *firm* following a *primary pooling event*.

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

...

- (2) ...

- (e) transferred in accordance with CASS 7A.2.4R(4); or

...

...

## Transfer of business

7.11.40A R CASS 7.11.41G to CASS 7.11.47R do not apply to a *firm* following a *primary pooling event*.

7.11.40B G CASS 7A.2.4R(4) (Pooling and distribution or transfer) applies to a *firm* in

respect of transfers of *client money* to another *person* following a *primary pooling event*.

...

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*.

7.11.47B G CASS 7A.2.6AR (Closing a client money pool) applies to a *firm* following a *primary pooling event* in respect of allocated but unclaimed *client money*.

...

## **7.13 Segregation of client money**

...

Money due to a client from a firm

7.13.38A R CASS 7.13.39R and CASS 7.13.40G do not apply to a *firm* following a *primary pooling event*.

7.13.38B G CASS 7A.2.10AR and CASS 7A.2.10BG (Money due to a client from a firm after a *primary pooling event*) apply to a *firm* following a *primary pooling event* in respect of *money* due to a *client* from a *firm*.

7.13.39 R Pursuant to the *client money segregation requirements*, a *firm* that is operating the normal approach and becomes liable to pay ~~money~~ money to a *client* ~~should~~ must promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

...

...

Prudent segregation

7.13.40A R (1) Subject to paragraph (2), CASS 7.13.41R to CASS 7.13.49R do not apply to a *firm* following a *primary pooling event*.

(2) If, at the time of a *primary pooling event*, a *firm* has retained *money* in a *client bank account* for the purposes of CASS 7.13.41R, that *money* remains *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.

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

*money rules and the ~~client money distribution rules~~ client money distribution and transfer rules.*

...

- 7.13.45 R The *firm's* written policy must not conflict with the *client money rules* or the ~~*client money distribution rules*~~ *client money distribution and transfer rules*. If there is a conflict, the *client money rules* and the ~~*client money distribution rules*~~ *client money distribution and transfer rules* will prevail.

...

#### Prudent segregation record

- 7.13.49A R (1) Subject to paragraph (2), CASS 7.13.50R to CASS 7.13.52G do not apply to a *firm* following a *primary pooling event*.
- (2) Where a *firm* holds a *prudent segregation record* under CASS 7.13.53R following a *primary pooling event*, the *prudent segregation record* must continue to satisfy the requirements set out in CASS 7.13.51R.

...

#### The alternative approach to client money segregation

- 7.13.53A R (1) Subject to paragraphs (2) and (3), CASS 7.13.59R, CASS 7.13.62R(3), CASS 7.13.62R(4) and CASS 7.13.63R to CASS 7.13.67R do not apply to a *firm* following its *failure*.
- (2) If, at the time of a *primary pooling event*, a *firm* has retained *money* in a *client bank account* for the purposes of *alternative approach mandatory prudent segregation* under CASS 7.13.65R, that *money* remains *client money* for the purposes of the *client money rules* and the *client money distribution and transfer rules*.
- (3) Where a *firm* holds an *alternative approach mandatory prudent segregation record* under CASS 7.13.68R following a *primary pooling event*, the *alternative approach mandatory prudent segregation record* must continue to satisfy the requirements set out in CASS 7.13.67R.

...

- 7.13.65 R (1) A *firm* that uses the alternative approach must, in addition to CASS 7.13.62R, pay an amount (determined in accordance with this *rule*) of its own *money* into its *client bank account* and subsequently retain that *money* in its *client bank account* (*alternative approach mandatory prudent segregation*). The amount segregated by a *firm* in its *client bank account* under this *rule* is *client money* for the purposes of the *client money rules* and the ~~*client money distribution*~~

~~rules~~ client money distribution and transfer rules.

...

...

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

...

7.13.72A R (1) Subject to paragraphs (2) and (3), CASS 7.13.73R to CASS 7.13.75R do not apply to a firm following a primary pooling event.

(2) If, at the time of a primary pooling event, a firm has retained money in a client bank account for the purposes of clearing arrangement mandatory prudent segregation under CASS 7.13.73R, that money remains client money for the purposes of the client money rules and the client money distribution and transfer rules.

(3) Where a firm holds a clearing arrangement mandatory prudent segregation record under CASS 7.13.76R following a primary pooling event, the clearing arrangement mandatory prudent segregation record must continue to satisfy the requirements set out in CASS 7.13.75R.

7.13.73 R (1) Where the circumstances described in CASS 7.13.72R(1)(a) apply to a firm it must pay an amount (determined in accordance with this rule) of its own money into its client bank account and retain that money in its client bank account (clearing arrangement mandatory prudent segregation). The amount segregated by a firm in its client bank account under this rule will be client money for the purposes of the client money rules and the ~~client money distribution rules~~ client money distribution and transfer rules.

...

...

## **7.15 Records, accounts and reconciliations**

...

7.15.15 R (1) Subject to paragraph (4), A firm must perform an internal client money reconciliation:

(a) each business day; and

(b) based on the records of the firm as at the close of business on the previous business day.

(2) When performing an internal client money reconciliation, a firm must, subject to (3), follow one of the standard methods of internal

*client money reconciliation* in CASS 7.16.

...

(4) Following a *primary pooling event*, and in addition to any obligations of a special administrator under regulation 10H of the *IBSA Regulations*:

- (a) a *firm* must perform an *internal client money reconciliation* that relates to the time of the *primary pooling event* as soon as reasonably practicable after the *primary pooling event*; and
- (b) the *firm* must perform further *internal client money reconciliations* as regularly as required under paragraph (5), based on the records of the *firm* as at the close of business on the *business day* before the day on which the reconciliation takes place.

(5) A *firm* must determine when and how often to perform an *internal client money reconciliation* under paragraph (4)(b) so as to ensure that:

- (a) the *firm* remains in compliance with CASS 7.15.2R, CASS 7.15.3R and CASS 7.15.5R(1) and (2) (Record keeping); and
- (b) the correct amounts of *client money* are returned to *clients* or transferred on behalf of *clients* under the *client money distribution and transfer rules*.

7.15.15A G (1) The reference point for the *internal client money reconciliation* under CASS 7.15.15R(4)(a) should be the precise point in time at which the *primary pooling event* occurred.

(2) When a *firm* decides whether it is necessary at any particular point in time to perform an *internal client money reconciliation* under CASS 7.15.15R(4)(b), it should have particular regard to the need to maintain its books and accounts in order to ensure that:

- (a) each notional *pool* of *client money* formed under CASS 7A.2.4R(1) and (1A) (Pooling and distribution or transfer) is correctly composed and maintained, and is treated separately;
- (b) *client money* that is required under CASS 7A.2.4R(3) (Pooling and distribution or transfer) and CASS 7A.2.7-AR (Client money received after a *primary pooling event*) to be treated as outside of any notional *pool* is treated accordingly; and
- (c) where applicable, *clients* ' entitlements to their *client money* are calculated in accordance with CASS 7A.2.5R(-2)(b) (Client money entitlements).

