

CP12/15^{★★}

Financial Services Authority

Client Assets Firm Classification, Oversight, Reporting and the Mandate Rules

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 30 September 2012.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-15-response.shtml.

Alternatively, please send comments in writing to:

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A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

CASS	Client Asset Sourcebook
CBA	Cost benefit analysis
CF	Controlled Function
CF10a	CASS Operational Oversight Control Function
CMA	Client Money and Asset Positions
CMAR	Client Money and Assets Return
CP	Consultation Paper
CP10/9	Enhancing the Client Assets Sourcebook
CP11/4	The Client Money and Asset Return (CMAR): Operational Implementation
GABRIEL	Gathering Better Regulatory Information Electronically
PS	Policy Statement
PS10/16	Client Assets Sourcebook (Enhancements) Instrument 2010
PS11/5	Auditor's client assets report
PS11/6	The Client Money and Asset Return (CMAR): Operational Implementation
SIF	Significant Influence Function

1

Overview

Introduction

- 1.1 This paper consults on two areas of client assets policy, CASS oversight and reporting and the mandate rules (CASS 8).

CASS Oversight and Reporting

- 1.2 In PS10/16, *Client Assets Sourcebook (Enhancements) Instrument 2010*, we created an annual stratification process through which firms that hold client money and/or client assets must classify themselves as either ‘CASS small’, ‘CASS medium’ and ‘CASS large’ firms. This annual stratification takes place during the first 15 business days of January, and is based on a firm’s previous year’s or projected client money and assets holdings.
- 1.3 In PS10/16 we also introduced the Client Money and Asset Return (CMAR) as part of a framework of rules designed to enhance the consumer protection regime for client money and assets. CMAR is operated through GABRIEL, our online information gathering system to create a reporting medium for firms to report their client money and assets positions (CMA) to the FSA in relation to investment business.
- 1.4 In October 2011 we implemented the requirement for CASS large and CASS medium firms to allocate the CASS operational oversight controlled function (CF10a) to a director or senior manager. In CP11/4, *The Client Money and Asset Return (CMAR): Operational Implementation* we proposed that the CF10a-holder within a CASS large or CASS medium firm be responsible for completing and submitting the CMAR on a monthly basis.
- 1.5 In CP11/4, *The Client Money and Asset Return (CMAR): Operational Implementation*, we also expressed our intention to defer CMAR implementation for CASS small firms until the operational processes for the higher impact CASS large and CASS medium firms are fully implemented. In this consultation paper (CP) we are not consulting on introducing CMAR requirements for CASS small firms, but our intention is to keep this under review.

- 1.6 Since introducing the CF10a controlled function, we have noticed some shortcomings in the CASS firm classification and operational oversight requirements (CASS 1A) and we are proposing some additional amendments to CASS 1A in this CP to address these.
- 1.7 In addition we propose to make changes based on feedback we have received on the language and presentation of a number of the questions within the CMAR as well as the CMAR guidance notes.

The mandate rules (CASS 8)

- 1.8 The mandate rules require firms carrying on investment business or insurance intermediation to establish and maintain certain internal controls when such firms have mandates by which they are able to control clients' assets or liabilities. The purpose of these internal controls is to reduce the risk of a firm misusing a mandate (for example, fraudulently), which could result in consumer detriment.
- 1.9 Although we were not aware of any uncertainty in previous years in relation to the scope of the mandate rules, following the reintroduction of mandates within the scope of client money and assets audit reporting for certain firms (see PS11/5, *Auditor's client assets report*), we have identified that there is now a large degree of inconsistency in understanding among firms and their auditors. This inconsistency may result in some firms not applying the mandate rules in all circumstances that are intended to be in scope (which can create risk of consumer detriment) and some firms applying the mandate rules in circumstances that are not intended to be in scope (which can give rise to unnecessary costs for firms). In addition, auditors interpreting the scope of the mandate rules unduly narrowly could lead to them not reporting on internal controls that are in scope, while auditors interpreting the scope unduly widely could lead to more expensive client money and assets audit costs for firms.
- 1.10 We are proposing to clarify the scope of the mandate rules to bring the Handbook text into line with the FSA's long-held policy intentions, and to prevent the risks and unnecessary costs described above. We are not proposing to change the internal controls required by the mandate rules, and we are not proposing to change the purpose of the mandate rules.

Structure of the paper

- 1.11 There are two consultations contained within this paper. Chapter 2 (Clarifying the CASS firm classification and operational oversight regime) and Chapter 3 (Changes to the Client Money and Assets Return (CMAR) and guidance) should be read concurrently. Chapter 4 sets out our proposals on the mandate rules (CASS 8).

Consultation period

- 1.12 We are consulting on these proposals for two months; any comments should reach us by 30 September 2012. We plan to issue a Policy Statement in November 2012, with the final rules coming into force on 1 January 2013.
- 1.13 While we try to give respondents three months to reply to 2** consultations, we have decided in this instance to consult for a two-month period only to make the changes in time for the stratification exercise in January 2013 and the busy audit season in the first quarter of 2013 when the majority of client assets audit reports are completed. We believe this provides adequate time to respond.

Who should read this CP?

- 1.14 This paper will be of interest to:
- all firms that carry on investment and insurance intermediation business;
 - all firms holding client money and assets and/or firms that have mandates by which they are able to control clients' assets or liabilities;
 - individuals who may have senior management responsibilities in relation to a regulated firm's client money and assets operations; and
 - consumers.
- 1.15 The proposals in this paper in Chapter 2 (Clarifying the CASS firm classification and operational oversight regime) and Chapter 3 (Changes to the Client Money and Assets Return (CMAR) and guidance) do not apply to General Insurance Intermediaries who only hold client money in accordance with CASS 5.
- 1.16 Our proposals on the mandate rules apply to any firm that has mandates by which it is able to control clients' assets or liabilities in relation to investment and insurance intermediation business.

CONSUMERS

- 1 This CP proposes changes to clarify existing FSA reporting requirements that apply to regulated firms holding client money and assets. These reporting requirements enable the FSA to better supervise these firms.
 - 2 The mandate rules provide protection for clients when, in relation to investment and insurance intermediation business, regulated firms have mandates by which they are able to control clients' assets or liabilities. This CP proposes changes to bring the scope of those rules in line with the FSA's policy intention.
-

2

Clarifying the CASS firm classification and operational oversight regime

Introduction

- 2.1 Since the introduction of the CF10a controlled function last year, we have identified a need to further clarify the implementation and application of CASS firm classification and operational oversight requirements in response to valuable feedback from firms and industry associations.
- 2.2 In this CP we propose to make a small number of minor amendments to the provisions set out in CASS 1A, *CASS firm classification and operational oversight*.

The scope of the application of CASS 1A: arranging safeguarding and administration of assets

- 2.3 We are aware that some firms that only arrange safeguarding and administration of assets (but do not hold them or safeguard and administer them) are uncertain as to whether CASS 1A applies.
- 2.4 We propose to clarify that the regulated activity of arranging safeguarding and administration of assets does not fall within the scope of CASS 1A.

Q1: Do you agree that the rules should be clarified making it clear that arranging safeguarding and administration of assets should not fall within the scope of CASS 1A? If not, why not?

CASS firm type effective date

- 2.5** We propose to clarify the date when a firm becomes a CASS firm for the first time or when a CASS firm changes category. The proposed effective date will depend on the timing and circumstances of firms' notification of their CASS firm type (which is based on their previous or projected client money and assets holdings).
- 2.6** As set out currently in the rules, a firm which held client money and/or assets in the previous calendar year must notify the FSA in writing by the fifteenth business day in January of its highest holdings in the previous calendar year. We propose that such a firm's CASS firm type, which is notified to us at the same time, takes effect on 1 February following the notification.
- 2.7** A firm that did not hold any client money and/or assets in the previous calendar year, but by the fifteenth business day of January projects that it will be holding client assets for the remainder of the calendar year, is required to notify the FSA in writing by the fifteenth business day of January of its highest projected holdings. We propose that such a firm's CASS firm type, as notified to us, also takes effect on 1 February following the notification.
- 2.8** A firm that did not hold any client money and/or assets in the previous calendar year and did not by the fifteenth business day of January project that it will be holding client assets, must notify the FSA in writing of its highest projected holdings at least by the business day before it begins to hold client money and/or assets. We propose that such a firm's CASS firm type, as notified to us, takes effect on the day this firm begins to hold client money and/or assets.

Q2: Do you agree with our proposals for when a firm's CASS firm type takes effect? If not, why not?

- 2.9** The existing provisions in CASS 1A only allow a firm a limited opportunity to opt in to a higher CASS firm type. Currently, a CASS small firm or CASS medium firm can only elect to be treated as a CASS medium firm or CASS large firm respectively during the first 15 business days of January.
- 2.10** We propose to adopt a more flexible opt-in provision to allow a CASS small firm or CASS medium firm to elect to be treated as a CASS medium firm or CASS large firm respectively at any point during the year. In addition, we propose to clarify the date on which the new CASS firm type will take effect for such a firm that has made an election.

