FINANCIAL CONDUCT AUTHORITY

Consultation Paper

CP24/20***

Changes to the safeguarding regime for payments and e-money firms

September 2024

How to respond

We are asking for comments on this Consultation Paper (CP) by **17 December 2024**.

You can send them to us using the form on our website.

Or in writing to:

Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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Chapter 1

Summary

Why we are consulting

What is safeguarding and why does it matter?

1.1 Payment institutions, e-money institutions and credit unions that issue e-money (collectively Payments Firms) are required to protect funds received in connection with making a payment or in exchange for e-money issued (relevant funds). Payments Firms must do this immediately on receiving the funds. These requirements are designed to protect consumers so that if a firm fails, consumers receive the maximum value of their funds as quickly as possible. Effective safeguarding minimises, so far as possible, the risk of shortfalls in relevant funds, delays or difficulties in identifying consumer entitlements and the costs incurred in returning funds during an insolvency.

1.2 Current safeguarding requirements are set out in the Payment Services Regulations 2017 (PSRs) and E-Money Regulations 2011 (EMRs). While we have issued guidance on these provisions in our Approach Document, there remain poor practices across the industry due to poor implementation of the regulatory framework. Our supervision teams have seen an increase in the number of firms with safeguarding issues. In 2023, we opened supervisory cases relating to approximately 15% of firms that safeguard, to address concerns about their safeguarding arrangements. Inadequate safeguarding has resulted in significant consumer harm where firms have failed and entered insolvency. (See our March 2023 letter to the Chief Executives of regulated payments firms and Chapter 2.)

1.3 For firms that became insolvent between Q1 2018 and Q2 2023, there was an average shortfall of 65% in funds owed to clients (difference between funds owed and funds safeguarded). Deficiencies in safeguarding rules were also noted in the Payment Services Regulations Review and Call for Evidence by His Majesty's Treasury (the Treasury). The review suggested that, in line with the repeal of assimilated EU law under the Financial Services and Markets Act 2023, responsibility for developing detailed safeguarding requirements could be transferred to us, noting our experience of the client assets regime (CASS). In the review, the Treasury invited us to consult on changes to the current safeguarding regime.

Who this applies to

1.4 Our proposed rules will apply to all:

- authorised payment institutions
- e-money institutions
- small e-money institutions
- credit unions who issue e-money in the United Kingdom under the PSRs and EMRs.

1.5 In addition, small payment institutions (SPIs) will continue to be able to opt-in to comply with safeguarding requirements on a voluntary basis. Small e-money institutions and credit unions (that are required to safeguard funds received in exchange for e-money) will also continue to be able to opt-in to the safeguarding requirements for any payment services they provide which are unconnected with issuing e-money. Our proposed rules will also apply to EEA firms in supervised run-off (SRO) under the financial services contracts regime (FSCR). Our rules will not apply to firms subject to unsupervised 'contract run off'.

1.6 This Consultation Paper (CP) will also interest:

- consumers of Payments Firms
- consumer groups
- insolvency practitioners (IPs)
- auditors
- professional advisers including lawyers and accountants
- providers of safeguarding accounts, custodians of assets used for safeguarding purposes, and firms who provide insurance or guarantees to Payments Firms responsible for safeguarding relevant funds

What we want to change

1.7 In line with our statutory objectives to protect consumers and markets and our 2023/24 Business Plan commitment to reduce harm from firm failure, we want to improve the safeguarding regime to ensure that:

- funds received in exchange for issued e-money or received for the execution of a payment transaction are held safely and securely by Payments Firms at all times or are covered by appropriate insurance policy or comparable guarantee
- the right amount of funds are segregated from the firm's own funds
- it is clear that the funds are held on behalf of consumers
- the claims of e-money holders or payment service users can be met from the asset pool and that these claims take priority over other creditors
- safeguarded funds can be returned to consumers as quickly, and as whole, as possible in the event a Payments Firm fails

Outcome we are seeking

1.8 The risks of consumer harm set out above also exist in the sectors where the CASS regime currently applies and we have sought to mitigate them through those rules. The CASS regime is well established and currently applies to around 3,500 firms collectively holding approximately £18 trillion of custody assets and £183 billion of client money. The regime has been strengthened over the last 20 years, particularly to reflect lessons learned following the previous financial crisis and new sectors we regulate (eg debt management firms) and is a good framework to draw on in designing our proposed safeguarding requirements. In developing our safeguarding proposals, we have adapted the approaches in the existing CASS rules to reflect payment services.

1.9 We want to address weaknesses in the current safeguarding approach and ensure that consumer money is safe by:

- minimising shortfalls in safeguarded relevant funds
- ensuring these funds are returned as cost-effectively and quickly as possible
- strengthening our ability to identify and intervene in firms that do not meet our safeguarding expectations to ensure these outcomes are met.

1.10 We propose to make changes to the safeguarding regime in 2 stages – the interim and end-state – and are consulting on rules and guidance for both stages of our proposed regime:

- Interim rules to
  - support a greater level of compliance with existing safeguarding requirements as set out in the EMRs and PSRs
  - support more consistent record keeping
  - enhance reporting and monitoring requirements to identify shortfalls in relevant funds, and improve supervisory oversight
- End-state rules that replace the safeguarding requirements of the EMRs and PSRs with a 'CASS' style regime where relevant funds and assets are held on trust for consumers. This second stage will address remaining shortcomings of the regime when the revocation of the safeguarding requirements in the PSRs and EMRs by the Financial Services and Markets Act 2023 is commenced.

1.11 We are consulting on interim rules that we can make ahead of this to address concerns around current safeguarding practices. These rules should improve the protection of safeguarded funds held by Payments Firms and the outcomes for consumers if a firm fails.