- (4) Depending on the circumstances of the *firm* and the scale, frequency and nature of activity after a *primary pooling event* that affects *client money*, a *firm* may conclude that it is necessary to continue performing *internal client money reconciliations* each *business day* for a period of time after the *primary pooling event*.

...

#### Frequency of external reconciliations

7.15.21A R CASS 7.15.22R to 7.15.26R do not apply to a *firm* following a *primary pooling event*.

7.15.21B G CASS 7.15.26AR applies to a *firm* following a *primary pooling event*.

...

#### Frequency of external reconciliations after a primary pooling event

7.15.26A R Following a *primary pooling event*, and in addition to any obligations of a special administrator under regulation 10H of the *IBSA Regulations*:

- (1) a *firm* must perform an *external client money reconciliation* that relates to the time of the *primary pooling event* as soon as reasonably practicable after the *primary pooling event*, based on the next available statements or other form of confirmation after the *primary pooling event* from:

(a) the banks with which the *firm* holds a *client bank account*; and

(b) the *persons* with which the *firm* holds a *client transaction account*; and

- (2) the *firm* must perform further *external client money reconciliations* on a regular basis:

(a) with a suitable frequency to ensure that the correct amounts of *client money* are returned to *clients* or transferred on behalf of *clients* under the *client money distribution and transfer rules*; and

(b) as soon as reasonably practicable after the date to which the *external client money reconciliation* relates.

7.15.26B G The reference point for the *external client money reconciliation* under CASS 7.15.26AR(1) should be the precise point in time at which the *primary pooling event* occurred.

7.15.26C R When determining the frequency with which it will undertake *external client money reconciliations* under CASS 7.15.26AR(2) after a *primary pooling*

event, a firm must have regard to:

- (1) the frequency, number and value of transactions which the firm undertakes in respect of client money;
- (2) the risks to which the client money is exposed, such as the nature, volume and complexity of the firm's business and where and with whom client money is held; and
- (3) the need to be able to verify that:
  - (a) client money within each notional pool formed under CASS 7A.2.4R(1) and (1A) (Pooling and distribution or transfer), and client money that is required under CASS 7A.2.4R(3) (Pooling and distribution or transfer) and CASS 7A.2.7-AR (Client money received after a primary pooling event) to be treated as outside of any notional pool, has not been incorrectly distributed, transferred or dissipated; and
  - (b) the proceeds of any payments and transactions that settle after the primary pooling event and which involve client money, including interest payments and other amounts included in the client money resource, have been received correctly.

...

#### Reconciliation discrepancies

- 7.15.29 R When a discrepancy arises between a firm's client money resource and its client money requirement identified by a firm's internal client money reconciliations, the firm must determine the reason for the discrepancy and, subject to CASS 7.15.29AR, ensure that:

...

- 7.15.29A R A firm that has failed is not required to make a payment or withdrawal under CASS 7.15.29R(1) or CASS 7.15.29R(2) respectively in so far as the legal procedure for the firm's failure restricts the firm from doing so.

...

- 7.15.32 R While a firm is unable to immediately resolve a discrepancy identified by an external client money reconciliation, and one record or set of records examined by the firm during its external client money reconciliation indicates that there is a need to have a greater amount of client money or, if appropriate, approved collateral than is the case, the firm must assume, until the matter is finally resolved, that that record or set of records is accurate and, subject to CASS 7.15.32AR, pay its own money into a relevant account.

- 7.15.32A R A firm that has failed is not required to pay its own money into a relevant account under CASS 7.15.32R in so far as the legal procedure for the firm's



failure restricts the firm from doing so.

- 7.15.32B G (1) CASS 7.15.29AR and CASS 7.15.32AR recognise that a failed firm is required to investigate discrepancies, but the extent to which it is able to resolve discrepancies may be limited by insolvency law, for example.
- (2) CASS 7.15.29AR and CASS 7.15.32AR would not prevent a failed firm from making any transfers required under regulation 10H(3) or (4) of the IBSA Regulations.

...

## 7.16 The standard methods of internal client money reconciliation

- 7.16.1 G (1) *Firms are required to carry out an internal client money reconciliation each business day (CASS 7.15.12R and CASS 7.15.15R(1)) or as required by CASS 7.15.15R(4) after a primary pooling event. This section sets out methods of reconciliation that are appropriate for these purposes (the standard methods of internal client money reconciliation).*

...

...

- 7.16.33 R (1) To meet the total ~~margin transaction requirement~~ margin transaction requirement, a firm may appropriate and use its own approved collateral, provided it meets the requirements in paragraph (2).

...

## 7.17 Statutory trust

...

- 7.17.2 R ...
- (1) for the purposes of, and on the terms of, the *client money rules* and the ~~*client money distribution rules*~~ *client money distribution and transfer rules*;

...

## 7A Client money distribution and transfer

### 7A.1 Application and purpose

Application

- 7A.1.1 R Subject to CASS 7A.1.1AR, this chapter (the ~~*client money distribution rules*~~ *client money distribution and transfer rules*) applies to a firm that holds client

money which is subject to the *client money rules* when a pooling event occurs.

- 7A.1.1A R The ~~*client money distribution rules*~~ *client money distribution and transfer rules* do not apply to any *client money* held by a *trustee firm* under CASS 7.10.34R to CASS 7.10.40G.
- 7A.1.1B G As a result of CASS 7A.1.1AR, the ~~*client money distribution rules*~~ *client money distribution and transfer rules* relating to *primary pooling events* and *secondary pooling events* will not affect any *client money* held by a *firm* in its capacity as *trustee firm*. Instead, the treatment of that *client money* will be determined by the terms of the relevant instrument of trust or by applicable law. However, the ~~*client money distribution rules*~~ *client money distribution and transfer rules* do apply to a *firm* for any *client money* that it holds other than in that capacity which is subject to the *client money rules*.

#### Purpose

- 7A.1.2 G The ~~*client money distribution rules*~~ *client money distribution and transfer rules* ~~seek to facilitate~~ set out the ~~timely return~~ required treatment of *client money* to a *client* in the event of the *failure* of a *firm* or third party at which the ~~*firm* holds *client money*~~ on the occurrence of a pooling event so that where:
- (1) for example, a *firm* fails (but also in other situations where a *primary pooling event* occurs), the rules in CASS 7A.2 (Primary pooling events) facilitate the return or transfer of *client money*; and
  - (2) a person at which the *firm* holds *client money* fails, the rules in CASS 7A.3 (Secondary pooling events) allocate any loss of *client money* among certain of the *firm's* *clients*.