Q3: Do you agree with our proposal to allow CASS small firms and CASS medium firms to elect to be treated as a CASS medium firm or CASS large firm respectively at any point during the year? If not, why not?

Procedures for becoming a CASS medium or a CASS large firm

- 2.11** CASS medium firms and CASS large firms are subject to the requirement to allocate the CASS operational oversight function (CF10a) to a director or a senior manager. However, we recognise that firms which become CASS medium firms and CASS large firms in certain circumstances (excluding where they opt-in to a higher CASS firm type) may not be in a position to meet this requirement immediately.
- 2.12** We therefore propose that a CASS medium or a CASS large firm in this position must take the necessary steps to meet this requirement as soon as practicable. This includes submitting a CF10a application within a specified period of 30 business days and, in the meantime, allocating a director or a senior manager performing a significant influence function (SIF) responsibility for:
- oversight of the firm's operational compliance with CASS;
 - reporting to the firm's governing body about that oversight; and
 - completing and submitting a CMAR to the FSA.

Q4: Do you agree that a firm which becomes a CASS medium or CASS large firm and is not in a position to allocate the CF10a controlled function immediately must take the necessary steps to meet that requirement as soon as practicable, and submit an CF10a application within 30 business days? If not, why not?

Q5: Do you agree that that until such time a CASS small firm that became a CASS medium or CASS large firm has allocated the CF10a function to a director or a senior manager, such firm should allocate to a director or a senior manager performing a significant influence function (SIF) the responsibilities set out in 2.12? If not, why not?

3

Changes to the Client Money and Assets Return (CMAR) and guidance

Introduction

- 3.1 While we received widespread support on the implementation and application of CMAR and the associated CMAR guidance notes, we received some helpful feedback on the CMAR framework itself and the CMAR guidance notes. Most of the feedback on the CMAR framework was in relation to the CMAR itself.
- 3.2 We consult on the basis that the number of questions posed and the amount of data sought by the CMAR will remain broadly unchanged.

CMAR Section 6 – Segregation of Safe Custody Assets

- 3.3 Section 6 of CMAR currently requires a firm to provide details of how it holds safe custody assets for its clients by completing a table. A firm's client assets holdings are required to be grouped according to 'where and how' they are held and the firm must report on the number of stock lines in each such group, and their value. The aggregate value is validated against data field 8D.
- 3.4 We have identified a technical issue that arises from the structure of the table, which requires a firm to report each grouping of safe custody assets in a separate row of the table. This can result in a firm reporting the same lines of stock over more than one row, where these lines of stock may be held in more than one manner. This duplication means that the validation against data field 8D will fail. We implemented an interim workaround for this issue through technical FAQs on the CMAR help pages of the FSA's website, which asked firms to use balancing figures for data field 25D so that the validation would not fail.

- 3.5 We now propose to amend the structure of the table so that the interim workaround will no longer be required.
- 3.6 Our proposed approach is to replace data field 25A ‘where and how held?’ with two new data fields: ‘where held?’ and ‘how registered’. This will provide greater flexibility and should simplify the process of reporting the manner in which a firm registers legal title and holds safe custody assets, because firms will no longer need to duplicate stock holdings over more than one row in the table and use balancing figures.
- 3.7 We anticipate that this new proposed layout will shorten the time required by a firm to complete these data fields, and will also lead to clearer information being reported to the FSA.

Additional minor changes to the CMAR

- 3.8 We also propose to make some additional minor changes to the CMAR template, specifically:
- a) to change the GABRIEL validation of CMAR data field 8B ‘Overview of firm’s activities subject to CASS – Number of clients’ to allow for a firm to report zero clients where applicable, as the current validation rule does not allow for this;
 - b) to amend the text and presentation of some of the data fields, to address any misunderstandings and drive consistency in reporting; and
 - c) to change the format of questions on the CMAR for data fields 31-34 (notifiable breaches) and provide further guidance to accompany these changes.

Please see Appendix 1 for the proposed CMAR template amendments.

Q6: Do you agree with our proposed changes to CMAR? If not, why not?

Standardisation for data fields that require client money balances

- 3.9 The CMAR guidance notes for data fields that concern client money balances are silent as to whether the information reported should be taken from internal or external reconciliations.
- 3.10 To standardise the approach taken by firms, we are proposing guidance that a firm using the standard method of internal reconciliation should (unless otherwise stated) report client money balances on the basis of its client money resource as at the last business day of the reporting period. We expect this approach to provide more clarity to firms on the data that is required by the CMAR and also to drive more consistency in the data reported by firms.

- 3.11** We are also proposing that firms that use a different method of internal reconciliation in accordance with CASS 7.6.7R should read the guidance in so far as it is consistent with that different method.
- 3.12** In line with our proposal to standardise the use of internal reconciliations when reporting client money balances, we also propose to update the guidance for data fields 14-21 to reflect these changes and ensure consistency throughout the guidance.
- 3.13** Current CMAR guidance specifies that for data fields 14-20 a firm should use the reconciliation carried out on the reporting period end date and, for data field 21, to use the penultimate reconciliation carried out in the reporting period.
- 3.14** We propose to clarify that for data fields 14-21, a firm should report by reference to the results of its internal reconciliation carried out on the first business day after the reporting period. We have decided to propose this change as it appeared preferable for many firms to report in this manner.
- 3.15** We also propose to provide additional clarity surrounding unallocated, unidentified client money and uncleared payments in the CMAR guidance notes.

Other additions to CMAR guidance

- 3.16** We propose to provide further guidance on other matters such as:
- asset valuation;
 - arranging activities;
 - allocated but unclaimed client assets;
 - unreconciled client money and safe custody assets;
 - CMAR Section 8 (Record keeping and breaches); and
 - defining the reporting period for the purposes of the CMAR.

Please see Appendix 1 for the proposed changes to the CMAR guidance notes.

Q7: Do you agree with the proposed changes to the CMAR guidance notes? If not, why not?

4

Clarifying the scope of the mandate rules (CASS 8)

Introduction

- 4.1 The FSA Handbook has always had rules around firms' use of mandates in relation to investment business, and some of our predecessor self-regulatory organisations also had similar rules. The current mandate rules require firms carrying on investment business or insurance intermediation to establish and maintain certain internal controls when they have mandates by which they are able to control clients' assets or liabilities. The purpose of these internal controls is to reduce the risk of a firm misusing a mandate (for example, fraudulently), which could result in consumer detriment.

Scope issues

- 4.2 Although we were not aware of any uncertainty historically in relation to the scope of the mandate rules, following the reintroduction of mandates within the scope of CASS audit reporting for certain firms (see PS11/5, March 2011), we have identified that there is now a large degree of inconsistency in understanding among firms and their auditors.
- 4.3 This inconsistency may result in some firms not applying the mandate rules in all circumstances that are intended to be in scope (which can create risk of consumer detriment) and some firms applying the mandate rules in circumstances that are not intended to be in scope (which can give rise to unnecessary costs for firms). In addition, auditors interpreting the scope of the mandate rules too narrowly could lead to them not reporting on internal controls that are in scope, while auditors interpreting the scope too widely could lead to more expensive client money and assets audit costs for firms. This has also generated a significant amount of query work for the FSA.

Proposed scope clarification

4.4 We are proposing to clarify the scope of the mandate rules to bring the Handbook text into line with the FSA's long-held policy intentions, to prevent the risks and unnecessary costs described above. Draft rules and guidance are set out in the CP annexes. We are not proposing to change the internal controls required by the mandate rules (other than by clarifying what is required for discretionary investment managers when acting as such), and we are not proposing to change the purpose of the mandate rules.

a) Application

4.5 We do not propose to change the scope of regulated business to which the mandate rules apply (investment business and insurance intermediation).

4.6 We propose to clarify that the mandate rules do not apply to a firm in relation to client money held by that firm in accordance with CASS 5 or CASS 7, or client assets held by that firm in accordance with CASS 6.

4.7 We propose to clarify that the mandate rules do not apply to an operator of a regulated collective investment scheme, in relation to activities carried on for the purpose, or in connection with, the operation of the scheme. The FSA's rules in relation to collective investment schemes (the COLL sourcebook) cover the responsibilities of operators, and also provide for depositories to keep the actions of operators under review.