1.12 The interim rules are designed to achieve the following outcomes:

- Provide additional clarity and detail in our rules so that all Payments Firms that safeguard relevant funds have adequate policies and procedures to the same base standard, creating a level playing field.
- Strengthen our ability to identify and intervene against Payments Firms that do not meet the safeguarding requirements set out in the PSRs and EMRs.
- Monitor trends in the sector through enhanced reporting requirements (eg a monthly regulatory return) to facilitate targeted proactive supervision.
- Help firms hold the right amount of safeguarded funds at all times, with appropriate systems and controls in place.
- Help ensure firms conduct due diligence when considering which institutions (eg authorised credit institution or authorised custodian) they hold relevant funds or assets with and that the relevant funds are appropriately diversified.

1.13 The end-state rules are designed to achieve the following outcomes, in addition to the outcomes set out above for the interim rules:

- Strengthen protection of consumers' rights and provide greater legal certainty by imposing a statutory trust over safeguarded funds, so that consumers remain the beneficial owners, with the firm acting as trustee over those funds.
- Apply established principles of trust law to protect the funds from the claims of other creditors should the firm fail.

How these changes will be implemented

1.14 The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (the rulemaking SI) gave us broader powers to make rules for Payments Firms, including for safeguarding. We now have powers that broadly mirror those in sections 137A, 137B and 340 of the Financial Services and Markets Act 2000 on authorised persons. Our proposed rules will be introduced using these powers.

1.15 We propose creating detailed rules and guidance for Payments Firms, setting out how firms must protect the funds they hold on behalf of consumers. Some aspects of our proposal seek to address gaps in the current regime or align it with similar requirements in the FCA Handbook's Client Assets Sourcebook (CASS) and Supervision Manual (SUP). Other aspects codify the existing guidance in our Approach Document by moving relevant provisions into our Handbook.

1.16 In the interim, most of the proposed rules will be set out in a new Chapter 15 of the Client Asset Sourcebook (CASS). Our proposals will also add new rules into the FCA's Supervision Manual (SUP). A new Chapter SUP 3A will include new audit requirements and a new sub-chapter in SUP 16 will introduce the requirement for a new regulatory return to be submitted monthly by firms. Where the interim rules cover the same ground as guidance in Chapter 10 of the Approach Document, we will remove or amend that guidance to reflect our new rules.

1.17 In the end state, we propose to amend the rules in Chapter 15 of CASS which will replace the safeguarding requirements set out in legislation (the PSRs and the EMRs). We will also make any necessary consequential amendments to the Approach Document to reflect the removal of Chapter 10. The proposed end-state rules will include the imposition of a statutory trust over 'relevant funds' (as defined in our proposed rules).

1.18 A full summary of our proposed CASS and SUP rules (for both interim and end state) are in Chapter 3 of this CP. The proposed new CASS rules are in Annex B and our proposed new SUP rules are in Annex C. In the interim rules "[to follow]" indicates text that will be inserted by the end-state rules. We do not intend to consult separately on the changes to the Approach Document mentioned above as they are consequential to the proposed rules. We have proposed an implementation period to give firms time to implement the new rules and have proposed transitional provisions in Chapter 8 of this CP.

1.19 Following this consultation, we intend to continue to work with the Treasury to review and consult on the rest of the regime currently set out in the PSRs and EMRs, with a view to moving the firm facing requirements into the Handbook.

1.20 In 2021, the Payment and Electronic Money Institution Insolvency Regulations 2021 established the Payments and Electronic Money Special Administration Regime (PESAR). This special administration regime introduced an additional objective for insolvency practitioners to ensure the return of relevant funds as soon as reasonably practicable. As it is not compulsory for a Payments Firm to enter the PESAR, we also propose to introduce rules for where a Payments Firm fails and enters an insolvency procedure other than the PESAR. Similar to the PESAR, these rules will specify how to distribute funds to consumers when a firm fails. This aims to provide clarity for firms and Insolvency Practitioners. We are also proposing to make rules to mitigate the impact of the failure of a third party used for safeguarding purposes. We intend to consult on these rules separately, at a later stage, but before implementing the end-state rules.

Measuring success

1.21 We intend to measure success as follows:

- A reduction in value of the shortfall of relevant funds if a Payments Firm fails. This should maximise the money returned to consumers.
- A fall in the number of supervisory cases that are raised relating to safeguarding and fewer formal interventions such as requirements are imposed based on failures to comply with safeguarding requirements. While this number may rise in the short term because of enhanced reporting and audit requirements, we would ultimately expect the number to fall.

Next steps

1.22 Please respond to the consultation by 17 December 2024. We plan to publish final interim rules with an accompanying policy statement within the first six months of 2025.

Chapter 2

The wider context

The harm we are addressing

2.1 The current safeguarding regime was designed to support competition, innovation, and consumer protection in a developing sector. The sector now has more complex business models and the number of consumers has increased. According to our Financial Lives survey data, the proportion of consumers using an e-money account has consistently grown, from 1% in 2017, to 4% in 2020, and to 7% in 2022. Payment institutions onboarded 14 million consumers in 2022, up from 12 million in 2021. There is an increasing reliance on the sector (approximately 1 in 10 e-money holders in the UK are using e-money accounts as their main day-to-day transactional accounts). E-money issuers held approximately £18 billion of funds in safeguarding accounts in 2023, an increase from £11 billion in 2021, and we estimate that Payments Firms held £5 billion in relevant funds on any given day last year.

2.2 The growth in number of consumers serviced by the sector and in the amount of safeguarded funds held by Payments Firms means a greater share of the UK population is likely to be exposed to harm if there is a shortfall in safeguarded funds, or a delay in their return to consumers.