## 7A.2 Primary pooling events

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

- 7A.2.1 G (1) ~~A *firm* can hold *client money* in a general *client bank account*, a designated *client bank account* or a designated *client fund account*.~~
- (2) ~~A *firm* holds all *client money* in general *client bank accounts* for its *clients* as part of a common pool of *money* so those particular *clients* do not have a claim against a specific sum in a specific account; they only have a claim to the *client money* in general.~~
- (3) ~~A *firm* holds *client money* in designated *client bank accounts* or designated *client fund accounts* for those *clients* that requested their *client money* be part of a specific pool of *money*, so those particular *clients* do have a claim against a specific sum in a specific account; they do not have a claim to the *client money* in general unless a *primary pooling event* occurs. A *primary pooling event* triggers a~~

~~notional pooling of all the *client money*, in every type of *client money* account, and the obligation to distribute it.~~

- (4) ~~If the *firm* becomes insolvent, and there is (for whatever reason) a *shortfall in money* held for a *client* compared with that *client's* entitlements, the available funds will be distributed in accordance with the *client money distribution rules*. [deleted]~~

7A.2.2 R A *primary pooling event* occurs:

- (1) on the *failure* of the *firm*;
- (2) on the vesting of assets in a trustee in accordance with an ‘assets requirement’ imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act*;
- (3) on the coming into force of a ~~requirement for all *client money* held by the *firm* or requirements which, either separately or in combination:~~
  - (a) is or are for all *client money* held by the *firm*; and
  - (b) require the *firm* to take steps to cease holding all *client money*;  
or
- (4) when the *firm* notifies, ~~or is in breach of its duty to notify~~, the *FCA*, in accordance with CASS 7.15.33R (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

7A.2.3 R CASS 7A.2.2R(4) does not apply so long as:

- (1) the *firm* is taking steps, in consultation with the *FCA*, to establish those records; and
- (2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

7A.2.3A R If a *primary pooling event* occurs in circumstances where the *firm* had, before the *primary pooling event*, reduced its ~~*margin*~~ *margin*ed transaction requirement *margin*ed transaction requirement by utilising *approved collateral* under CASS 7.16.33R, it must immediately liquidate this *approved collateral* and place the proceeds in a *client bank account* that relates to the relevant notional pool under CASS 7A.2.4R(1) (Pooling and distribution or transfer).

7A.2.3B R CASS ~~7A.2.7R~~ 7A.2.7-AR (Client money received after a primary pooling event) does not apply to the proceeds under CASS 7A.2.3AR.

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

- (1) will form part of the relevant notional ~~pool~~ *pool* of *client money* (see CASS 7A.2.4R(1A)(a)(i) (Pooling and distribution or transfer); and

- (2) must be distributed or transferred on behalf of *clients* in accordance with this chapter.

Client money reconciliations after a primary pooling event

- 7A.2.3D    G    (1)    If a special administrator has been appointed to the *firm* under the *IBSA Regulations* then they will be required to carry out a reconciliation under regulation 10H of the *IBSA Regulations*.
- (2)    Notwithstanding regulation 10H of the *IBSA Regulations*, CASS 7.15 has application to a *firm* after a *primary pooling event*, meaning, for example, that ongoing compliant record-keeping is required (see CASS 7.15.15R(4) (Internal client money reconciliations) and CASS 7.15.26AR (Frequency of external reconciliations after a primary pooling event)).

Pooling and distribution or transfer

- 7A.2.4    R    If a *primary pooling event* occurs, then:
- (1)    (a)    in respect of a *sub-pool*, the following is treated as a single notional *pool* of *client money* for the beneficiaries of that *pool*:
- (i)    any *client money* held in a *client bank account* of the *firm* relating to that *sub-pool*; and
- (ii)    any *client money* held in a *client transaction account* of the *firm* relating to that *sub-pool*, except for *client money* held in a *client transaction account* at an *authorised central counterparty* or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*;
- (b)    in respect of the *general pool*, the following is treated as a single notional *pool* of *client money* for the beneficiaries of the *general pool*:
- (i)    any *client money* held in any *client bank account* of the *firm*;
- (ii)    any *client money* held in a *client transaction account* of the *firm*, except for *client money* held in a *client transaction account* at an *authorised central counterparty*, or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*; and
- (iii)    any *client money* identifiable in any other account held by the *firm* into which *client money* has been received;
- except, in each case, for *client money* relating to a *sub-pool*

which falls under sub-paragraphs (1)(a)(i) or (ii)- ; and

- (1A) (a) a notional *pool* under paragraph (1) shall also include any *client money* that is:
- (i) transferred by the *firm* under regulation 10H(3) of the *IBSA Regulations* to a *client bank account* that is included in that *pool* under paragraph (1);
  - (ii) paid under CASS 7A.2.3AR into a *client bank account* that is included in that *pool* under paragraph (1);
  - (iii) paid under CASS 7A.2.4R(3)(b) or CASS 7A.2.4R(3)(d) into a *client bank account* or *client transaction account* that is included in that *pool* under paragraph (1);
  - (iv) (subject to sub-paragraph (b)) otherwise received after the *primary pooling event* into a *client transaction account* that is included in that *pool* under paragraph (1) where the receipt is in relation to a *margin*ed transaction that the *firm* had entered into through the use of that *client transaction account* and which had not closed out before *primary pooling event*; and
  - (v) paid under CASS 7.15.29R(1) (Reconciliation discrepancies) after the *primary pooling event* into a *client bank account* that is included in that *pool* under paragraph (1); and
- (b) the *firm* must not transfer any *client money* in a notional *pool* under sub-paragraphs (1)(a) or (b) to a *client transaction account* except where necessary to comply with sub-paragraph (2)(b);
- (c) a notional *pool* under paragraph (1) shall cease to include *client money* from the point at which it is:
- (i) transferred by the *firm* under regulation 10H(4) of the *IBSA Regulations* from a *client bank account* that is included in that *pool* under paragraph (1); or
  - (ii) paid out after the *primary pooling event* from a *client transaction account* that is included in that *pool* under paragraph (1) where the payment is in relation to a *margin*ed transaction that the *firm* had entered into through the use of that *client transaction account* and which had not closed out before *primary pooling event*.
- (2) the *firm* must, as soon as reasonably practicable:
- (a) (subject to paragraph (4)) 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

- (b) (where applicable) transfer *client money* comprising a *sub-pool* to effect or facilitate *porting* of positions held for the *clients* who are beneficiaries of that *sub-pool*; and
- (3) if, in connection with a *regulated clearing arrangement*, *client money* is remitted directly to the *firm* either from an *authorised central counterparty* or from a *clearing member* as part of that person's default management procedures, then, as soon as reasonably practicable:
- (a) any such remittance in respect of a *client transaction account* that is an *individual client account* does not form a part of any notional pool under CASS 7A.2.4R(1) and must be distributed to the relevant *client* subject to CASS 7.17.2R(4);
  - (b) subject to sub-paragraphs (3)(c) and (d), any such remittance in respect of a *client transaction account* that is an *omnibus client account* must form part of the notional *pool* under CASS 7A.2.4R(1)(b) and be subject to distribution in accordance with CASS 7A.2.4R(2)(a);
  - (c) any such remittance in respect of a *client transaction account* that is an *omnibus client account* must be distributed to the relevant *clients* for whom that *omnibus client account* is held if:
    - (i) no *client money* in excess of the amount recorded in that *omnibus client account* is held by the *firm* as margin in relation to the positions recorded in that *omnibus client account*; and
    - (ii) the amount of such remittance attributable to each *client* of the *omnibus client account* is readily apparent from information provided to the *firm* by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*;

in which case the amount of such remittance does not form a part of any notional pool under CASS 7A.2.4R(1) and must be distributed to each such *client* in accordance with the information provided by the *authorised central counterparty* or *clearing member* subject to CASS 7.17.2R(4); and
  - (d) any such remittance in respect of a *client transaction account* that is a *net margined omnibus client account* in respect of which the *firm* maintains a *sub-pool* must form part of such

sub-pool under CASS 7A.2.4R(1)(a) to be distributed in accordance with CASS 7A.2.4R(2)(a); and