4.8 We are proposing guidance to clarify that the mandate rules do not affect the duties that a firm (Firm A) has in relation to an account or assets it holds, where another firm (Firm B) has a mandate in respect of that account or those assets held with Firm A. For example, the mandate rules do not affect the obligations that a bank or a custodian has to its client for a deposit or securities account, where the client gives a mandate to another firm over that account. We would expect such a bank or custodian to continue to comply with all relevant legal and regulatory obligations towards its client.

b) Definition of mandate

4.9 To clarify the scope of the mandate rules, we propose to define what a mandate is within the rules. This is to clarify that the mandate rules apply to any means which a firm obtains in written form from (and with the consent of) the client and subsequently retains, and which gives the firm the ability (without the client's further involvement being necessary) to control the client's assets or liabilities by carrying on any of the following activities:

- giving instructions in relation to the client's money to another person who is responsible for holding that money (such as a bank holding a deposit, or an investment firm or insurance intermediary holding client money);
- giving instructions in relation to the client's assets to another person who is responsible to the client for holding those assets (such as a custodian); or

- giving instructions to another person so that the client incurs a debt or other liability to that other person (or any other person that is not the firm itself).
- 4.10** The proposed definition clarifies that a mandate is something which is obtained with the consent of the client. We would not expect a firm to acquire the means to carry on the activities at 4.9 without the client's consent.
- 4.11** The proposed definition also clarifies that a mandate can take any written form. It need not state that it is a 'mandate'. It could be standalone document, a specific provision within a document or an agreement that also relates to other matters, or a combination of provisions within a number of documents which together provide the means by which a firm has the ability to carry on the activities at 4.9. It remains the case that the means that give the firm the ability to carry on the activities at 4.9 must be obtained in written form from the client for those means to be mandates for the purposes of this chapter.
- 4.12** A power of attorney, or similar binding authority, granted by a client to a firm that enables the firm to manage the client's investment affairs in some way, may be (or include) a mandate.
- 4.13** The proposed definition also clarifies that a mandate is something that is retained by the firm so that it can be used from time to time. We are proposing additional guidance to clarify the circumstances in which a firm's ability to carry on the activities at 4.9 in order to effect transactions immediately could amount to a mandate where the firm retains the information that confers that ability.
- 4.14** Our guidance gives the example of a firm receiving written credit card details as a type of mandate that a firm might obtain that would enable the firm to place a client in debt to another person.
- 4.15** We are also proposing guidance to clarify the effect of limits or conditions that are placed around the firm's carrying on of the activities at 4.9. If a client requires that a firm can only carry on those activities in connection with transactions up to a certain amount, then this could still be a mandate. However, if a firm has the ability to give instructions of the sort referred to 4.9 but must, in practice, always seek the prior consent of the client for these instructions to be effective, this would not amount to a mandate because the client's further involvement would be necessary.
- 4.16** We are clarifying that terms or conditions that limit a discretionary investment managers' discretion to make to investment decisions for a client's portfolio, such as exposure limits (for example, no more than 20% in equities), or restrictions on investing in certain securities (for example, no debt securities with a credit rating below a certain level) would not amount to mandates. However, an agreement containing terms such as these may still contain mandates, to the extent that other provisions in the agreement give the firm the ability described in 4.9 (for example, the ability to instruct its client's custodian).

- Q8:** Do you agree that the scope of the CASS mandate rules, as expressed in the Handbook at present, should be clarified?
- Q9:** Do you agree that the draft Instrument appended to this CP will ensure that the mandate rules' scope is in line with the FSA's policy intentions, as set out above?

The requirements of the mandate rules

- 4.17** We wish to take the opportunity to confirm that the sole requirement of the CASS 8 mandate rules is, and always has been, that a firm that has mandates must establish and maintain adequate records and internal controls in respect of its use of those mandates. We are proposing guidance to clarify this. Any failure to establish and maintain adequate records and internal controls would be a breach of the relevant mandate rules.
- 4.18** If a firm uses mandates other than in accordance with their terms (i.e. the conditions placed by the client or the firm's own management around the use of the mandate), this may indicate that the firm has failed to establish and maintain adequate records and internal controls in respect of its mandates, particularly if such use of mandates by the firm is widespread or significant in terms of its nature or frequency.
- 4.19** In addition, we are clarifying that some of the internal controls that firms must establish and maintain are controls to ensure that each transaction entered into under each mandate that the firm has is in accordance with any conditions placed by the client or the firm's management on the use of the mandate.
- 4.20** We are also clarifying that the record keeping and internal controls requirements of the mandate rules do not apply to conditions that limit a discretionary investment managers' discretion to make to investment decisions for a client's portfolio (for example, exposure limits or restrictions on investing in certain securities). However, discretionary investment managers should continue to meet any other applicable legal and regulatory requirements relating to their business, including those set out elsewhere in the FSA's Handbook.
- 4.21** We are also taking the opportunity to simplify the layout of the requirements of the mandate rules.

Annex 1

Cost benefit analysis and compatibility statement

Cost benefit analysis

1. When proposing new rules, we are obliged (under section 155 of the Financial Services and Markets Act 2000 (FSMA)) to publish a cost benefit analysis (CBA), unless we expect there to be no costs or only a minimal increase. As a matter of policy, we also provide a CBA for significant proposed guidance relating to rules. The CBA is an estimate of the costs and an analysis of the benefits of the proposals. It is a statement of the differences between the baseline (broadly speaking, the current position) and the position that will arise if we implement the proposals.

CASS oversight and reporting requirements

2. The minor amendments we are proposing for CASS 1A (CASS oversight and reporting requirements¹) should assist firms in complying with the rules, because they clarify areas of uncertainty. The minor amendments we are proposing for the CMAR and the changes we are proposing for the CMAR guidance notes should assist firms in completing the CMAR in compliance with the rules and in a way that helps us to meet our policy objectives. They do this by clarifying the nature of the data sought to ensure systematic consistency.
3. These minor amendments and additions are likely to impose only negligible costs, if any. Costs associated with providing the data to the FSA have already been considered in the consultation of the original policy proposal (see the CBA in CP10/9, *Enhancing the Client Assets Sourcebook*).

¹ CASS oversight and reporting requirements are described in CP10/9, *Enhancing the Client Assets Sourcebook*, and referenced in CP11/4, *The Client Money and Asset Return (CMAR): Operational Implementation*.

Mandate rules (CASS 8)

4. The changes that we are proposing for the mandate rules specify that some firms are now excluded from the application of CASS 8 (for example, operators of collective investment schemes (CIS) when they act as such). This is, in effect, deregulation and will likely reduce costs for these firms (or result in no change in costs if they do not apply the rules currently).

Compatibility statement with our statutory objectives

5. In this section we set out our views on how the proposals and draft rules in this CP are compatible with our general duties under Section 2 of the Financial Services and Markets Act 2000 (FSMA) and our regulatory objectives set out in Sections 3 to 6 of FSMA. This section also outlines how our proposals are consistent with the principles of good regulation (also in Section 2 of FSMA) to which we must have regard.
6. For the CASS oversight and reporting changes, the compatibility statement in CP10/9, *Enhancing the Client Assets Sourcebook*, still holds.
7. The clarification of the scope of the mandate rules is likely to strengthen compliance, and hence consumer protection.

Compatibility with the need to consider the principles of good regulation

8. Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to the principles of good regulation. For the CASS oversight and reporting requirements, these principles were considered in CP10/9.
9. The changes to the CASS 8 mandate rules are considered below, in particular the following:

The need to use our resources in the most efficient and economic way

10. Our proposed amendments to the mandate rules will reduce the queries related to clarification of the range of firms and arrangements that CASS 8 applies to, improving use of resources.

The principle that a burden or restriction which is imposed should be proportionate to the benefits

11. Please see our CBA above.

Annex 2

List of questions

- Q1:** Do you agree that the rules should be clarified making it clear that arranging safeguarding and administration of assets should not fall within the scope of CASS 1A? If not, why not?
- Q2:** Do you agree with our proposals for when a firm's CASS firm type takes effect? If not, why not?
- Q3:** Do you agree with our proposal to allow CASS small firms and CASS medium firms to elect to be treated as a CASS medium firm or CASS large firm respectively at any point during the year? If not, why not?
- Q4:** Do you agree that a firm which becomes a CASS medium or CASS large firm and is not in a position to allocate the CF10a controlled function immediately must take the necessary steps to meet that requirement as soon as practicable, and submit an CF10a application within 30 business days? If not, why not?
- Q5:** Do you agree that that until such time a CASS small firm that became a CASS medium or CASS large firm has allocated the CF10a function to a director or a senior manager, such firm should allocate to a director or a senior manager performing a significant influence function (SIF) the responsibilities set out in 2.12? If not, why not?

- Q6:** Do you agree with our proposed changes to CMAR? If not, why not?
- Q7:** Do you agree with the proposed changes to the CMAR guidance notes? If not, why not?
- Q8:** Do you agree that the scope of the CASS mandate rules, as expressed in the Handbook at present, should be clarified?
- Q9:** Do you agree that the draft Instrument appended to this CP will ensure that the mandate rules' scope is in line with the FSA's policy intentions, as set out above?

Appendix 1

Draft handbook text

**CLIENT ASSETS SOURCEBOOK (FIRM CLASSIFICATION, OPERATIONAL
OVERSIGHT, AND MANDATE RULES) 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 156 (General supplementary powers); and
 - (5) 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 January 2013.

Amendments to the Handbook

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

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

Citation

- E. This instrument may be cited as the Client Assets Sourcebook (Firm Classification, Operational Oversight, and Mandate Rules) Instrument 2012.

By order of the Board
[] 2012

Annex A

Amendments to the Glossary of definitions

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

mandate is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in *CASS* 8.2.1R.

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.

1A CASS firm classification and operational oversight

1A.1 Application

1A.1.1 R (1) Subject to (2) ~~and~~, (3) and (4) this chapter applies to a *firm* to which either or both of CASS 6 (Custody rules) and CASS 7 (Client money rules) applies.