2.3 Consumer harm could be particularly widespread if a large Payments Firm with poor safeguarding practices failed. There may be significant costs of distribution, as well as shortfalls in the safeguarded funds held. Insolvency Practitioners (IPs) would likely need to spend time resolving which funds should be allocated to consumers and returning these. The failure of a Payments Firm could cause wider harm to the market if it held funds on behalf of other regulated firms, which in turn could see those firms fail.

2.4 We are particularly concerned about the risks of harm to vulnerable consumers. Our Financial Lives 2022 survey showed that 40% of e-money account holders had at least one characteristic of vulnerability, such as a low resilience to financial shocks. Vulnerable consumers are likely to be more reliant on e-money funds for day-to-day transactions, accessing salaries, or paying household bills. Payments Firms (in particular money remitters) service diaspora communities and financially vulnerable consumers. We welcome the provision of services to these groups. But we want to ensure appropriate standards are in place to protect consumers from harm.

2.5 If a Payments Firm's UK safeguarding bank were to fail, the Financial Services Compensation Scheme (FSCS) may be able to 'look-through' the Payments Firm to compensate the Payments Firm's customers. However, FSCS cover does not apply where the Payments Firm itself fails. Because of this, and the risks described above, consumers may lose money if their Payments Firm fails. They are also likely to face significant delays in receiving relevant funds while the insolvency progresses. This will have the most severe impact on financially vulnerable consumers, who may need to borrow money and go into debt if they are unable to access their funds for an extended period. These consumers may be affected by even small losses.

2.6 We have given a more detailed analysis of the trends in the payment and e-money sectors, and the risks to consumers, in our cost benefit analysis.

Poor safeguarding practices and limited regulatory oversight

2.7 We provide guidance in our Approach Document to address various risks arising from the high-level nature of the safeguarding requirements set out in the PSRs and EMRs.

2.8 We welcome competition and innovation in the payments sector, as set out in our March 2023 Portfolio letter: FCA priorities for payments firms. However, we are concerned that many Payments Firms do not have sufficiently robust safeguarding practices. There is insufficient detail in the requirements to ensure consistent standards across the industry, help firms properly implement the requirements in a way that achieves intended outcomes or provide adequate data for us to effectively monitor firms' safeguarding arrangements.

2.9 Poor safeguarding practices mean that relevant funds may not be appropriately protected if a Payments Firm enters an insolvency process. In our letter, we outlined common shortcomings we see in safeguarding practices including: (i) a lack of documented processes for consistently identifying which funds must be safeguarded; (ii) inadequate reconciliation procedures to ensure that the correct sums are protected on an ongoing basis; and (iii) a lack of due diligence and acknowledgement of segregation from credit institutions providing safeguarding accounts. As a result, some Payments Firms present an unacceptable risk of harm to their consumers and market integrity.

2.10 While many Payments Firms have welcomed further guidance, we have found that it is inconsistently applied across the sector. Payments Firms have also requested additional clarity to the safeguarding requirements including, for example, the approach to carrying out reconciliations.

2.11 When firms enter insolvency proceedings, these shortcomings can result in a shortfall in relevant funds; delay in, or inability to, identify consumer entitlements; increased insolvency costs, which subsequently reduces the amount of funds available to return to consumers; and delays in the insolvency process.

2.12 Moreover, current regulatory reporting on safeguarded funds is limited, reducing our ability to effectively supervise Payments Firms. For instance, we do not receive sufficient or timely data about the volumes of safeguarded funds or where they are held. Infrequent and light touch regulatory reports also limit our ability to quantify and assess the risk where a Payments Firm fails or is at risk of failing.

Legal uncertainty following the insolvency of Ipagoo LLP

2.13 In addition to poor safeguarding practices, we see risks of harm from the current legal framework which applies when a firm enters an insolvency process. The Court of Appeal judgment in the case of Ipagoo LLP [2022] EWCA Civ 302 ruled that the EMRs do not

create a statutory trust over funds received from e-money holders. The Court also ruled that when there is a shortfall in an insolvent E-Money Institution's (EMI) safeguarded asset pool, it should be topped-up.

2.14 The judgment has left many questions unanswered as to the status of safeguarded funds on insolvency. The approach taken was novel, and there is uncertainty as to how the top-up should rank against claims of other creditors, such as those with fixed charges over firm assets. There are also, contrary to a trust, no well-established legal principles that can be easily applied to deal with questions that arise in the distribution process. When firms do enter an insolvency process, IPs have continued to seek directions from the Court on the treatment of the safeguarded asset pool, leading to higher costs and delays in returning funds to consumers. These issues exist even when firms enter the PESAR.

2.15 A subsequent Court judgment following the insolvency of Allied Wallet [2022] EWHC 1877 (Ch) ruled that the Ipagoo judgment extends to the PSRs. This means relevant funds held with authorised payment institutions are also not subject to a statutory trust, creating similar issues of legal ambiguity.

How it links to our objectives

Consumer protection

2.16 In the interim, enhanced reporting, monitoring and record keeping requirements should support early identification of shortfalls in safeguarded funds. Firms will know and document what they are holding for whom through maintaining accurate and accessible records. This will reduce the risk of shortfalls in relevant funds where a firm becomes insolvent and will lead to improved consumer protection.

2.17 Introducing the statutory trust in the end-state proposals will address legal uncertainty. This will ensure faster distribution and reduce the cost of distribution when a firm fails. In addition, the end-state proposals also require principal firms to either receive relevant funds directly instead of their agents and distributors or to safeguard an estimate of the relevant funds held by their agents and distributors. This will address risks arising from a lack of oversight of agents and distributors and reduce the complexity of distribution where firms have a high number of agents and distributors. This should help to ensure that consumers' funds are returned as quickly and as whole as possible.