- (4) as an 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 that is not required to be transferred under CASS 7A.2.4R(2)(b), a *firm* (Firm A) may on its own initiative transfer some or all of that *client's client money* in the relevant notional *pool* to any other *person* (Firm B) for safekeeping on behalf of the *client* provided that:
- (a) as a consequence of any such transfer, Firm A does 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*;
  - (b) unless Firm A is able to rely on regulation 10B(3)(b) of the *IBSA Regulations* for the transfer to Firm B to have effect without the consent of the *client*, either:
    - (i) Firm A has the specific consent of the *client* to the transfer to Firm B; or
    - (ii) (A) there is a written agreement between Firm A and the *client* which provides that Firm A may transfer the *client's client money* to another *person*; and  
 (B) Firm A can lawfully rely on that provision to achieve the transfer under this *rule*;
  - (c) Firm A has, in advance of the transfer under this *rule*, either:
    - (i) obtained a contractual undertaking from Firm B that the *money* transferred will be held by Firm B as *client money* in accordance with the *client money rules*; or
    - (ii) where the *client money rules* do not apply to Firm B, or where they do apply but Firm B is able to hold the *money* transferred other than as *client money*, satisfied itself, having exercised all due skill care and diligence in its assessment, that Firm B will apply adequate measures to protect the *money* transferred;
  - (d) where regulation 10C(3) of the *IBSA Regulations* does not apply, Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B

will return the money to the *client* at the *client's* request; and

- (e) Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B will notify the *client*, within 14 days of the transfer of that *client's* balance having commenced:
  - (i) of the applicable regulatory regime under which the money will be held by Firm B;
  - (ii) either:
    - (A) of any relevant compensation scheme limits that may apply in respect of Firm B's handling of the transferred money; or
    - (B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and
  - (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.

7A.2.4A -2     G     Where regulation 10C(3) of the *IBSA Regulations* does apply, Firm A should, in advance of the transfer under CASS 7A.2.4R(4), obtain a contractual undertaking from Firm B that:

- (1) Firm B will comply with the *client's* request for a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*; and
- (2) Firm B will notify the *client*, within 14 days of the transfer of that *client's safe custody asset* having commenced, that the *client* can demand a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*.

7A.2.4A -1     G     Under CASS 7A.2.4R(1)(b)(i) a *firm* should include the balances of *client money* referred to at CASS 7.13.40AR(2), CASS 7.13.53AR(2) and CASS 7.13.72AR(2) in the relevant *pool*.

- 7A.2.4A     G     (1)     Under *EMIR*, where a *firm* that is a *clearing member* of an *authorised central counterparty* defaults, the *authorised central counterparty* may:
- (a) *port client* positions where possible; and
  - (b) after the completion of the default management process:
    - (i) return any balance due directly to those *clients* for whom the positions are held, if they are known to the *authorised central counterparty*; or



- (ii) remit any balance to the *firm* for the account of its *clients* if the *clients* are not known to the *authorised central counterparty*.

(1A) Under the *EMIR L2 Regulation*, where a *firm* acting in connection with a *regulated clearing arrangement* for a *client* (who is also an *indirect client*) defaults, the *clearing member* with whom the *firm* has placed *client money* of the *indirect client*, may, in accordance with the *EMIR L2 Regulation*:

- (a) transfer the positions and assets either to another *clearing member* of the relevant *authorised central counterparty* or to another *firm* willing to act for the *indirect client*; or
- (b) liquidate the assets and positions of the *indirect clients* and remit all monies due to the *indirect clients*.

(1B) For the avoidance of doubt, ‘relevant *clients*’ in the case of CASS 7A.2.4R(3)(a) and CASS 7A.2.4R(3)(c) includes a *client* who is also an *indirect client*.

(2) Where any balance remitted from an *authorised central counterparty*, or, in the case of *indirect clients*, a *clearing member*, to a *firm* is *client money*, CASS 7A.2.4R(3) provides for the distribution of remittances from either an *individual client account* or an *omnibus client account*.

(3) Remittances received by the *firm* falling within CASS 7A.2.4R(3)(a) and CASS 7A.2.4R(3)(c) should not be pooled with *client money* held in any *client bank account* operated by the *firm* at the time of the *primary pooling event*. Those remittances should be segregated and promptly distributed to each *client* on whose behalf the remittance was received.

(4) For the avoidance of doubt, in respect of a *regulated clearing arrangement*, any *client money* remitted by the *authorised central counterparty*, or, in the case of *indirect clients*, the *clearing member*, to the *firm* pursuant to CASS 7A.2.4R(3) should not be treated as *client money* received after the ~~failure~~ *failure* of the *firm* under CASS ~~7A.2.7R~~ 7A.2.7-AR (Client money received after a primary pooling event).

(5) The *firm*’s obligation to its *client* in respect of *client money* held in a *sub-pool* is discharged to the extent that the *firm* transfers that *client money* to facilitate *porting* in accordance with CASS 7.11.34R(8).

7A.2.4B    G    (1)    The restrictions on transfers of *client money* at CASS 7A.2.4R(4) are each of the type referred to at regulation 10B(4) of the *IBSA Regulations* as “a restriction in client money rules”.

(2)    Where Firm A has complied with the restrictions at CASS 7A.2.4R(4) for any transfers to Firm B, any *money* transferred to Firm B ceases to

be *client money* held by Firm A (see CASS 7.11.34R(2)(e) (Discharge of fiduciary duty)).

- (3) But any *money* returned by Firm B to Firm A in the event of a 'reverse transfer' will be subject to the *client money rules* and *client money distribution and transfer rules* as applied to Firm A, and should be treated by Firm A in accordance with CASS 7A.2.7-AR (Client money received after the failure of the firm).

#### Client money entitlements

- 7A.2.5 R (-2) (a) Subject to paragraph (-2)(b), each *client's* entitlement to *client money* in a notional *pool* is calculated with reference to the *client money requirement* as shown by an *internal client money reconciliation* carried out in accordance with CASS 7.15.15R(4)(a) (Internal client money reconciliations) as at the *primary pooling event*.
- (b) If, as at the *primary pooling event*, the *firm* had entered in to one or more cleared *margined transactions* through the use of a *client transaction account* at a *clearing house* that had not *closed out* as at the *primary pooling event*, the *client money requirement* under (-2)(a) must be calculated as follows:
- (i) CASS 7.16.28R does not apply in respect of those cleared *margined transactions*; and
- (ii) subject to CASS 7.16.30R, in respect of those cleared *margined transactions* a *client's equity balance* is instead the amount which the *firm* is liable to pay to the *client* (or the *client* to the *firm*) under the *client money rules* for *margined transactions* following the *close out* of those *margined transactions*. This balance should include any cash margin the *firm* has received from the *client* in connection with those transactions.
- (-1) Each *client's client equity balance* following any adjustments under paragraph (-2) must be reduced by:
- (a) any amount paid by:
- (i) an ~~authorised central counterparty~~ *authorised central counterparty* to a ~~clearing member~~ *clearing member* other than the *firm* in connection with a *porting* arrangement in accordance with CASS 7.11.34R(6) in respect of that *client*; and
- (ii) a *clearing member* to another *clearing member* or *firm* (other than the *firm*) in connection with a transfer in accordance with CASS 7.11.34R(8);

- (b) any amount paid by:
  - (i) an *authorised central counterparty* directly to that *client*, in accordance with CASS 7.11.34R(7); and
  - (ii) a *clearing member* directly to an *indirect client* in accordance with CASS 7.11.34R(9); and
- (c) any amount that must be distributed to that *client* by the *firm* in accordance with CASS 7A.2.4R(3)(a) or (c).