...

(4) This chapter does not apply to a *firm* to which only CASS 6 applies, applied or is projected to apply (as the case may be), merely because it is, was, or is projected to be (as the case may be) a *firm* which arranges safeguarding and administration of assets.

1A.2 CASS firm classification

1A.2.1 G The application of certain *rules* in this chapter depends upon the 'CASS firm type' within which a *firm* falls. The 'CASS firm types' are defined in accordance with CASS 1A.2.7R. The 'CASS firm type' within which a *firm* falls is also used to determine whether it is required to have the CASS *operational oversight function* described in CASS 1A.3.1AR and whether the reporting obligations ~~that apply to it~~ in SUP 16.14 (Client money and asset return) apply to it.

1A.2.2 R (1) A *firm* must once every year, and ~~within the time limit provided for by~~ the time it is required to make a notification in accordance with CASS 1A.2.9R(4), determine whether it is a CASS *large firm*, CASS *medium firm* or a CASS *small firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in CASS 1A.2.7R.

...

...

1A.2.5 R ...

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

(a) the election is ~~made by including it in the notice notified to the FSA provided under CASS 1A.2.8R or CASS 1A.2.9R in~~ notified to the FSA

writing;

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

...

1A.2.8 R ~~In relation to the calendar year ending on 31 December 2011, a firm must notify the *FSA* in writing:~~

- (1) ~~by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, if it held *client money* or *safe custody assets* in that previous year; or~~
- (2) ~~by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* that the firm projects that it will hold during 2011, if it did not hold *client money* or *safe custody assets* in the previous calendar year but at the date of its notification to the *FSA* projects that it will do so in 2011; or~~
- (3) ~~in any other case, before the date on which the firm begins to hold *client money* or *safe custody assets*, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the firm projects that it will hold during the remainder of 2011; and~~
- (4) ~~in every case, of its 'CASS firm type' classification. [deleted]~~

1A.2.8A R ~~In addition, in relation to the calendar year ending on 31 December 2011, a *CASS small firm* must by 31 July 2011 notify the *FSA* in writing of:~~

- (1) ~~the highest total amount of *client money* and the highest total value of *safe custody assets* held during the period between 1 January 2011 and 30 June 2011; or~~
- (2) ~~if it did not hold *client money* or *safe custody assets* in that period, the highest total amount of *client money* and the highest total value of *safe custody assets* that the firm projects, as at the date of its notification to the *FSA* under this rule, it will hold between 1 July 2011 and 31 December 2011. [deleted]~~

1A.2.9 R ~~In relation to each calendar year beginning with that which ends on 31 December 2012, a firm must notify the *FSA* in writing: Once every calendar year a firm must notify to the *FSA* in writing the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the day specified in (1) to (4):~~

- (1) ~~within 15 business days of 31 December of the previous calendar year, of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, if it held *client money* or *safe custody assets* in that previous~~

~~calendar year if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or~~

- (2) ~~within 15 *business days* of 31 December of the previous year, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the then current calendar year, if it did not hold *client money* or *safe custody assets* in the previous calendar year but at the date of its notification to the *FSA* projects that it will do so in the then current calendar year if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or~~
- (3) ~~in any other case, before the date on which the *firm* begins to hold *client money* or *safe custody assets*, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of the then current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money* or *safe custody assets*; and~~
- (4) ~~in every case, its 'CASS firm type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).~~

1A.2.10 R For the purpose of the annual notification to which ~~CASS 1A.2.8R and CASS 1A.2.9R refers, and for the purpose of the notification to which CASS 1A.2.8AR refers,~~ a *firm* must apply the calculation rule in CASS 1A.2.3R.

1A.2.11 G For the purpose of CASS 1A.2.9R(1), the *FSA* will treat that obligation as satisfied if a *firm* ~~submits~~ submitted a *CMAR* for each period within the previous calendar year ~~the month ending 31 December~~ in compliance with SUP 16.14.3R.

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

- (1) if the *firm* notifies the *FSA* in accordance with CASS 1A.2.9R(1) or CASS 1A.2.9R(2), on 1 February following the notification; or
- (2) if the *firm* notifies the *FSA* in accordance with CASS 1A.2.9R(3), on the day it begins to hold *client money* or *safe custody assets*; or
- (3) if the *firm* makes an election under CASS 1A.2.5R(1), and provided

the conditions in CASS 1A.2.5R(2) are satisfied, on the day the notification made under CASS 1A.2.5R(2)(a) states that the election is intended to take effect.

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

1A.3 Responsibility for CASS operational oversight

1A.3.1 R A *CASS small firm* must allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS; and
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- ~~(3) completing and submitting a CMAR to the FSA in accordance with SUP 16.14.~~

...

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

- (1) take the necessary steps to ensure that the *firm* complies with CASS 1A.3.1AR as soon as practicable, which must at least include submitting an application for a *candidate* in respect of the *CASS operational oversight function* within 30 business days of the *firm* becoming a *CASS medium firm* or a *CASS large firm*; and
- (2) until such time as the *firm* is able to comply with CASS 1A.3.1AR, allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:
 - (a) oversight of the *firm's* operational compliance with CASS;
 - (b) reporting to the *firm's governing body* in respect of that oversight; and
 - (c) completing and submitting the CMAR to the FSA in accordance with SUP 16.14.

...

1A.3.3 R (1) Subject to (2), a *firm* must make and retain an appropriate record of

the *person* to whom responsibility is allocated in accordance with ~~CASS 1A.3.1R~~, ~~or CASS 1A.3.1AR~~ or CASS 1A.3.1CR(2).

...

8 Mandates

8.1 Application

8.1.1 R This chapter (the *mandate rules*) applies to a *firm* (~~including in its capacity as trustee under CASS 5.4~~) in respect of any written authority from a *client* ~~under which the *firm* may control a *client's* assets or liabilities~~ when it has a *mandate* in the course of, or in connection with, the *firm's*:

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

8.1.2 G ~~Mandates or similar authorities for the purpose of this chapter include a *firm's* authority over a *client's* safe custody account, for example for stock lending purposes, a *firm's* authority over a *client's* bank or building society account including direct debits in favour of the *firm*, and a *firm* holding a *client's* credit card details.~~ [deleted]

8.1.2A R The *mandate rules* do not apply to a *firm*:

- (1) in relation to *client money* that the *firm* is holding in accordance with CASS 5 or CASS 7 (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with CASS 7.5.2R);
or
- (2) in relation to *safe custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets (without arranging)* in accordance with CASS 6; or
- (3) when it acts as the *operator of a regulated collective investment scheme*, in relation to activities carried on for the purpose, or in connection with, the operation of the *scheme*.

...

Purpose

8.1.4 G ~~The *mandate rules* apply to those *firms* that control, rather than hold, *clients'* assets or are able to create liabilities in the name of a *client*. These *rules* seek to ensure that require *firms* to establish and maintain records and internal controls to prevent the misuse of a *mandate* the authority granted by the *client*.~~

8.1.4A G The *mandate rules* only apply to a *firm* that has a *mandate*, and do not affect

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

General

- 8.1.5 R ~~A *firm* that holds authorities of the sort referred to in this chapter, must establish and maintain adequate records and *internal controls* in respect of its use of the mandates, which must include:~~
- ~~(1) an up-to-date list of the authorities and any conditions placed by the *client* or the *firm's* management on the use of them;~~
 - ~~(2) a record of all transactions entered into using the authority and *internal controls* to ensure that they are within the scope of authority of the *person* and the *firm* entering into the transaction;~~
 - ~~(3) The details of the procedures and authorities for the giving and receiving of instructions under the authority; and~~
 - ~~(4) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*. [deleted]~~

8.2 Definition of mandate

- 8.2.1 R A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):
- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
 - (2) they are in written form at the time they are obtained from the *client*;
 - (3) they are retained by the *firm* so that they can be used by the *firm* from time to time;
 - (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
 - (a) instructions to another *person* in relation to the *client's* money that is credited to an account maintained by that other *person* for the *client*;
 - (b) instructions to another *person* in relation to any money to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including

where that other *person* is holding *client money* for the *client* in accordance with CASS 5 or CASS 7);

- (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments*);
- (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
- (5) their circumstances are such that the *client's* further involvement is not necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

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

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

- (a) after it uses it to effect those immediate transactions; or
- (b) because those transactions are not, for whatever reason, effected immediately.

(2) If a *firm* receives information that puts it in the position described in CASS 8.2.1R(4) and the *firm* retains that information in order to effect transactions in the future or over a period of time, then such information could amount to a *mandate*.

8.2.4 G (1) If a *firm* obtains the means by which it can give the types of instructions referred to in CASS 8.2.1R(4), but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client* might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.

(2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in CASS 8.2.1R(4), but the *firm* cannot, in practice, use those means without the *client's* further involvement, then the condition in CASS 8.2.1R(5) would not be met. For example, a *firm* might have the means by which it can give

instructions of the type referred to in CASS 8.2.1R(4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to such instructions.

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

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

8.3 **Records and internal controls**

8.3.1 R A *firm* that has *mandates* must establish and maintain adequate records and *internal controls* in respect of its use of the *mandates*.

