

CLIENT ASSETS SOURCEBOOK (RESOLUTION PACK) INSTRUMENT 2012

Powers exercised

- A. The Financial Services 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 59 (Approved persons);
 - (2) section 138 (General rule-making power);
 - (3) section 139 (Miscellaneous ancillary matters);
 - (4) section 149 (Evidential provisions);
 - (5) section 156 (General supplementary powers); and
 - (6) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 October 2012.

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.

Citation

- F. This instrument may be cited as the Client Assets Sourcebook (Resolution Pack) Instrument 2012.

By order of the Board
21 March 2012

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 definition in the appropriate alphabetical position. The text is not underlined.

CASS resolution pack those documents and records which are specified in *CASS 10.2* and *CASS 10.3*.

Amend the following as shown.

client money ...

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

...

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Annex B

Amendments to the Client Assets sourcebook (CASS)

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

After CASS 9 insert the following new chapter. The text is not underlined.

10 CASS resolution pack

10.1 Application, purpose and general provisions

Application

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

Purpose

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

General provisions

- 10.1.3 R A *firm* falling within CASS 10.1.1R must maintain and be able to retrieve, in the manner described in this chapter, a *CASS resolution pack*.
- 10.1.4 G A *firm* is required to maintain a *CASS resolution pack* at all times when CASS 10.1.1R applies to it.
- 10.1.5 G (1) The *rules* in this chapter specify the types of documents and records that must be maintained in a *firm's* *CASS resolution pack* and the retrieval period for the pack. The *firm* should maintain the component documents of the *CASS resolution pack* in order for them to be retrieved in accordance with CASS 10.1.7R, and should not use the retrieval period to start producing these documents.
- (2) The contents of the documents that constitute the *CASS resolution*

pack will change from time to time (for example, because daily reconciliations must be included in the pack).

- (3) A *firm* is only required to retrieve the *CASS resolution pack* in the circumstances prescribed in *CASS 10.1.7R*.

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

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

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

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

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

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

(a) the document identifying the institutions referred to in *CASS 10.2.1R(2)*;

(b) the document identifying individuals pursuant to *CASS 10.2.1R(4)*;

(c) any written notification or trust acknowledgement letters referred to in *CASS 10.2.1R(5)*;

(d) the most recent internal reconciliations relating to *safe custody assets* referred to in *CASS 10.3.1R(3)*;

(e) the most recent external reconciliations relating to *safe custody assets* referred to in *CASS 10.3.1R(5)*;

(f) the most recent internal reconciliations relating to *client money* referred to in *CASS 10.3.1R(7)*; and

- (g) the most recent external reconciliations relating to *client money* referred to in CASS 10.3.1R(9).
- (2) Where a *firm* is reliant on the continued operation of certain systems for the provision of component documents in its *CASS resolution pack*, it should have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.
- (3) Contravention of (1) or (2) may be relied upon as tending to establish contravention of CASS 10.1.7R.
- 10.1.10 G Where a *firm* anticipates that it might be the subject of an *insolvency order*, it is likely to have sought advice from an external adviser. The *firm* should make the *CASS resolution pack* available promptly, on request, to such an adviser.
- 10.1.11 R (1) A *firm* must ensure that it reviews the content of its *CASS resolution pack* on an ongoing basis to ensure that it remains accurate.
- (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in CASS 10.2.1R, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.
- 10.1.12 G For the purpose of CASS 10.1.11R(2), an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to CASS 10.2.1R(2).
- 10.1.13 G A *firm* may hold in electronic form any document in its *CASS resolution pack* provided that it continues to be able to comply with CASS 10.1.7R and CASS 10.1.11R in respect of that document.
- 10.1.14 R The individual to whom responsibility for CASS operational oversight has been allocated under CASS 1A.3.1R or, as the case may be CASS 1A.3.1AR, must report at least annually to the *firm's governing body* in respect of compliance with the *rules* in this chapter.
- 10.1.15 G Individuals allocated functions relating to CASS operational oversight pursuant to CASS 1A.3.1R or, as the case may be, CASS 1A3.1AR are reminded that their responsibilities include compliance with the provisions in this chapter.
- 10.1.16 R A *firm* must notify the *FSA* in writing immediately if it has not complied with, or is unable to comply with, CASS 10.1.3R.