- (1) When, in respect of a *client* who is a beneficiary of a ~~pool~~ pool and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a positive *individual client balance* and a negative *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *individual client balance* for that *client*.
- (2) When, in respect of a *client* who is a beneficiary of a ~~pool~~ pool and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a negative *individual client balance* and a positive *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *client equity balance* for that *client*.

- 7A.2.5A     G     (1)     (a)     The effect of CASS 7A.2.5R(-2)(b) is that the *client equity balance* for the relevant cleared *margined transaction* is with reference to the eventual *close out* or ‘*hindsight*’ value of the transaction, instead of being a notional balance as at the *primary pooling event* under CASS 7.16.28R.
- (b)     CASS 7A.2.5R(-2)(b) applies in respect of cleared *margined transactions* that a firm had entered into for any client, including for *indirect clients* where the *firm* is itself a *client* of a clearing member.
- (2)     In cases where CASS 7A.2.5R(-2)(b) does not apply, the *client equity balance* for a *margined transaction* will be the notional balance as at the *primary pooling event* under CASS 7.16.28R.

...

## 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:
- (a)     (subject to paragraph (2)) attempt to distribute the balance to the relevant *client* or transfer it to another *person* for safekeeping on behalf of the *client* in accordance with CASS

7A.2.4R (Pooling and distribution or transfer):

- (b) (subject to paragraph (3)) take reasonable steps to notify any *client* in respect of whom the *firm* has evidence that the *money* may belong, of the *firm*'s proposed course of action;
  - (c) where the *firm* has *failed*, apply any of the following types of balances of *client money* in the notional *pool* towards any costs incurred in accordance with CASS 7.17.2R(4), including any costs incurred under paragraph (1)(d):
    - (i) *client money* allocated to a *client* for which, following the steps taken by the *firm* to satisfy paragraph (1)(b), the *client* to whom the *client money* belongs has not provided the *firm* with instructions that would enable the *firm* to make a distribution or transfer under paragraph (1)(a); or
    - (ii) *client money* belonging to a *client* who, in response to a notification made under paragraph (1)(b), has confirmed to the *firm* that it disclaims the benefit of the statutory trust under CASS 7.17.2R in relation to the *client money*; or
    - (iii) *client money* that, following the steps taken by the *firm* to satisfy paragraph (1)(b), is unallocated to any *client* in the *firm*'s records and accounts; and
  - (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.
- (2) A *firm* is not required to attempt to return or transfer the balance of *client money* under paragraph (1)(a) where the *client* to whom the balance belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under CASS 7.17.2R in relation to the balance *client money*.
- (3) A *firm* is not required to notify a *client* under paragraph (1)(b) where:
- (a) the *firm* is able to distribute the *client money* to the relevant *client* or transfer it to another *person* on behalf of the *client* in accordance with CASS 7A.2.4R (Pooling and distribution or transfer);
  - (b) the *client* to whom the balance of *client money* belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under CASS 7.17.2R in relation to the balance

client money;

- (c) in respect of a *client* for whom the *firm* has evidence that they were a *retail client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that *client* in the notional *pool* is £25 or less when calculated under CASS 7A.2.5R (Client money entitlements); or
- (d) in respect of a *client* for whom the *firm* has evidence that they were a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that *client* is £100 or less when calculated under CASS 7A.2.5R (Client money entitlements).

- 7A.2.6B    G    (1)    A *firm* may propose to cease to treat a balance of *money* as *client money* under CASS 7A.2.6AR(1) where the *firm* is using the procedure under regulation 12C of the *IBSA Regulations* to set a ‘hard bar date’ by giving a ‘hard bar date notice’, or another similar procedure in accordance with the legal procedure for the *firm*’s *failure*.
- (2)    In any case, a *firm* should consider the whether its obligations under law (including trust law) or any agreement permit it to cease to treat a balance of *money* as *client money* in the way in which it proposes to do so.
- (3)    Balances of *client money* under CASS 7A.2.6AR(1)(c)(iii) include any remaining amount of those that the *firm* is holding to comply with:
- (a)    CASS 7.13.41R (Prudent segregation);
  - (b)    CASS 7.13.65R(1) (The alternative approach to client money segregation); and
  - (c)    CASS 7.13.73R(1) (Use of the normal approach in relation to certain regulated clearing arrangements).

- 7A.2.6C    E    (1)    Reasonable steps in CASS 7A.2.6AR(1)(b) include the following course of conduct:
- (a)    determining, as far as reasonably possible, the correct contact details for the relevant *client*;
  - (b)    for a *client* for whom the *firm* has evidence that it was a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*:
    - (i)    writing to the *client* at the last known address either by post or by electronic mail:
      - (A)    to inform it of the *firm*’s intention to no longer

treat the balance as *client money*;

(B) to inform it of the consequences of the *firm's* proposed course of action in relation to the *client's* ability to assert an ownership right to that *money*; and

(C) to invite the *client* to submit a claim for the *money*; and

(ii) where the *client* has not responded within 28 *days* of the communication under sub-paragraph (i), attempting to communicate the information in sub-paragraph (i) to the *client* on at least one further occasion by any means other than that used in (i) including by post, electronic mail, telephone or media advertisement; and

(c) for any other *client*:

(i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and

(ii) where the *client* has not responded within 28 *days* of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the *client* on at least one further occasion by any means other than one in respect of which the *firm* has obtained positive confirmation that the *client* is not receiving such communications.

(2) Compliance with paragraph (1) may be relied on as tending to establish compliance with CASS 7A.2.6AR(1)(b).

(3) Contravention of paragraph (1) may be relied on as tending to establish contravention of CASS 7A.2.6AR(1)(b).

7A.2.6D G For the purpose of CASS 7A.2.6CE(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including:

(1) telephoning the *client*;

(2) searching internal and/or public records;

(3) media advertising;

(4) mortality screening; and

(5) using credit reference agencies or tracing agents.

7A.2.6E R If the *firm* undertook a tracing exercise for the purposes of CASS 7.11.50R(3) (Allocated but unclaimed client money) before the *primary pooling event* but

had not made the charity payment under that rule by the time of the primary pooling event then the findings of that exercise may be relied on for the purposes of CASS 7A.2.6CE(1)(a).