8.3.2 R The records and *internal controls* required by CASS 8.3.1R must include:

- (1) an up-to-date list of each *mandate* that the *firm* has, including a record of any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
- (2) a record of each transaction entered into under each *mandate* that the *firm* has;
- (3) *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
- (4) the details of the procedures and *internal controls* around the giving of instructions under the *mandates* that the *firm* has (such instructions being those referred to in CASS 8.2.1R(4)); and
- (5) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.

8.3.3 G A *firm* that manages investments should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and conditions placed by a *client* on the *firm's* exercise of discretion when taking decisions to trade in the course of managing investments. The requirements in CASS 8.3.2R(1) and CASS 8.3.2R(3) apply only in respect of conditions placed around the *firm's* use of a *mandate* itself (for example where a *mandate* may only be used in connection with transactions up to a certain value, or by certain personnel within the *firm*), and not to conditions on the *firm's* exercise of discretion when taking decisions to trade (for example investment

restrictions or exposure limits for a portfolio).

9 Prime brokerage

...

9.3 Prime brokerage agreement disclosure annex

...

9.3.2 G ...

- (2) (a) in the case of a *CASS small firm* or a *firm* to which *CASS 1A.3.1CR* applies, the person in that *firm* to whom the responsibilities set out in *CASS 1A.3.1 R* or the responsibilities set out in *CASS 1A.3.1CR(2)* respectively have been allocated; or

...

10 CASS resolution pack

10.1 Application, purpose and general provisions

...

- 10.1.14 R The individual to whom responsibility for CASS operational oversight has been allocated under *CASS 1A.3.1R*, *CASS 1A.3.1AR* or, as the case may be ~~*CASS 1A.3.1AR*~~ *1A.3.1CR(2)*, must report at least annually to the *firm's governing body* in respect of compliance with the *rules* in this chapter.
- 10.1.15 G Individuals allocated functions relating to CASS operational oversight pursuant to *CASS 1A.3.1R*, *CASS 1A.3.1AR* or, as the case may be ~~*CASS 1A.3.1AR*~~ *1A.3.1CR(2)* are reminded that their responsibilities include compliance with the provisions in this chapter.

Sch 1 Record keeping requirements

...

Sch
1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>CASS 1A.3.3R</i>	Allocation of the <i>CASS</i> oversight	The <i>person</i> to whom the <i>CASS</i> oversight	Upon allocation	5 years (from the date the

	responsibilities in <i>CASS</i> 1A.3.1 R- or ₂ of the <i>CASS operational oversight function</i> , <u>or of the responsibilities in <i>CASS</i> 1A.3.1CR(2)</u> , as relevant	responsibilities have been allocated, subject to the provisions of <i>CASS</i> 1A.3.3 R, or to whom the <i>CASS operational oversight function</i> has been allocated in accordance with <i>CASS</i> 1A.3.1A R ₂ or to whom the <u>responsibilities in <i>CASS</i> 1A.3.1CR(2) have been allocated</u>		record was made)
...				
<i>CASS</i> 8.1.5R <u>8.3.1R</u>	Adequate records and internal controls in respect of the <i>firm's</i> use of mandates <i>mandates</i> (see <i>CASS</i> 8.1.5R (4) <u>8.3.2R(1)</u> to <i>CASS</i> 8.1.5R (4) <u>8.3.2R(5)</u>)	Up to date list of <i>firm's</i> authorities <i>mandates</i> and any conditions regarding the use of authorities <i>mandates</i> , all transactions entered into, details of procedures and authorities <i>internal controls</i> for giving and receiving of instructions under authorities <i>mandates</i> , and important <i>client</i> documents held by the <i>firm</i>	Maintain current full details	Not specified

Sch 2 Notification requirements

...

Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				

CASS 1A.2.8R (1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.8R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.8R.	The coming into force of CASS 1A.2.8R	31 January 2011 unless contrary provision is made in CASS 1A.2.8R. [deleted]
CASS 1A.2.8R(4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The coming into force of CASS 1A.2.8R	31 January 2011 unless contrary provision is made in CASS 1A.2.8R. [deleted]
CASS 1A.2.8AR	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in CASS 1A.2.8AR	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in CASS 1A.2.8AR	The need to comply with CASS 1A.2.8AR	31 July 2011 unless contrary provision is made in CASS 1A.2.8AR [deleted]
CASS 1A.2.9R(1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9R.	The need to comply with CASS 1A.2.9R(1) - (3)	Within 15 <i>business days</i> from the end of December of the previous calendar year By the <u>fifteenth business day</u> of January unless contrary provision is made in CASS

				1A.2.9R
<i>CASS</i> 1A.2.9R(4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The need to comply with <i>CASS</i> 1A.2.9R(4)	Within 15 <i>business</i> <i>days</i> from the end of December of the previous calendar year unless contrary provision is made in <i>CASS</i> 1A.2.9R. At the same time the <i>firm</i> makes the notification under <i>CASS</i> 1A.2.9R(1), (2) or (3)
<i>CASS</i> 1A.3.2R	The <i>person</i> to whom the responsibilities in <i>CASS</i> 1A.3.1R have been allocated	The name of the <i>person</i>	Upon allocation	Until 31 January 2011 [deleted]

Annex C

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

...

16.14 Client money and asset return

...

- 16.14.3 R (1) ~~A~~ Subject to (3), a firm must submit a completed *CMAR* to the *FSA* within 15 *business days* of the end of each month.
- (2) In this *rule* month means a calendar month and *SUP* 16.3.13R(4) does not apply.
- (3) A firm which changes its 'CASS firm type' and notifies the FSA that it is a CASS medium firm or a CASS large firm in accordance with CASS 1A.2.9R is not required to submit a CMAR in respect of the month in which such change to its 'CASS firm type' takes effect in accordance with CASS 1A.2.12R.
- 16.14.4 R For the purposes of the *CMAR*:
- (1) *client money* is that to which the *client money rules* in *CASS* 7 apply; and
- (2) *safe custody assets* are those to which the *custody rules* in *CASS* 6 apply but only in relation to the holding of financial instruments (in the course of MiFID business) and the safeguarding and administration of assets (without arranging) (in the course of business that is not MiFID business).
- 16.14.5 G For the avoidance of doubt, the effect of *SUP* 16.14.4R~~(4)~~ is that (1) to (3) are outside the scope of the CMAR and are any client money held in accordance with CASS 5 is to be excluded from any calculations which the *CMAR* requires a *firm* to make:
- (1) any client money held by the firm in accordance with CASS 5;
- (2) any safe custody assets in respect of which the firm is merely arranging safeguarding and administration of assets in accordance with CASS 6; and
- (3) any client money or safe custody assets in respect of which the firm merely has a mandate in accordance with CASS 8.

Delete 16 Annex 29R and insert the following new annex. The text is not underlined.

16 Annex 29R Client Money and Asset Return (CMAR)

This annex consists only of one or more forms. Forms are to be found through the following address:

Client Money and Asset Return: [insert link to form included below]

see next page

16 Annex 29AG Guidance notes for the data item in SUP 16 Annex 29R

Client Money and Asset Return (CMAR)

This annex contains *guidance* on the *CMAR* and is therefore addressed only to a *firm* which is subject to *SUP 16.14*.

General

Terms used in the *CMAR* bear the meaning ascribed to those terms in the *Glossary*, even though they do not appear in italicised form on the face of the *data item*, unless a contrary indication is given in this *guidance*.

A *firm* is reminded that the effect of *SUP 16.14.4R* is that in relation to a *firm* to which *CASS 5* (Client money: insurance mediation activity) and *CASS 7* (Client money rules) apply, that *firm* should not report in the *data item* shown in *SUP 16 Annex 29R* any *client money* that it holds in accordance with *CASS 5*.

SUP 16.14.4R also has the effect that the data reported by a *firm* on the *CMAR* should only relate to *client money* and/or *safe custody assets* held by the *firm*, and should not relate to *client money* and/or *safe custody assets* in respect of which the *firm* merely has a *mandate* or any *safe custody assets* in respect of which the *firm* merely arranges safeguarding and administration of assets.

Firms are reminded of their obligation to determine their ‘CASS firm type’ categorisation in accordance with *CASS 1A.2.2R*.

A *firm* should include in any amount of *client money* that it reports any *client money* which it has allowed another *person* to hold or control in accordance with *CASS 7.5.2R* (for example, an exchange, clearing house or intermediate broker).

Reporting Period

The reporting period for the *CMAR* is the calendar month for which a *CMAR* is required to be completed in accordance with *SUP 16.14.3R*, including the first *day* and the last *day* of that month. For example, the January reporting period will be January 1 to January 31, regardless of whether or not any *day* in January is a *business day*.

Valuation

Where this *data item* asks for a *firm* to report or calculate the value of *safe custody assets* that it holds on any given *day*, that *firm* should

- ~~(a) — if it has the previous *day*’s mark to market value of the *safe custody asset* in question, use that value; or~~
- ~~(b) — if it does not have the previous *day*’s mark to market value, calculate the value of that asset using the most recent mark to market value that it does have; and~~

~~in either case, apply a consistent mark to market methodology that reflects its normal accounting practice.~~

For the purposes of the *CMAR*, the *FSA* does not prescribe any particular methodology or frequency for valuing *safe custody assets*.