Market integrity

2.18 In the interim, more prescriptive rules on safeguarding will help early identification of potential risk factors. For instance, where a firm is unable to top up if there are shortfalls in the relevant funds. Where this is the case, solvent wind downs will increase confidence in the payment and e-money sectors by minimising the loss of relevant funds and strengthen market integrity. Where firms do fail, they can do so in a more orderly manner.

2.19 Our end-state rules require firms to receive safeguarded funds into a designated safeguarding account with an authorised credit institution (referred to as 'relevant funds bank accounts' in the draft rules) to ensure they are adequately segregated from other funds. This will not apply to funds received through an acquirer or an account used to participate in a payment system. This will improve market integrity by reducing the risk of operational disruption and contagion risk were a non-bank provider of safeguarding accounts to fail.

Competition

2.20 Higher standards and a consistent approach to safeguarding requirements will support competition within the wider payments and e-money market. More detailed rules will help level the playing field among Payments Firms, by removing inconsistencies in their approaches and allowing them to understand more easily what is required. Fewer disorderly failures will also encourage new market entrants and facilitate their introduction of innovative payment products to the sector.

2.21 Our end-state proposals will give additional clarity on the treatment and status of relevant funds. This may give additional certainty for investors where there is secured lending and incentivise greater levels of investment in the sector.

Secondary international competitiveness and growth objective

2.22 We consider our proposals will improve consumer protection, support competition and strengthen market integrity, our primary objectives. Our proposals also advance our secondary international competitiveness and growth objective (SICGO) by fostering trust in the UK payments sector and supporting an attractive environment for doing business.

2.23 They will improve client protections through reduction in shortfalls and the faster return of client funds. This helps ensure there is limited disruption to firms' users, maintaining trust and confidence in the UK payments sector even when firms fail.

2.24 There is a risk that any costs that arise due to our proposals may be passed on to consumers through higher fees or cutting other operational costs. However, competitive constraints limit the extent to which firms can pass on costs or reduce costs which impact the quality of their offer.

2.25 The costs may lead some Payments Firms to move their operations abroad while continuing to serve UK clients. Firms may also exit the market, which may reduce the number of services. However, there are a large number of active participants in the sector, including retail banks, so we do not believe that our proposals will affect competitiveness.

2.26 As set out in our Cost Benefit Analysis (Annex 2), we consider the costs to be proportionate and able to be absorbed by Payments Firms without the need for significant adjustments to their operations. We also note that there are limited business models where firms could establish overseas and continue to serve UK markets.

The Consumer Duty

2.27 Our proposals sit alongside the requirements for payment firms set out in the Consumer Duty. The Consumer Duty (the Duty) came into effect on 31 July 2023 for

new and existing products or services that are open to sale or renewal. It came into force for closed products on 31 July 2024. The Duty requires firms to act to deliver good outcomes for their retail consumers. A good consumer outcome includes keeping consumer money safe.

2.28 Our letter of 21 February 2023 reminded Payments Firms of their obligations under the Duty, including safeguarding. Notwithstanding our proposed changes to the safeguarding regime, firms will need to continue to have regard to those obligations. For example, highlighting where appropriate that they are not banks, and that funds which they hold are protected by safeguarding arrangements rather than by the FSCS.

Environmental, social & governance considerations

2.29 In developing this CP, we have considered the environmental, social and governance (ESG) implications of our proposals and our duty under ss. 1B(5) and 3B(1)(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under s. 5 of the Environment Act 2021. Overall, we do not consider that the proposals are relevant to contributing to those targets. We will keep this issue under review during the consultation and when considering whether to make the final rules.

Consultation with CBA Panel

2.30 We have consulted the Cost Benefit Analysis (CBA) Panel in preparing the CBA included in Annex 2, in line with the requirements of s138IA(2)(a) FSMA. A summary of their main recommendations and our subsequent changes are in the Consultation with the FCA Cost Benefit Analysis Panel section of the CBA.

Equality and diversity considerations

2.31 Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010 (in Northern Ireland, the Equality Act is not enacted but other antidiscrimination legislation applies).

2.32 Our proposals will likely have an impact on smaller Payments Firms which may be more likely to provide services to diaspora communities in the UK (eg money remittance services). However, we expect our proposals will protect consumers from heightened risks in current safeguarding models. This includes vulnerable consumers who are at most risk of suffering harm if their funds are not adequately safeguarded.

Chapter 3

Summary of the proposed safeguarding regime for payments and e-money firms

3.1 As set out in the previous chapters, we are proposing to provide additional rules and guidance on safeguarding obligations. This is to help firms achieve the outcomes set out above.

3.2 Our proposed changes cover the themes outlined in table 1 below and summarised here. As set out in Chapter 1, we propose to bring in the new safeguarding obligations in two-stages. We have designed the end state to build on the changes contained in the interim state to minimise disruption to firms so far as possible.

3.3 The obligations will be added to the CASS and SUP chapters of the FCA Handbook.

3.4 In the interim state, which we propose to introduce in advance of legislative change, our proposed rules will supplement the current safeguarding requirements in the PSRs and EMRs.

3.5 In the end state, the rules will entirely replace the current safeguarding requirements in the PSRs and EMRs when their revocation is commenced.

3.6 The key features of our **interim-state** proposals are:

- Improved books and records
  - More detailed record-keeping and reconciliation requirements for safeguarding, building on existing guidance and similar to existing requirements set out in CASS 7 for investment firms.
  - Requirement to maintain a resolution pack, including requirements on the types of documents and records to be included.
- Enhanced monitoring and reporting
  - Requirement to complete a new monthly regulatory return to be submitted to us covering safeguarded funds and safeguarding arrangements.
  - Requirement to have compliance with safeguarding requirements audited annually, with the audit submitted to us.
  - Requirement to allocate oversight of compliance with the safeguarding requirements to an individual in the Payments Firm.
- Strengthening elements of safeguarding practices
  - Additional safeguards where Payments Firms invest relevant funds in secure liquid assets.
  - Requirements to consider diversification of third parties with which Payments Firms hold, deposit, insure or guarantee relevant funds that it is required to safeguard and due diligence requirements.