- 7A.2.6F    R    (1)    A firm must make a record of any balance under CASS 7A.2.6AR(1)(c)(i) or (ii) which is to be applied towards any costs or towards any shortfall in the relevant notional pool in accordance with CASS 7A.2.6AR(1)(c) or (d) respectively, immediately before taking such steps.
- (2)    The record under paragraph (1) must state:
- (a)    the amount of the balance of client money;
- (b)    the name and contact details of any client to whom that balance was allocated according to the firm's records at the time of making the record under this rule; and
- (c)    either:
- (i)    the efforts applied by the firm to determine the client's correct contact details under CASS 7A.2.6CE(1)(a); or
- (ii)   if being relied on under CASS 7A.2.6ER, the efforts applied by the firm to determine the client's correct contact details for the purposes of CASS 7.11.50R(3) (Allocated but unclaimed client money).
- (3)    A firm must keep the record under (1) indefinitely.

Client money received after ~~the failure of the firm~~ a primary pooling event

- 7A.2.7    R    ~~Client money received by the firm after a primary pooling event in respect of a pool must not be pooled with client money held in any client money account operated by the firm either in respect of that pool or any other pool at the time of the primary pooling event. It must be placed in a client bank account that has been opened after that event and must be handled in accordance with the client money rules, and returned to the relevant client without delay, except to the extent that:~~
- (1)    ~~it is client money relating to a transaction that has not settled at the time of the primary pooling event; or~~
- (2)    ~~it is client money relating to a client, for whom the client money entitlement, calculated in accordance with CASS 7A.2.5R, shows that money is due from the client to the firm at the time of the primary pooling event. [deleted]~~
- 7A.2.7-A    R    (1)    This rule applies in respect of client money received by a firm after a primary pooling event that does not form part of a notional pool.

- (2) Where the *firm* is using the normal approach under CASS 7.13.6R (The normal approach), *client money* to which this rule applies must be received into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under CASS 7A. 2. 4R(1) (Pooling and distribution or transfer).
- (3) (a) This paragraph applies in respect of *client money* that is received by a *firm* into an account other than a *client bank account* as required under CASS 7.13.62R (The alternative approach to client money segregation) or as permitted under CASS 7.13.72R (Use of the normal approach in relation to certain regulated clearing arrangements).
- (b) To the extent the *firm* makes any transfers from its own account to a *client bank account* under CASS 7.13.62R(3) (The alternative approach to client money segregation) or CASS 7.13.72R(2)(b) (Use of the normal approach in relation to certain regulated clearing arrangements), such transfers must be made into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under CASS 7A. 2. 4R(1) (Pooling and distribution or transfer).
- (4) Subject to paragraphs (5) and (6), a *firm* must promptly return to each relevant *client* all *client money* to which this rule applies.
- (5) To the extent that *client money* relates to a transaction for a *client* that was concluded before the *primary pooling event* but had not yet settled at the time of the *primary pooling event*, the *firm* may use that *client money* to settle that transaction.
- (6) (a) This paragraph applies where *client money* which is not received by the *firm* into a *client transaction account* relates to one or more cleared *marginised transactions* entered into by the *firm* through the use of a *client transaction account* at a *clearing house*.
- (b) Where such transactions have not *closed out* as at the *primary pooling event*, then provided that the *firm* has not *failed*, it may transfer that *client money* to a *client transaction account* with the relevant *clearing house* in accordance with CASS 7.14 (Client money held by a third party) for the purpose of collateralising those *marginised transactions*.

7A.2.7A G If a *firm* opens may open a *client bank account* after a *primary pooling event*, for the purposes of complying with CASS 7A.2.7-AR(2) and CASS 7A.2.10AR(2). If it does so it must comply with CASS 7.18.15R regarding



*acknowledgement letters.*

- 7A.2.7B    G    Following a failure, CASS 7.17.2R(4) applies in respect of costs properly attributable to the return of a client's client money under CASS 7A.2.7-AR(4).
- 7A.2.8    G    ~~*Client money received after the primary pooling event relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:*~~
- ~~(1)    *an equity transaction with a trade date before the date of the primary pooling event and a settlement date after the date of the primary pooling event; or*~~
  - ~~(2)    *a contingent liability investment that is 'open' at the time of the primary pooling event and is due to settle after the primary pooling event. [deleted]*~~
- 7A.2.9    R    If a firm receives a mixed remittance after a primary pooling event other than where using the alternative approach under CASS 7.13.62R or under a regulated clearing arrangement to which CASS 7.13.72R applies, it must:
- (1)    pay the full sum into the separate a client bank account opened in accordance with that meets the requirements of CASS 7A.2.7R 7A.2.7-AR(2); and
  - (2)    pay the money that is not client money out of that client bank account into a firm's own bank account within one business day of the day on which the firm would normally expect the remittance to be cleared.
- 7A.2.10    G    Whenever possible the firm should seek to split a mixed remittance before the relevant accounts are credited.

Money due to a client from a firm after a primary pooling event

- 7A.2.10    R    A firm that is operating the normal approach to segregation under CASS 7.13  
A    (Segregation of client money) which becomes liable to pay money to a client  
after a primary pooling event must promptly, and in any event no later than  
one business day after the money is due and payable, pay the money:
- (1)    to, or to the order of, the client; or
  - (2)    into a client bank account that does not contain any client money  
forming part of a notional pool under CASS 7A. 2. 4R(1).
- 7A.2.10    G    Where the firm has payment instructions from the client, the firm should pay  
B    the money to the order of the client, rather than into a client bank account.

Secondary pooling events

- 7A.2.11    R    If both a primary pooling event and a secondary pooling event occur, the  
provisions of this section relating to a primary pooling event apply.

### 7A.3 Secondary pooling events

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

- 7A.3.1 R ~~A secondary pooling event occurs on the failure of a third party person to which client money held by the firm has been transferred under CASS 7.13.3R(1) to CASS 7.13.3R(3) (Depositing client money) or CASS 7.14.2R (Transfer of client money to a third party Client money held by a third party).~~
- 7A.3.2 R ~~CASS 7A.3.6R to CASS 7A.3.18R~~ CASS 7A.3.12AR do not apply if, on the failure of the ~~third party~~ relevant person, ~~the firm repays to its clients or pays into a client bank account, at an unaffected bank, an amount equal to the amount of client money which would have been held if a shortfall had not occurred at that third party;~~
- (1) there is no secondary pooling shortfall; or
  - (2) where there is a secondary pooling shortfall, the firm pays an amount equal to the amount of client money which would have been held at that person if a secondary pooling shortfall had not occurred either:
    - (a) to its clients in the appropriate amounts such that they are compensated by the amount of the secondary pooling shortfall that they would otherwise be required to bear under this section; or
    - (b) into a client bank account at an unaffected bank with the effect that any shortfall that would otherwise arise for the purposes of CASS 7.15 (Records, accounts and reconciliations) is avoided.
- 7A.3.3 G ~~When client money is transferred to a third party, a firm continues to owe fiduciary duties to the client. Whether a firm is liable for a shortfall in client money caused by a third party failure will depend on whether it has complied with its duty of care as agent or trustee. [deleted]~~

~~Failure of a bank~~

- 7A.3.4 G ~~When a bank person to which client money held by the firm has been transferred under CASS 7.13.3R(1) to CASS 7.13.3R(3) (Depositing client money) or CASS 7.14.2R (Client money held by a third party) fails, and the firm decides not to make good the shortfall any secondary pooling shortfall in the amount of client money held at that bank person (see CASS 7A.3.2R(2)), a secondary pooling event will occur in accordance with CASS 7A.3.6R. The firm would be expected to should reflect the shortfall secondary pooling shortfall that arises at the failed bank in the general pool (where the firm maintains only a general pool) and, where relevant, in a~~

particular *sub-pool* (where the firm maintains both a *general pool* and one or more *sub-pools*) in its records of the entitlement of *clients* and of *money* held with third parties under CASS 7.15 (Records, accounts and reconciliations).