Reporting Client Money Balances using internal reconciliations

The *guidance* in this annex assumes that a *firm* uses the *standard method of internal client money reconciliation*. *Firms* that use a different method of internal reconciliation in accordance with *CASS 7.6.7R* should read the *guidance* in this annex in so far as it is consistent with that different method.

Where this *data item* requires a *firm* to report any *client money* balances, unless otherwise specified the *firm* should report on the basis of its internal reconciliation carried out on the first *business day* following the reporting period in question, and should report on the basis of the *client money* resource calculated for that internal reconciliation in accordance with either *CASS 7 Annex 1G* paragraph 1 (if it operated the normal approach during the reporting period) or *CASS 7 Annex 1G* paragraph 2 (if it operated the alternative approach during the reporting period).

The effect of this is that the *client money* balance reported will be the aggregated *client money* resource on the *firm's client bank accounts* calculated either:

- a) as at the close of business on the last *business day* of the reporting period, if the *firm* operated the normal approach during the reporting period; or
- b) as at the close of business on the first *business day* following the reporting period in question, if the *firm* operated the alternative approach during the reporting period.

Currency

The reporting currency for this *data item* should be GBP (sterling). For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given *day* during a reporting period, a *firm* should, in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or that *safe custody asset* into sterling at the previous *day's* closing spot exchange rate.

Section 1 Firm information

1 Name of *CASS* audit firm

A *firm* should report the name of the auditor that provides its client assets report (see *SUP 3.10*). It is not possible for the *CMAR* to list all auditors in this data field. However, certain auditors are named for convenience, and the *FSA* does not in any way recommend or endorse the auditors that are named. If the auditor is not listed on the menu, where available, a *firm* should choose 'Other' and complete data field 2 if its auditor is not named.

2 Name of *CASS* audit firm (if 'Other' was selected above)

If a *firm* selects ‘Other’ in (1), it should enter the name of ~~its auditor~~ the auditor that provides its client assets report (see SUP 3.10).

- 3 ~~Does~~ Did the *firm* hold *client money* during the reporting period?

A *firm* should state “Yes” or “No”.

A *firm* should not take into account *client money* in respect of which it merely had a *mandate* in accordance with CASS 8 during the reporting period, or *client money* that it held in accordance with CASS 5 during the reporting period.

- 4 ~~Does~~ Did the *firm* safeguard and administer *safe custody assets* during the reporting period?

A *firm* should state “Yes” or “No”.

A *firm* should not take into account *safe custody assets* in respect of which it was merely *arranging safeguarding and administration of assets* in accordance with CASS 6 during the reporting period.

- 5 ~~Is~~ Was the *firm* subject to a *CFTC Part 30 exemption order* during the reporting period?

A *firm* should state “Yes” or “No”. *Handbook* provisions dealing with the *CFTC Part 30 exemption order* are set out CASS 7.4.32G to CASS 7.4.35R.

- 6 ~~Does~~ Did the *firm* operate the alternative approach during the reporting period (see CASS 7.4.14G to CASS 7.4.19G)?

A *firm* should state “Yes” or “No”. *Handbook* provisions dealing with the alternative approach are set out in CASS 7.4.14G to CASS 7.4.19G.

- 7 Has the alternative approach been signed off by the *firm*’s auditor?

A *firm* should state “Yes” or “No”. CASS 7.4.15R provides that a *firm* that does not operate the normal approach must first send a written confirmation to the *FSA* from the *firm*’s auditor that the *firm* has in place systems and controls which are adequate to enable it to operate another approach effectively.

- 8A Type of business activity

A *firm* should identify in this data field the investment activities or services in the course of which it holds *client money* or *safe custody assets* belonging to a *client* and may do so using its own description of the activity or service in question.

A *firm* should describe its business activities as accurately as possible, for example with reference to the relevant investment product, *regulated activity* and type of service (discretionary, advised, execution only, etc).

Any allocated but unclaimed *client money* or *safe custody assets* held by the *firm* which the *firm* continues to treat as such should be identified as a separate business activity.

8B Number of *clients*

In relation to each of the investment activities or services identified, a *firm* should report in this data field the number of *clients* for whom it holds *client money* or *safe custody assets* in respect of the activity or service in question.

If a *firm* holds *client money* or *safe custody assets* in respect of more than one activity or service for the same *client*, the *firm* should include this *client* in the number reported for each activity or service as appropriate. This means that the same *client* may be reported for more than one activity or service in this data field.

8C Balance of *client money* ~~as at reporting period end date~~

In relation to each of the investment activities or services identified, a *firm* should report in this data field the total amount of *client money* that it ~~holds~~ held belonging to *clients* in respect of the activity or service in question.

A *firm* should report *client money* balances on the basis of the *client money* resource used in the internal reconciliation that the *firm* carried out on the first *business day* following the reporting period in question.

A *firm* should include in the *client money* balances the aggregate balance of any allocated but unclaimed *money* which a *firm* continues to treat as *client money*. For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact. Paragraph 8A describes how allocated but unclaimed *client money* should be identified as a separate business activity.

8D Value of *safe custody assets* as at reporting period end date

In relation to each of the investment activities or services identified, a *firm* should report in this data field the total value of *safe custody assets* that it holds belonging to *clients* in respect of the activity or service in question.

A *firm* should include in the value of *safe custody assets* the aggregate value of any allocated but unclaimed *safe custody assets* held by the *firm*. For example, *safe custody assets* held in respect of *clients* whom the *firm* is no longer able to contact. Paragraph 8A describes how allocated but unclaimed *safe custody assets* should be identified as a separate business activity.

Section 2 Balances

9 Highest *client money* balance held during the reporting period

A *firm* should report the highest total amount of *client money* that it held at any point during the reporting period.

10 Lowest *client money* balance held during the reporting period

A *firm* should report the lowest total amount of *client money* that it held at any point during the reporting period.

11 Highest value of *safe custody assets* held during the reporting period

A *firm* should report the highest total value of *safe custody assets* that it held at any point during the reporting period.

12 Lowest value of *safe custody assets* held during the reporting period

A *firm* should report the lowest total value of *safe custody assets* that it held at any point during the reporting period.

In relation to data fields 9 to 12, a *firm* should ensure that it includes in the amount or value reported any *client money* or *safe custody assets* that it is holding or in respect of which it is safeguarding and administering investments, which has or have been placed with a ~~sub-~~eustodian third party custodian, either by a ~~eustodian~~ *eustodian custodian* with which that *firm* has deposited that *money* or those assets, or by that *firm* if it is a ~~eustodian~~ *eustodian custodian*.

In relation to data fields 9 to 12, a *firm* should determine the lowest and highest figures by reference to the data that it has recorded from internal reconciliations ~~over~~ that relate to the reporting period in question.

~~Other than in relation to a CMAR submitted in January and in circumstances in which a CMAR has been submitted on time in each of the preceding eleven months, submission of a CMAR will not have an effect on a firm's categorisation as either a CASS large firm or as a CASS medium firm. As CASS 1A.2.2R indicates, a firm's obligation to determine its categorisation arises once each year in January of the year in question.~~

Section 3 Segregation of client money

13A Type

A *firm* should identify the types of institution with which it has placed *client money*. CASS 7.4.1R identifies the type of institution with which a *firm* must promptly place into one or more accounts *client money* that it receives. CASS 7.5.2R identifies a limited number of circumstances in which a *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold or control *client money*.

13B Institution where *client money* held

A *firm* should report the full name and FSA firm reference number (if applicable) of the individual legal entity with which it has placed *client money*.

13C *Client money* balances

A *firm* should report the total amount of *client money* which it has placed with each institution identified in 13B.

A *firm* should report *client money* balances on the basis of the *client money* resource used in the internal reconciliation that the *firm* carried out on the first *business day* following the reporting period in question.

A *firm* should include in the *client money* balance the aggregate balance of any allocated but unclaimed *money* which a *firm* continues to treat as *client money*. For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.

13D Country of incorporation of the institution

A *firm* should report the name of the country in which each institution with which it places *client money* is incorporated using the appropriate two letter ISO code.

13E Group entity

A *firm* should indicate in this data field whether each institution with which it has placed *client money* is or is not a relevant group entity within the meaning of CASS 7.4.9BR. A *firm* should note that the definition in CASS 7.4.9BR is specific to CASS and the entities which comprise it may not be the same as those which comprise the *firm's group*.

Section 4 Client money requirement and resource

14 *Client money* requirement

In relation to a *firm* that follows the *standard method of internal client money reconciliation*, that *firm* should report its *client money* requirement, calculated in accordance with CASS 7 Annex 1G paragraph 6.

A *firm* should report its *client money* requirement on the basis of the internal reconciliation that the *firm* carried out on the first *business day* following the reporting period in question.

~~Included~~ A *firm* should include in the *client money* requirement is the aggregate balance of any allocated but unclaimed *money* which a *firm* continues to treat as *client money*; – for For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.