10.2 Core content requirements

- 10.2.1 R A *firm* must include within its *CASS resolution pack*:
- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS resolution pack*;
 - (2) a document which identifies the institutions the *firm* has appointed (including through an *appointed representative, tied agent, field representative* or other agent):
 - (a) in the case of *client money*, for the placement of *money* in accordance with *CASS 7.4.1R* or to hold or control *client money* in accordance with *CASS 7.5.2R*; and
 - (b) in the case of *safe custody assets*, for the deposit of those assets in accordance with *CASS 6.3.1R*;
 - (3) a document which identifies each *appointed representative, tied agent, field representative* or other agent of the *firm* which receives *client money* or *safe custody assets* in its capacity as the *firm's agent*;
 - (4) a document which identifies:
 - (a) each *senior manager* and *director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* by *CASS 6* or *CASS 7*; and
 - (b) the individual to whom responsibility for *CASS operational oversight* has been allocated under *CASS 1A.3.1R* or, as the case may be, to whom the *CASS operational oversight function* has been allocated under *CASS 1A.3.1AR*;
 - (5) for each institution identified in *CASS 10.2.1R(2)*, a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the *firm* that relates to the holding of *client money* or *safe custody assets* including any written notification or trust acknowledgement letters sent or received pursuant to *CASS 7.8*;
 - (6) a document which:
 - (a) identifies each member of the *firm's group* involved in operational functions related to any obligations imposed on the *firm* under *CASS 6* or *CASS 7*, including in the case of a member that is a *nominee company*, identification as such; and

- (b) identifies each third party which the *firm* uses for the performance of operational functions related to any of the obligations imposed on the *firm* by CASS 6 or CASS 7; and
 - (c) for each *group* member identified in (a), the type of entity (such as branch, subsidiary and or *nominee company*) the *group* member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;
 - (7) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between the *firm* and each third party identified in (6)(b);
 - (8) where the *firm* relies on a third party identified in (6)(b), a document which describes how to:
 - (a) gain access to relevant information held by that third party; and
 - (b) effect a transfer of any of the *client money* or *safe custody assets* held by the *firm*, but controlled by that third party; and
 - (9) a copy of the *firm's* manual in which are recorded its procedures for the management, recording and transfer of the *client money* and *safe custody assets* that it holds.
- 10.2.2 G For the purpose of CASS 10.2.1R(4), examples of individuals within the *firm* who are critical or important to the performance of operational functions include:
- (1) those necessary to carry out both internal and external *client money* and *safe custody asset* reconciliations; and
 - (2) those in charge of client documentation for business involving *client money* and *safe custody assets*.
- 10.2.3 R For the purpose of CASS 10.2.1R(2), a *firm* must ensure that the document records:
- (1) the full name of the individual institution in question;
 - (2) the postal and email address and telephone number of that institution; and
 - (3) the numbers of all accounts opened by that *firm* with that institution.

10.3 Existing records forming part of the CASS resolution pack

- 10.3.1 R A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:
- (1) CASS 6.3.1R(4) (safe custody assets: appropriateness of the firm’s selection of a third party);
 - (2) CASS 6.4.3R (firm’s use of safe custody assets);
 - (3) CASS 6.5.1R (*safe custody assets* held for each client), including internal reconciliations carried out pursuant to CASS 6.5.2R as explained in the *guidance* at CASS 6.5.4G;
 - (4) CASS 6.5.2AR (client agreements: firm’s right to use);
 - (5) CASS 6.5.6R (Reconciliations with external records);
 - (6) CASS 7.4.10R (client money: appropriateness of the firm’s selection of a third party);
 - (7) CASS 7.6.1R (client money held for each client), including internal reconciliations carried out pursuant to CASS 7.6.2R as explained in the *guidance* at CASS 7.6.6G;
 - (8) CASS 7.6.7R and CASS 7.6.8R (method of internal reconciliation of *client money* balances);
 - (9) CASS 7.6.9R (Reconciliations with external records);
 - (10) COBS 3.8.2R(2)(a) and (c) (client categorisation); and
 - (11) COBS 8.1.4R (retail and professional client agreements).
- 10.3.2 G CASS 10.3.1R does not change the record keeping requirements of the *rules* referred to therein.

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Schedule 1 Record keeping requirements

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Sch 1.3G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
	...				
	CASS 8.1.5R	...			

<u>CASS 10.1.3R</u>	<u>A firm's CASS resolution pack</u>	<u>The documents to which CASS 10.2 and CASS 10.3 refer</u>	<u>From the date on which a firm becomes subject to CASS 10.1.3R</u>	<u>None is specified</u>
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Schedule 2 Notification requirements

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Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<u>CASS 7A.3.19R(2)</u>	...			
<u>CASS 10.1.16R</u>	<u>Whether or not a firm has complied with, or is unable to comply with, CASS 10.1.3R</u>	<u>The fact of that firm's compliance or, as the case may be, non-compliance with the rule in CASS 10.1.3R</u>	<u>Non-compliance with CASS 10.1.3R</u>	<u>Immediately (as per CASS 10.1.16R)</u>