- 7A.3.5 G The ~~*client money distribution rules*~~ *client money distribution and transfer rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.

#### Failure of a bank: pooling

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

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

- 7A.3.6A G Depending on the *person* at which the *secondary pooling event* occurs, the types of *client bank accounts* and *client transaction accounts* that are affected by the *secondary pooling shortfall*, and the nature of a *firm's* business with a particular *client*, it is possible that the *client's* overall entitlement to *client money* held by the *firm* may be affected by a combination of CASS 7A.3.8R, CASS 7A.3.8AR, CASS 7A.3.10R and CASS 7A.3.11R.

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

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

Failure of an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty: pooling

7A.3.7A R If a secondary pooling event occurs as a result of the failure of an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, then, in relation to every general client bank account and client transaction account of the firm, CASS 7A.3.8R and CASS 7A.3.13R will apply, and CASS 7A.3.8AR will additionally apply in the case of the failure of an authorised central counterparty.

Failure of a bank, intermediate broker, settlement agent, OTC counterparty, exchange or clearing house: treatment of general client bank accounts and client transaction accounts

7A.3.8 R Subject to CASS 7A.3.8AR, if a secondary pooling event occurs as a result of the failure of a bank, intermediate broker, settlement agent, OTC counterparty, exchange or clearing house, Money money held in each general client bank account and client transaction account of the firm for the general pool or a sub-pool must be treated as pooled and:

- (1) ~~any shortfall~~ secondary pooling shortfall in client money held, or which should have been held, in general client bank accounts and client transaction accounts for the relevant pool, that has arisen as a result of the failure of the bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, must be borne by all the clients of that pool whose client money is held in such general client bank account or client transaction account of the firm, rateably in accordance with their entitlements;
- (2) a new client money entitlement must be calculated for each client of the relevant pool by the firm, to reflect the requirements in paragraph (1), and the firm's records must be amended to reflect the reduced client money entitlement;
- (3) the firm must make and retain a record of each client's share of the ~~client money shortfall at the failed bank~~ secondary pooling shortfall until the client is repaid; and
- (4) the firm must use the new client money entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to CASS 7.15.3R (Records and accounts) for that pool, ~~and where relevant SYSC 4.1.1R (General organisational requirements)~~

and SYSC 6.1.1R (Compliance).

7A.3.8A    R    If a secondary pooling event occurs as a result of the failure of an authorised central counterparty:

- (1)    any money held in a client transaction account that is an individual client account at the failed authorised central counterparty is not pooled by the firm with any of its other client money;
- (2)    any money held in a client transaction account that is an omnibus client account at the failed authorised central counterparty is not pooled by the firm with any of its other client money provided that:
  - (a)    no client money in excess of the amount recorded in that omnibus client account is held by the firm as margin in relation to the positions recorded in that omnibus client account; and
  - (b)    the client or clients of the firm to whom the amount recorded in that omnibus client account relates is or are readily apparent from information provided to the firm by the authorised central counterparty or, in the case of indirect clients, the clearing member;
- (3)    any money held in a client transaction account that is a net margined omnibus client account at the failed authorised central counterparty in respect of which the firm maintains a sub-pool is not pooled by the firm with any of its other client money;
- (4)    the proportion of any secondary pooling shortfall that arises as a result of client money held, or which should have been held, in an individual client account to which paragraph (1) applies must be borne by the client whose client money was held in that individual client account;
- (5)    the proportion of any secondary pooling shortfall that arises as a result of client money held, or which should have been held, in an omnibus client account to which paragraph (2) applies must either:
  - (a)    be borne by all the clients whose client money is held in that account, rateably in accordance with their entitlements; or
  - (b)    if the firm is required under applicable law to allocate the secondary pooling shortfall other than as under (a), be allocated as required by applicable law;
- (6)    the proportion of any secondary pooling shortfall that arises as a result of client money held, or which should have been held, in a net margined omnibus client account to which paragraph (3) applies must be borne by all the clients whose client money is held in the relevant sub-pool, rateably in accordance with their entitlements;

- (7) a new *client money* entitlement must be calculated for each relevant *client* of the relevant *pool*, to reflect the requirements in paragraphs (1), (2) and (3), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (8) the *firm* must make and retain a record of each *client's* share of the *secondary pooling shortfall* until the *client* is repaid; and
- (9) the *firm* must use the new *client money* entitlements calculated under paragraph (7) for the purposes of reconciliations pursuant to CASS 7.15.3R (Records and accounts) for the relevant *pool*.

7A.3.9 G The term “which should have been held” is a reference to the relevant *failed bank's person's* failure to hold the *client money* at the time of the *pooling event* ~~its failure~~.

- 7A.3.9A G
- (1) CASS 7A.3.8AR(5)(b) enables a *firm* to allocate the relevant part of a *secondary pooling shortfall* that arises in an *omnibus client account* under CASS 7A.3.8AR(2) other than on a “pro rata” basis, where this is required by applicable law.
  - (2) This would include, for example, where applicable law requires the *firm* to attribute a *secondary pooling shortfall* only to a particular *client* or *clients*.

Failure of a bank: treatment of designated client bank accounts and designated client fund accounts

- 7A.3.10 R For each *client* with a *designated client bank account* maintained by the *firm* for the *general pool* or a particular *sub-pool* and held at the *failed bank*:
- (1) any ~~*shortfall*~~ *secondary pooling shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* of the relevant *pool* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed bank*, rateably in accordance with their *client money* entitlements;
  - (2) a new *client money* entitlement must be calculated for each of the relevant *clients* of the relevant *pool* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
  - (3) the *firm* must make and retain a record of each *client's* share of the ~~*client money shortfall*~~ *secondary pooling shortfall* at the *failed bank* until the *client* is repaid; and
  - (4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to CASS 7.15.3R (Records and accounts) in respect of the relevant *pool*, ~~and where relevant SYSC 4.1.1R (General~~

~~organisational requirements) and SYSC 6.1.1R (Compliance).~~

7A.3.11 R *Money held by the firm in each designated client fund account for the general pool or a particular sub-pool with the failed bank must be treated as pooled with any other designated client fund accounts for the general pool or a particular sub-pool as the case may be which contain part of the same designated fund and:*