The balance reported for the *client money* requirement should be inclusive of the balances also reported for data fields 15-18.

15 Unallocated to individual *clients* but identified as *client money*

This data field relates to the payment of *client* entitlements.

A *firm* should report the amount of unallocated *client money* that it holds. A *firm* may be unable to allocate ~~*client money*~~ a *client entitlement* to an individual *client* on initial receipt of that *money* because of differences in trading hours, late journal adjustments or a failure by a third party to mark *money* (such as a dividend payment) that it sends to the *firm* as being for the account of the *client* in question.

16 Unidentified *client money* in ~~*client money*~~ bank accounts

A *firm* should report the amount of *money* ~~other than *client money*~~ that is held in that *firm's client bank accounts* and *client transaction accounts* which is the subject of enquiry by that *firm* to determine whether that *money* is *client money*.

17 Uncleared payments e.g. unrepresented cheques sent to *clients*

A *firm* should report the amount of *client money* accounted for by as yet uncleared payments to that *firm's clients* drawn on a *client bank account* of the *firm*. In this data field a *firm* should therefore include all uncleared cheques and other payable orders of any age, including electronic bank payments, in favour of a *client* but which have not been paid by the bank.

18 Excess cash in segregated accounts

~~In relation to a *firm* that follows the *standard method of internal client money reconciliation*, that~~ A *firm* should report the amount of *client money* that it holds in *client bank accounts* and *client transaction accounts* which ~~exceeds the amount reported in data field 14~~ the *firm* included in its *client money* requirement as a result of the *firm's* application of CASS 7.4.21R. CASS 7.4.21R explains when such an excess might arise. A *firm* should not include balances for this data field that it is reporting in data fields 15-17.

19 *Client money* resource

~~In relation to a *firm* that follows the *standard method of internal client money reconciliation*, that *firm* should report the amount of its *client money* resource, as defined in CASS 7 Annex 1G paragraph 1 in respect of a *firm* that adopts the normal approach and as defined in paragraph 2 of that annex in respect of a *firm* that adopts the alternative approach.~~

A *firm* should report its *client money* resource on the basis of the *client money* resource used in the internal reconciliation that the *firm* carried out on the first *business day* following the reporting period in question (which should be the same internal reconciliation used by the *firm* to report its *client money* requirement in data field 14).

A *firm* should include in the *client money* resource the aggregate balance of any allocated but unclaimed *money* which a *firm* continues to treat as *client money*. For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.

20 Surplus (+)/ deficit (-) of *client money* resource against *client money* requirement

A *firm* should report in this data field the amount by which its *client money* resource exceeds its *client money* requirement (to be reported in the *data item* as a positive amount), or as the case may be, the amount by which its *client money* requirement exceeds its *client money* resource (to be reported in the *data item* as a negative amount).

Where a surplus or deficit does not exist following a *firm*'s internal *client money* reconciliation, the *firm* should report '0' for this data field.

- 21 Adjustments made to withdraw an excess or rectify a deficit identified as a result of an internal reconciliation.

~~In relation to a *firm* whose *client money* resource and *client money* requirement were shown in the penultimate internal reconciliation carried out in the reporting period to be unequal, that~~ A *firm* should report the amount of *money* that it added to correct a *shortfall* or, as the case may be, that it withdrew reflecting an excess.

In relation to data fields 14 to ~~20~~ 21, a *firm* should report by reference to the results of its internal reconciliation carried out on the reporting period end date, or if that date is not a *business day*, by reference to those carried out on the *business day* nearest to the reporting period end date the first *business day* following the reporting period in question.

Data fields 15-18 relate to *client money* balances that form part of the *client money* requirement reported in data field 14. Data fields 15-18 will not equal the *client money* requirement reported in data field 14 unless the balances reported for data fields 15-18 include all balances that are allocated to individual *clients*.

Section 5 Client money reconciliations

- 22 *Client money* internal reconciliation

A *firm* should identify in this data field the frequency with which it performs internal reconciliations.

- 23 *Client money* external reconciliation

A *firm* should identify in this data field the frequency with which it performs external reconciliations.

- 24 *Client money* unreconciled items

A *firm* should identify in this data field the number of unreconciled *client money* items and allocate each item to one of the specified time bands according to the length of time for which it has remained unreconciled.

For the purposes of this data field, the number of unreconciled *client money* items refers to the number of individual discrepancies/breaks identified as part of a *firm*'s

internal reconciliation which have remained unresolved for period of 6 calendar *days* or more.

~~For the purpose of this data field, a *firm* should calculate the number of calendar *days* between the date on which an internal reconciliation in respect of that item should have been carried out, but was not, and the reporting date.~~

A *firm* should also report the balances of these individual unreconciled items as appropriate in data fields 15-17.

Section 6 Segregation of safe custody assets

In order to complete this section a *firm* will need to group the *safe custody assets* it held at the reporting period end date by the method of registration used (25A), the means by which the assets were held (25G) and the name of the institution with which the assets were deposited (25B). Each group of *safe custody assets* so identified should be reported as a separate row.

25A ~~Where and how held~~ How registered

~~A *firm* should identify in this data field at least those:~~

- ~~(a) — *safe custody assets* which it holds in its physical possession;~~
- ~~(b) — *safe custody assets* the legal title to which is registered and recorded in the name of a *nominee company*;~~
- ~~(c) — *safe custody assets* which it has deposited with a third party custodian;~~
- ~~(d) — *safe custody assets* which, if the *firm* is a custodian, it has deposited with a sub-custodian;~~
- ~~(e) — *safe custody assets* which it has deposited with any other third party.~~

~~In relation to any asset which falls into more than one of the available categories in 25A, a *firm* should report its holding of that asset in each of the available categories. However, for validation purposes, a *firm* should enter the 25D positive value of that asset in one only of those categories and enter a value of zero in each of the other available categories. A *firm* may choose in which of the available categories it reports the 25D positive value of that asset.~~

For each group of *safe custody assets* that a *firm* (in carrying on the *regulated activity of safeguarding and administering investments*) held at the reporting period end date, the *firm* should identify the method of registration it used in accordance with CASS 6.2.3R, by specifying one of the following categories of *person* in whose name legal title to the *safe custody assets* were registered during the reporting period:

- (a) the *client*;
- (b) the *firm*;

- (c) a third party;
- (d) a nominee company which is controlled by the firm;
- (e) a nominee company which is controlled by an affiliated company;
- (f) a nominee company which is controlled by an investment exchange;
- (g) a nominee company which is controlled by a third party with whom financial instruments are deposited under CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties).

25B Name of institution where held

For each group of safe custody assets that a firm (in carrying on the regulated activity of safeguarding and administering investments) held at the reporting period end date, the A firm should report, as relevant, the identity of the nominee company to which is registered and recorded the legal title to the safe custody assets in question, or the identity of the third party institution with which it has deposited the safe custody assets. In relation to safe custody assets which it holds held in its physical possession, a firm should enter its own name in the data field.

In identifying any nominee company or third party institution in this data field, a firm should ensure that it specifies the full name or the FSA firm reference number (if applicable) of the individual legal entity with which the safe custody assets have been were deposited.

In relation to any dematerialised safe custody assets which a firm held as the sole custodian (and which are not identified in data field 25G as being deposited with a third party), the firm should report the name of the central securities depository where the safe custody assets were deposited, for example CREST, Euroclear etc.

25C Number of lines of stock

In relation to each nominee company or third party institution identified in 25B combination of registration and holding method identified in 25A and 25G, a firm should report the total number of lines of stock being safe custody assets that the firm held at the reporting period end date which in the case of a nominee company legal title has been registered and recorded in its name and in any other case which it has deposited with a third party institution. As a firm is only being asked to enter the total number of lines of stock in relation to each identified institution, it is not expected to identify separately safe custody assets belonging to an individual client.

For the purpose of this data field, a firm should treat each stock which bears its own CUSIP or ISIN number as a separate line of stock.

25D Value of safe custody assets as at reporting period end date

As at the reporting period end date, a firm should calculate the total value of the safe custody assets held by each institution identified in 25B reported on each row and enter that value in the data field. In completing 25D a firm should have regard to the guidance given in relation to 25A.

25E Country of incorporation of the institution

In relation to each institution identified in 25B, a *firm* should report the name of the country in which that institution is incorporated using the appropriate two letter ISO code.

25F Group entity

A *firm* should indicate in this data field whether each institution with which it has placed *safe custody assets* is or is not a member of that *firm's group*.

25G Where held

For each group of *safe custody assets* that a *firm* (in carrying on the regulated activity of safeguarding and administering investments) held at the reporting period end date, the *firm* should identify in this data field whether the *safe custody assets* were:

- (a) held in the *firm's* physical possession (for example bearer notes);
- (b) deposited with a third party *custodian*;
- (c) deposited with a third party exchange (this may include a central securities depository such as CREST or Euronext, where any dematerialised *safe custody assets* are registered by the *firm* in accordance with CASS 6.2.3R, but are not also deposited with a third party in accordance with CASS 6.3);
- (d) deposited with a third party *clearing house*;
- (e) deposited with a third party intermediary; or
- (f) deposited with any other third party.