- Additional safeguards and more detailed requirements on how Payments Firms can safeguard relevant funds by insurance or comparable guarantee.

3.7 The key features of our **end-state** proposals are:

- Strengthening elements of safeguarding practices
  - More robust requirements on how Payments Firms must segregate and handle relevant funds. This will include requiring that Payments Firms receive relevant funds directly into an appropriately designated account at an approved bank, except where funds are received through an acquirer or an account used to participate in a payment system.
  - Agents and distributors cannot receive relevant funds unless their principal Payments Firm safeguards sufficient funds in designated safeguarding accounts to cover the funds expected to be received and held by their agents or distributors.
- Holding funds under a statutory trust
  - Imposition of a statutory trust over relevant funds held by a Payments Firm, and relevant assets, insurance policies/guarantees and cheques.
  - Additional detail around when the safeguarding obligation starts and funds become subject to the trust.

3.8 These proposals are informed by our experience in regulating firms that safeguard client money or custody assets in other sectors (such as investment firms, general insurance intermediaries, debt management firms and claims management companies) as well as the risks that we have seen in the payments sector as part of our supervisory work.

Table 1: Summary of key proposals

Main proposals	Interim-state proposals	End-state proposals (in addition to interim-state proposals)
Improved books and records	• Enhanced record keeping and reconciliation requirements • Requirement to maintain resolution pack	• Updated record keeping and reconciliation requirements
Enhanced monitoring and reporting	• Requirement for firms to have safeguarding practices audited by an external auditor, with the safeguarding audit submitted to the FCA. • Requirement for firms to complete a monthly safeguarding regulatory return	

Main proposals	Interim-state proposals	End-state proposals (in addition to interim-state proposals)
Strengthening elements of safeguarding practices	• Requirements to exercise due skill, care and diligence in selecting and appointing third parties • Requirements to consider the need for diversification • Additional requirements on how Payments Firms can safeguard relevant funds by insurance or comparable guarantee	• Relevant funds must be received into a designated safeguarding account at an approved bank, with the exception of funds received through an acquirer or an account used to participate in a payment system. • Agents and distributors cannot receive relevant funds unless the principal Payments Firm safeguards the estimated value of funds held by agents and distributors in a designated safeguarding account. • Additional requirements when Payments Firms only safeguard relevant funds by insurance or comparable guarantee

Holding funds etc. under a statutory trust		• Payment firms will receive and hold the following under a statutory trust:
		  ◦ Relevant funds; and
		  ◦ Assets, insurance policies and guarantees used for safeguarding.

Chapter 4

Improved books and records

Record-keeping, reconciliation and resolution packs

Issues and proposed changes

4.1 We are concerned that many firms have inadequate processes for identifying relevant funds and performing reconciliations to help ensure these funds are protected on an ongoing basis. This means it can be difficult for a firm to distinguish relevant funds from its own money. Also, when a firm fails it is difficult for an IP to quickly identify and distribute relevant funds. IPs will have difficulty determining which funds are relevant funds, and available for distribution, and in what proportion consumer claims should be paid from a firm's asset pool. This leads to delays in distributing relevant funds to consumers, and often reduces the amount of money returned to consumers.

4.2 Robust record-keeping and reconciliation requirements will help firms put in place adequate processes to protect relevant funds. Complying with these requirements will help firms ensure that issues or shortfalls in safeguarded funds are identified in a timely manner and that any shortfalls in safeguarded funds are made good by the firm as early as possible. These requirements can also help to improve the speed of distribution if a firm fails.

Proposed provisions for interim state

4.3 Our proposed record-keeping and reconciliation rules will largely codify and build on the existing guidance in Chapter 10 of our Approach Document. These are:

- **Policies and procedures:** Firms will be required to establish, implement and maintain adequate policies and procedures to help ensure compliance with the safeguarding provisions in the EMRs and PSRs, and the safeguarding rules.
- **Records and accounts:** Firms will be required to maintain accurate records and accounts to enable it, at any time and without delay, to distinguish between relevant funds and other funds.
- **Internal relevant funds reconciliations:** Firms will be required to perform reconciliations, at least once each business day and in line with the method set out in the proposed rules, to help ensure they are safeguarding the required amount of relevant funds. Internal relevant funds reconciliations will be based on the values contained in their internal records and ledgers, rather than in the records they get from third parties such as banks.
- **External relevant funds reconciliations:** Firms will be required to perform reconciliations, at least once each business day and in line with the method set out in the proposed rules, to compare the balances recorded in their internal records to those of third parties. External relevant funds reconciliation helps to ensure the accuracy of Payments Firms' internal records and accounts.

- **Discrepancies:** Firms will be required to determine the reason for any discrepancy or difference identified by its reconciliations. Where an internal relevant funds reconciliation identifies a difference between the safeguarding resource and the safeguarding requirement, a firm would be required to determine the reason for the discrepancy and ensure that any shortfall is paid into a relevant funds bank account or any excess is withdrawn by the end of the business day on which the reconciliation is performed. Where an external reconciliation identifies a discrepancy, a firm would be required to investigate the reason for the discrepancy and resolve it, unless it arose solely as a result of timing differences.
- **Notification requirements:** Firms will be required to inform us in writing and without delay if: their internal records are materially out of date, inaccurate or invalid; they will be unable to perform an internal or external reconciliation; it will be unable to remedy a discrepancy in its reconciliations; at any time in the previous year there was a material difference between the amount of relevant funds they were safeguarding and the amount they should have been safeguarding. This is in addition to other notification requirements.