- (1) *any ~~shortfall~~ secondary pooling shortfall in client money held, or which should have been held, in designated client fund accounts that has arisen as a result of the failure, must be borne by each of the clients of the relevant pool whose client money is held in that designated fund, rateably in accordance with their entitlements;*
- (2) *a new client money entitlement must be calculated for each client of the relevant pool by the firm, in accordance with paragraph (1), and the firm's records must be amended to reflect the reduced client money entitlement;*
- (3) *the firm must make and retain a record of each client's share of the ~~client money shortfall~~ secondary pooling shortfall at the failed bank until the client is repaid; and*
- (4) *the firm must use the new client money entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to CASS 7.15.3R (Records and accounts) for the relevant pool, ~~and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).~~*

7A.3.12 R *A client whose money was held, or which should have been held, in a designated client bank account with a bank that has failed is not entitled to claim in respect of that money against any other client bank account or client transaction account of the firm.*

7A.3.12 R *A client whose money was held, or which should have been held, in a designated client fund account with a bank that has failed is not entitled to claim in respect of that money against any other client bank account of the firm that is not part of the same designated fund or against any client transaction account of the firm.*

Client money received after the ~~failure of a bank~~ secondary pooling event

7A.3.13 R *Client money received by the firm after the failure of a bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, that would otherwise have been paid into a client bank account or client transaction account at that bank, exchange, clearing house, intermediate broker, settlement agent or OTC counterparty, as the case may be, for either the general pool or a particular sub-pool:*

- (1) *must not be transferred to the failed ~~bank~~ person unless specifically instructed by the client in order to settle an obligation of that client to*

the ~~failed bank~~ person; and

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

7A.3.14 R If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
- (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the *firm* would normally expect the *remittance* to be cleared.

7A.3.15 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

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

7A.3.16 R ~~If a *secondary pooling event* occurs as a result of the failure of an intermediate broker, settlement agent or OTC counterparty, then in relation to every *general client bank account* and *client transaction account* of the *firm* relating to the *general pool* or a particular *sub-pool* as the case may be, the provisions of CASS 7A.3.17R and CASS 7A.3.18R will apply. [deleted]~~

7A.3.17 R ~~*Money held in each general client bank account and client transaction account of the firm relating to the general pool or a particular sub-pool as the case may be, must be treated as pooled and:*~~

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



be;

- (3) ~~the firm must make and retain a record of each client's share of the client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty until the client is repaid; and~~
- (4) ~~the firm must use the new client money entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.15.3R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance). [deleted]~~

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

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

- (1) ~~must not be transferred to the failed third party unless specifically instructed by the client in order to settle an obligation of that client to the failed intermediate broker, settlement agent or OTC counterparty; and~~
- (2) ~~must be, subject to (1), placed in a separate client bank account relating to the general pool or the particular sub pool as the case may be, that has been opened after the secondary pooling event and either:~~
  - (a) ~~on the written instruction of the client, transferred to a third party other than the one that has failed; or~~
  - (b) ~~returned to the client as soon as possible. [deleted]~~

~~Notification to the FCA: failure of a bank, intermediate broker, settlement agent or OTC counterparty of secondary pooling event~~

7A.3.19 R ~~On the failure of a third party with which money is held, a firm must notify the FCA as soon as reasonably practical after it becomes aware of the failure of any bank, exchange, clearing house, intermediate broker, settlement agent, OTC counterparty or other entity with which it has placed, or whom it has allowed to hold, client money:~~

- (1) ~~as soon as it becomes aware of the failure of any bank, intermediate broker, settlement agent, OTC counterparty or other entity with which it has placed, or to which it has passed, client money; and [deleted]~~
- (2) ~~as soon as reasonably practical, whether it intends to make good any shortfall that has arisen or may arise and of the amounts involved.~~

[deleted]

- (3) whether it intends to make good any *secondary pooling shortfall* that has arisen or may arise; and
- (4) the amount of that *secondary pooling shortfall*, or the expected amount if the actual amount is not known.

...

## 9 Information to clients

### 9.1 Application

9.1.1 R This chapter applies as follows:

- (1) ...
- (2) subject to paragraphs (3) and (4), CASS 9.4 and CASS 9.5 apply to a *firm* to which either or both CASS 6 (Custody rules) and CASS 7 (Client money rules) applies;
- (3) CASS 9.4 and CASS 9.5 do not apply to a *firm* which only *arranges safeguarding and administration of assets*; and
- (4) ...

Amend the following as shown.

## TP 1 Transitional Provisions

### TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
<u>1AZ</u>	<u>The changes to the <i>Glossary</i> in Annex A and to CASS in Annex B of the Client Assets (Client Money and Custody Assets</u>	<u>R</u>	<u>In relation to a <i>firm</i>:</u>  <u>(i) that has <i>failed</i>; or</u>  <u>(ii) in respect of which a <i>primary pooling event</i> occurred.</u>	<u>Indefinitely</u>	<u>26 July 2017</u>

	<u>Distribution and Transfers) Instrument 2017</u>		<u>in either case before the changes in column (2) took effect, the changes effected by the provisions in the Annex listed in column (2) do not apply to the firm, and therefore the provisions in CASS amended by that Annex will continue to apply as they were in force as at 25 July 2017.</u>		
...					

## Sch 1 Record keeping requirements

...

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>CASS 6.7.6R</u>	<u>Any safe custody asset disposed of in accordance with CASS 6.7.2R</u>	<p><u>(i) The safe custody asset that was disposed of;</u></p> <p><u>(ii) the value of the consideration received for the safe custody asset disposed of;</u></p> <p><u>(iii) the name and contact details of the</u></p>	<u>At the time of the disposal</u>	<u>Indefinite</u>

		<u>client to whom the safe custody asset was allocated, according to the firm's records at the time of making the record; and</u>  <u>(iv) efforts applied by the firm to determine the client's correct contact details under CASS 6.7.4E(1)(a) or, if being relied on, for the purposes of CASS 6.2.10R(4).</u>		
...				
<u>CASS 7A.2.6FR</u>	<u>Any balance under CASS 7A.2.6AR(1)(b)(i) or (ii) which has been applied towards any costs incurred in accordance with CASS 7.17.2R or towards any shortfall in the relevant notional pool in accordance with CASS 7A.2.6AR(1)(b) or (c) respectively</u>	<u>(i) The amount of the balance of client money;</u>  <u>(ii) the name and contact details of any client to whom that balance was allocated according to the firm's records at the time of making the record; and</u>  <u>(iii) efforts applied by the firm to determine the client's correct contact details under CASS 7A.2.6CE(1)(a)</u>	<u>Immediately before taking steps to apply the balance towards costs or a shortfall in accordance with CASS 7A.2.6AR(1)(b) or (c) respectively</u>	<u>Indefinite</u>

		<u>) or, if being relied on, for the purposes of CASS 7.11.50R(3).</u>		
...				

## Annex C

## Amendments to the Supervision sourcebook (SUP)

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

### 3 Auditors

...

#### 3.10 Duties of auditors: notification and report on client assets

...

##### 3.10.5 R Client assets report

Whether in the auditor's opinion	
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> <u>(except CASS 6.7)</u> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> and the <i>mandate rules</i> throughout the period;
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> <u>(except CASS 6.7)</u> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> and the <i>mandate rules</i> , at the date as at which the report has been made;
...	

...