Section 7 Safe Custody Assets Reconciliations26 *Safe custody assets* unreconciled items

A *firm* should identify in this data field the number of *safe custody assets* unreconciled items and allocate each item to one of the specified time bands according to the length of time for which it has remained unreconciled.

~~For the purpose of this data field, a *firm* should calculate the number of calendar *days* between the date on which an internal reconciliation in respect of that item should have been carried out, but was not, and the reporting date.~~

For the purposes of this data field, the number of *safe custody assets* unreconciled items refers to the number of individual discrepancies/custody breaks identified as part of a *firm's* external reconciliation which have remained unresolved for a specific period of time.

In relation to the “30-day field”, a *firm* should report items which have remained unreconciled for ~~no more than 30 *days*~~ at least 30 *days* but no more than 59 *days*.

In relation to the “60-day field”, a *firm* should report items which have remained unreconciled for at least ~~31~~ 60 *days*, but no more than ~~60~~ 89 *days*.

~~In relation to the 90-day field, a *firm* should report:~~

- ~~(a) — items which have remained unreconciled for at least 61 *days*, but no more than 90 *days*; and~~
- ~~(b) — items which have remained unreconciled for 91 *days* or more.~~

In relation to the “90-day field”, a *firm* should report items which have remained unreconciled for at least 90 *days*.

27A Method

In relation to each type of *safe custody asset* identified in 27C, a *firm* should report the method of internal reconciliation that it ~~applies~~ applied to that type of asset. *CASS* 6.5.2R to *CASS* 6.5.5R set out *rules* and *guidance* in relation to internal reconciliation methods.

27B Frequency

In relation to each method identified in 27A, a *firm* should report the frequency with which it ~~conducts~~ conducts internal reconciliations using that method.

27C Type of *safe custody asset*

A *firm* should report the different types of *safe custody asset* that it ~~holds~~ held and may do so using its own description of an asset type.

28 *Client bank account*

Client bank account has the same meaning as in the *Glossary* in the context of *CASS* 7 and *CASS* 7A.

28F Explanation of discrepancies

A *firm* should provide a brief explanation for any difference between the number of *client bank accounts* reported for 28D and the number of trust/acknowledgement letters to cover these accounts reported for 28E (see *CASS* 7.8.1R).

29 *Client transaction account*

Client transaction account has the same meaning as in the *Glossary*.

28F Explanation of discrepancies

A *firm* should provide a brief explanation where there is a difference between the number of *client transaction accounts* reported for 29D and the number of

trust/acknowledgement letters to cover these accounts reported for 29E (see CASS 7.8.2R).

Section 8 Record keeping and breaches

- 31 ~~Has the *firm* complied with the requirements in~~ Did the *firm* fail to comply with the requirements in any of CASS 6.5.1R, CASS 6.5.2R, and CASS 6.5.6R and CASS 6.5.10R?

~~A *firm* should indicate whether, at any point during the reporting period, it has complied in all material respects~~ failed to comply with any of the requirements set out in CASS 6.5.1R, CASS 6.5.2R and CASS 6.5.6R.

If a *firm*, having carried out a reconciliation during the reporting period, failed to comply with CASS 6.5.10R, it should also record that fact in this data field.

CASS 6.5.10R provides that a *firm* must promptly correct any discrepancies which are revealed in the reconciliations envisaged by CASS 6.5 and make good, or provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.

- 32 ~~Following reconciliation, is the *firm* unable, in any material respect, to comply with CASS 6.5.10R? If yes, was a notification made to the FSA?~~

~~If a *firm*, having carried out a reconciliation, has not complied with or is unable in any material respect to comply with CASS 6.5.10R, it should record that fact in this data field. CASS 6.5.10R provides that a *firm* must promptly correct any discrepancies which are revealed in the reconciliations envisaged by CASS 6.5, and make good, or provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.~~

If in data field 31 the *firm* has acknowledged a failure to comply with any of the specified *rules*, it should confirm in this data field whether a notification was made to the FSA in accordance with CASS 6.5.13R.

Where the *firm*'s response to data field 31 relates to multiple instances of non-compliance, it should only answer "Yes" in this data field if all instances were notified.

- 33 ~~Has the *firm* complied with the requirements in~~ Did the *firm* fail to comply with the requirements in any of CASS 7.6.1R, CASS 7.6.2R, and CASS 7.6.9R and CASS 7.6.13R to CASS 7.6.15R?

~~A *firm* should indicate whether, at any point during the reporting period it has complied in all material respects~~ failed to comply with any of the requirements set out in CASS 7.6.1R, CASS 7.6.2R and CASS 7.6.9R.

If a *firm*, having carried out a reconciliation during the reporting period, failed to comply with one or more of the obligations found in CASS 7.6.13R to CASS 7.6.15R, it should also record that fact in this data field.

CASS 7.6.13R to CASS 7.6.15R set out requirements which apply to a *firm* in relation to internal and external reconciliation discrepancies.

- 34 ~~Following reconciliation, is the *firm* unable, in any material respect, to comply with CASS 7.6.13R to CASS 7.6.15R. If yes, was a notification made to the FSA?~~

~~If a *firm*, having carried out a reconciliation, has not complied with or is unable to comply with one or more of the obligations found in CASS 7.6.13R to CASS 7.6.15R, it should record that fact in this data field. CASS 7.6.13R to CASS 7.6.15R set out requirements which apply to a *firm* in relation to internal and external reconciliation discrepancies.~~

If in 33 the *firm* has acknowledged a failure to comply with any of the specified *rules*, it should confirm in this data field whether a notification was made to the FSA in accordance with CASS 7.6.16R.

Where the *firm*'s response to 33 covers multiple instances of non-compliance, it should only answer "Yes" in this data field if all instances were notified.

In relation to data fields 31 and 33, a *firm* should ~~only report in the affirmative~~ answer "Yes" if it failed to comply with any of the ~~has been in compliance with the~~ *rules* specified in those data fields at ~~all times throughout any point during the reporting period in question, whether or not it is in compliance at the end of the reporting period.~~

A *firm*'s responses to data fields 31 and 33 should only relate to breaches that occurred within the particular reporting period in question and not to any breach that may have occurred in a previous reporting period, even if the breach remains unresolved.

A *firm* should answer "N/A" as appropriate to data fields 31 and 33 if it did not hold *client money* or *safe custody assets* during the reporting period.

In relation to data fields 32 and 34, a *firm* should ~~report the fact of its non-compliance if it has any time during the reporting period failed to comply with the specified *rules* in the way envisaged by CASS 6.5.13R(2) and CASS 7.6.16R(2), whether or not it is in compliance at the period end date only~~ answer "Yes" if the *firm* has acknowledged any breaches in data fields 31 or 33, and all such breaches were notified as required within the reporting period in question.

CASS 6.5.13R and CASS 7.6.16R require that the FSA be informed without delay of any of the matters in respect of which notification is required by those *rules*. Submission of the CMAR within the time limit specified in SUP 16.14.3R does not discharge the obligations in those *rules* and a *firm* remains obliged to notify the FSA as soon as it becomes aware that any of the circumstances described in those *rules* has arisen.

A firm should answer 'N/A' for data fields 32 and 34 if the firm has answered either 'No' or 'N/A' for data fields 31 and 33 respectively.

Section 9 Outsourcing and offshoring

In relation to its business that is subject to CASS, a firm should report in data field 35 outsourcing and offshoring arrangements that it has established which it judges to be material to that business, either by reason of their scale or their importance.

For the purposes of data fields 35A to 35D, 'outsourcing' refers to where a firm outsources part of its client money and/or custody asset operations to a third party and 'offshoring' refers to where a firm's client money and/or custody asset operations are managed through a branch established by it outside of the UK.

35A Who do you outsource or offshore your client money and/or custody asset operations to?

A firm should state either:

(a) the full name of the legal entity that business has been outsourced to;
or

(b) if the business is offshored, the name of the firm itself.

An FSA firm reference number should also be provided for any firm which is authorised by or registered with the FSA.

Validation

Validation number	Data element	Sign	Formula
1	8B	=>	0 (NIL)
2	8C(total)	=	$8CT = \sum 8C$
3	8C (total)	=	$8CT = 13CT$
4	8D (total)	=	$8DT = \sum 8D$
5	8D (total)	=	$8DT = 25DT$
6	10A	<=	9A
7	12A	<=	11A
8	13C(total)	=	$13CT = \sum 13C$
9	20A	=	19A-14A
10	25D(total)	=	$25DT = \sum 25D$
11	28D	=	28A+28B-28C
12	29D	=	29A+29B-29C
13	30D(total)	=	$30DT = 28D + 29D$

Appendix 2

Designation of Handbook Provisions

FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website¹ for further details about this process.

We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
CASS 1A CASS 8 CASS 9 CASS 10	FCA
SUP 16	The provisions of SUP 16 are currently subject to internal review and have not yet been designated.

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¹ One-minute guide <http://media.fsahandbook.info/latestNews/One-minute%20guide.pdf>

PUB REF: 004503

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