4.4 Firms will also be required to maintain a resolution pack to help ensure they maintain and are able to retrieve information that would: help an IP achieve a timely return of relevant funds to consumers; in the event of another firm's resolution help the Bank of England or FSCS; and in both cases help the FCA in the event of insolvency. Under the proposed rules specified documents must be able to be retrieved within 48 hours.

Proposed provisions in end state

4.5 In the end state, we will update our rules on policies and procedures and resolution packs requirements to reflect end-state requirements. For instance, the reconciliation requirements will reflect the proposed rules on when the trust begins and ends.

4.6 We propose rules on organisational arrangements to reduce the risk that relevant funds will be lost as a result of fraud, poor record keeping, or negligence. This will replace the existing requirements in regulations 23(17) of the PSRs and 24(3) of the EMRs and include a requirement to ensure that firms have policies and procedures to identify and determine which funds are relevant funds when a firm undertakes activities that are not payment activities or the issuance of e-money.

Question 1: **Do you agree with our proposed rules and guidance on record-keeping, reconciliation of relevant funds and the resolution pack in both the interim and end state? If not, please explain why.**

Question 2: **To what extent will firms incur operational costs relating to record keeping, reconciliation and resolution packs when moving from the interim to end state?**

Chapter 5

Enhanced monitoring and reporting

Safeguarding audits

Issues and proposed changes

5.1 As set out earlier, compliance with the safeguarding requirements in the PSRs and EMRs varies significantly across the sector. We have seen significant shortcomings in how some Payments Firms understand and comply with the safeguarding obligations under the PSRs/EMRs and the guidance set out in our Approach Document.

5.2 Paragraph 10.71 of the Approach Document sets out that we expect firms to arrange specific annual audits assessing their compliance with the safeguarding requirements under the PSRs and EMRs where they are required to arrange statutory audits of their accounts under the Companies Act 2006. The audit should be carried out by an audit firm or another independent external firm or consultant with the appropriate specialist skillset. The auditor of a Payments Firm is required to tell us if it becomes aware of a breach of any of the requirements imposed by or under the PSRs or EMRs. However, auditors do not have to submit their audits to the FCA for review.

5.3 Safeguarding audits are important in identifying failings in a firm's safeguarding arrangements. These audits facilitate oversight and assurance of firms' controls, with a view to ensuring that firms have the necessary systems and controls to protect relevant funds at all times. They also give firms and us the opportunity to review and remedy weaknesses in a firm's safeguarding arrangements.

5.4 Regular and robust safeguarding audits would help to improve firms' safeguarding arrangements, systems and controls, and increase compliance with the safeguarding requirements. These audits would allow firms to independently verify their safeguarding policies, processes and practices, and to address any breaches of the safeguarding requirements to improve consumer protection. The proposed safeguarding audits would also help us identify firms that pose the most risk and help to ensure that they comply with the safeguarding regime. Drawing on evidence from the investment sector, which is subject to CASS audit requirements, we have seen improvements in CASS compliance: the trend in adverse audits (poor compliance) decreased from a peak of 14% of received reports for 2016, to 8.3% of 2021 reports.

5.5 We considered in particular whether the audit requirement should apply to small EMIs given the costs of the audits. However, we are keen to maintain parity across the sector as much as possible and not limit our ability to embed a standardised approach to auditing requirements. We also consider the costs of the requirement to be proportionate to the benefits of improving safeguarding compliance.

Proposed provisions for interim state

5.6 We propose to codify the requirement for a safeguarding audit in rules, and to extend it to all Payments Firms other than payment initiation service providers, SPIs and credit unions that issue e-money. The rules will apply to SPI's and credit unions that issue e-money as guidance. The audit requirement will apply whether or not a Payments Firm was required to safeguard relevant funds during the period the audit relates to. If they were not, the rules will require the audit to be prepared in line with the terms of a limited, rather than reasonable, assurance engagement.

5.7 In summary, we propose to introduce provisions on:

- Firms' appointment of the external safeguarding auditor. Firms will be required to appoint an independent, qualified auditor to carry out the safeguarding audit, and to take reasonable steps to ensure the auditor has the required skill, resources and experience,
- the appointment of an auditor for a firm if it fails to appoint an auditor within 28 days of being required to do so,
- firms' duty to co-operate with the auditor in the discharge of the auditor's duties in relation to the safeguarding audit
- an auditor's duty to cooperate with us in the discharge of its functions under the PSRs and the EMRs
- an annual audit report, in a prescribed format, is to be submitted by firms' auditors to us, confirming:
  - whether the firm had maintained systems adequate to comply with the applicable safeguarding requirements
  - whether the firm was in compliance with those requirements at the end of the audit period
  - details of any breaches
  - the remedial actions taken (if any) by the firm and the circumstances that gave rise to the breach

5.8 An audit standard will be produced by the Financial Reporting Council and auditors will be required to specify which standard and guidance was used to carry out the audit. Auditors will be required to submit the safeguarding audit report to us within 4 months of the end of the period to which it relates. Full details of the form of the report that auditors will be expected to submit are in Annex C in Appendix 1.

Proposed provisions in the end state

5.9 We will amend the requirements set out in the interim state to reflect the new safeguarding regime in the end-state rules.

Question 3: **Do you agree with our proposals for requiring external safeguarding audits to be carried out in both the interim and end state? If not, why not?**

Question 4: **Do you agree with our proposals to require that safeguarding audits are submitted to us? If not, why not?**

Question 5: **Do you agree that small EMI's should be required to carry out an annual safeguarding audit? If not, why not?**

Safeguarding reporting

Issues and proposed changes

5.10 We currently have limited data on safeguarding in the payments and e-money sector. Payments Firms only report their safeguarding holdings once a year, giving us a 'snapshot' in time, rather than up-to-date information. Payments Firms do not have to report how or where they safeguard relevant funds. This lack of oversight hinders our ability to proactively target our supervisory activity or to identify poor practice early on. This can lead to more significant challenges in crisis scenarios, such as when a firm with a high value of safeguarded funds fails or where a firm holding safeguarded funds or assets for others fails.

Proposed provisions in the interim state

5.11 Our proposed rules will introduce a new monthly regulatory return for firms to submit. This new regulatory return will help us to assess supervisory risks in the portfolio more broadly, and to ensure individual firms' safeguarding practices are compliant. It will replace the current questions on safeguarding in existing regulatory returns.

5.12 The proposed regulatory return will require regular and comprehensive information to be submitted by firms about their safeguarding of relevant funds, including data on: the safeguarding audit requirements; the safeguarding method(s) used; amounts of relevant funds safeguarded; safeguarding reconciliation in the period, the excess or shortfall identified and adjustments made to rectify these, as well as the frequency of internal and external reconciliations; relevant funds bank accounts and relevant assets accounts; and notifiable breaches.

5.13 The proposed regulatory return will be submitted electronically. The proposed data items for the return are in Annex C in Appendix 1.

Proposed provisions in the end-state

5.14 In the end state, the return will be amended to reflect the safeguarding requirements in the end state.

Question 6: **Do you agree with our proposals for safeguarding returns to be submitted to us and the frequency of reporting, in both the interim and end state? If not, please explain why.**

Question 7: **Do you agree with the proposed data items to be included in the report? If not, please explain why.**

Chapter 6

Strengthening elements of safeguarding practices

Segregation of relevant funds

Issues and proposed changes

6.1 Under the current safeguarding requirements in the PSRs and EMRs, firms may safeguard relevant funds by either segregating them or protecting them through an insurance policy or comparable guarantee. Segregation is used by more than 95% of firms.

6.2 Firms using the segregation method must keep relevant funds segregated from any other funds they hold from receipt. If a firm continues to hold relevant funds at the end of the business day after the day of receipt (D+1), they must place these into a designated safeguarding account with an authorised credit institution or the Bank of England or invest them in secure, liquid assets.

6.3 This means that before D+1, Payments Firms can hold relevant funds in accounts that are not designated safeguarding accounts provided by authorised credit institutions. We estimate that approximately 35% of firms that safeguard use this flexibility to hold relevant funds in transactional accounts provided by e-money firms.

6.4 The current approach raises several risks of consumer harm during the pre-D+1 period, when relevant funds can be held outside a designated safeguarding account:

- Firstly, relevant funds held with other Payments Firms during the pre-D+1 period are at relatively higher risk compared to funds held with authorised credit institutions. This is because Payments Firms are not subject to the same prudential requirements as banks, so are at relatively higher risk of failure. Between Q1 2018 and Q2 2023, 12 Payments Firms that safeguarded relevant funds became insolvent. Payments Firms are not covered by depositor protection under the Financial Services Compensation Scheme.
- Secondly, where multiple payment or e-money firms hold relevant funds with the same Payments Firm, or where there is a 'chain' of accounts (eg firm A holds relevant funds with firm B, firm B holds relevant funds with firm C), there is a risk of contagion should a Payments Firm fail while holding relevant funds for other Payments Firms. This is exacerbated by the relatively higher risk of failure of Payments Firms compared to authorised credit institutions.
- Thirdly, relevant funds are less likely to be identified promptly as relevant funds by an IP when a firm fails, as there is no requirement for such an account to be named in a way that shows it is a safeguarding account.
- Finally, there is no express prohibition on third parties having interests in or rights over funds in such an account, leading to a risk that third-party rights are asserted over funds, and costly and time-consuming disputes occur in the event of an insolvency.

Proposed provisions in interim state:

6.5 Our proposed rules will require firms to:

- exercise due skill, care and diligence when appointing third parties that: provide accounts where relevant funds or assets are either received or deposited; manage relevant assets; or provide insurance or comparable guarantees
- periodically review their use of these third parties
- consider whether to diversify their use of these third parties
- consider how to ensure relevant funds not held in designated safeguarding accounts are clearly identifiable, with the word 'safeguarding' used in the account name when possible
- get acknowledgement letters which put the bank or custodian on notice that they are holding relevant funds or assets and how they should be treated
- promptly allocate relevant funds to individual consumers

Proposed provisions in end state

6.6 Our proposed rules will require Payments Firms that safeguard through the segregation method to receive relevant funds directly into a designated safeguarding account with an approved bank or the Bank of England, subject to the exceptions set out below.

6.7 We propose to replicate the provision in the PSRs and EMRs that allows Payments Firms to have designated safeguarding accounts with approved foreign credit institutions. This includes those in a member state of the Organisation for Economic Co-operation and Development.

6.8 We note that there may be circumstances where Payments Firms would face operational challenges in receiving relevant funds directly into a designated safeguarding account. Under our proposals, a firm would be allowed to choose not to receive funds directly into such an account where:

- relevant funds are received either through a merchant acquirer or into an account that is held only to participate in a payment system or
- the firm receives relevant funds as cash

6.9 We propose to replicate the requirement to deposit these relevant funds in designated safeguarding accounts by the end of the business day after the day they were received (D+1) as currently required under the EMRs and PSRs.

6.10 As set out in the CBA, we recognise that this proposal will have costs for firms. We consider that it is a proportionate measure given the risks it addresses, as set out above.

6.11 We also propose:

- **Use of template acknowledgement letters:** The acknowledgement letters will be updated to refer to the trust over relevant funds and assets. The rules will also prevent the use of accounts if an acknowledgement letter has not been obtained.
- **Prudent segregation:** Our rules will allow a firm to pay its own funds into a designated safeguarding account to prevent a shortfall in relevant funds. They

are then relevant funds so the statutory trust, record-keeping, reconciliation, and governance requirements will apply.

- **Treatment of unidentified receipts of funds:** Our rules will allow firms to treat funds as relevant funds where it is unable to identify whether they belong to its consumers or itself. This should reduce the risk of a shortfall in relevant funds on failure, as well as making it easier for an IP to identify relevant funds.

Question 8: **Do you agree with our proposals to make prescriptive rules on the segregation of relevant funds in both the interim and end state? If not, please explain why.**

Question 9: **Do you agree with our proposals to require relevant funds to be received directly into a designated safeguarding account subject to specified exceptions? If not, please explain why.**

Agents and distributors

Issues and proposed changes

6.12 Payments Firms frequently provide payment services through agents. An agent is any person who acts on behalf of a Payments Firm in the provision of payment services. Almost 24,000 agents of Payments Firms are registered with us. Electronic money institutions can also engage distributors to distribute and redeem e-money. Distributors are not required to be registered with us. The obligation to safeguard funds remains with the principal firm (the Payments Firm on whose behalf the agent or distributor is acting) and not with the agent or distributor.

6.13 Currently, where firms safeguard by segregation, agents or distributors can hold relevant funds until the end of the business day following receipt (D+1). This can increase complexity if a firm fails. The relevant funds must be segregated, but there are no detailed requirements on how. There is an increased risk of harm where an account is not in the name of the principal firm. This may lead to delays in identifying relevant funds if a firm fails. By D+1, the relevant funds must be paid into the principal firm's designated safeguarding account unless they have been paid out to the payee within this period.

6.14 We are concerned that principal firms do not have sufficient oversight of their agents and distributors, with inadequate due diligence before onboarding them and a lack of ongoing monitoring. This lack of oversight provides inadequate assurance over agents' and distributors' segregation of relevant funds from their own funds. We are particularly concerned given that there are approximately 24,000 agents.

6.15 Even where the principal firm has strong controls over its appointment of agents and their segregation processes, the holding of relevant funds by agents poses risks if a principal firm or agent fails. If a principal firm fails, the funds held by agents may take significant time and be costly to recover, particularly for firms with very large agent networks. If an

agent fails, there is a similar risk of delay, the principal firm may lack sufficient liquidity to execute consumer transactions initiated through the agent, and funds held by agents may be subject to competing claims from the agent's third-party creditors.

Proposed provisions in interim state

6.16 We are not proposing any changes in the interim state.

Proposed provisions in end state

6.17 Where a Payments Firm has agents and distributors, and uses segregation, it will have to either:

- receive relevant funds directly into its designated safeguarding account; or
- segregate an amount of the Payments Firm's own funds, based on historical transaction data, equal to the maximum estimated value of relevant funds that would be held by agents or distributors (electronically or as cash). This is referred to as agent and distributor segregation. Any funds that a Payments Firm segregates in this way will be relevant funds, so part of the statutory trust.

6.18 Our changes aim to improve the protection of relevant funds received in connection with services provided through Payments Firms' agents and distributors.

Question 10: **Do you agree that funds received through agents or distributors should either be paid directly into the principal firm's designated safeguarding account, or protected through agent and distributor segregation? If not, please explain why.**

Investing relevant funds in secure liquid assets

Issues and proposed changes

6.19 The EMRs and PSRs allow firms to safeguard by investing relevant funds in secure, liquid assets approved by us. Paragraph 10.53 of the Approach Document says that the following assets are approved in all cases, with others requiring approval on a case by case basis:

- items that fall into one of the categories set out in Article 114 of the Capital Requirements Regulation (575/2013), as retained by the European Union (Withdrawal) Act 2018 (EUWA) and amended by the Capital Requirements (Amendment) (EU Exit) Regulations 2018, for which the specific risk capital charge is no higher than 0%; or
- units in an undertaking for collective investment in transferable securities (UCITS) which invest solely in the above assets

6.20 Some Payments Firms continue to experience difficulties accessing safeguarding accounts with credit institutions. This is in part due to the risk appetite of credit institutions. As a result, these Payments Firms may rely more on safeguarding through investing in secure liquid assets.

6.21 In the event of firm failure, or high volumes of redemption of e-money, the assets will need to be capable of quick sale, with the proceeds used to meet consumer entitlements. So, if the market for the assets is not sufficiently liquid or stable, there is a risk of the firm having insufficient liquid funds available to meet consumer entitlements.

Proposed provisions in interim state

6.22 We propose that firms will be able to invest in the same range of secure, liquid assets as they can now.

6.23 Our proposed rules place additional requirements on firms when selecting assets. The firm will be required to ensure that:

- there is a suitable spread of investments
- assets are selected in line with an appropriate liquidity strategy, and credit risk policy
- any foreign exchange risks are prudently managed

6.24 Our proposed rules also address how these assets should be reflected in a firm's reconciliations, with the aggregate value of the assets included in the safeguarding resource.

Proposed provisions in end state

6.25 We intend to retain the option for firms to safeguard by investing in secure liquid assets.

6.26 Under our proposed end-state rules, relevant funds (and the assets purchased with them) will be included in the statutory trust. A firm that invests in secure liquid assets will need to ensure it has any necessary permissions to do so on behalf of its consumers. They are likely to need permission to manage investments if they manage the investment of relevant funds with discretion. If they do not have permission to safeguard and administer investments, they will need to deposit the assets with a custodian firm that does. If a Payments Firm holds the assets they invest in, they will need to comply with any applicable requirements of the CASS 6 custody rules.

6.27 We are reviewing the range of assets Payments Firms should be able to invest in under the end-state rules and considering whether further specification would be useful as well as whether additional guidance on liquidity management and procedures would be helpful. We will consult on that separately, alongside the failure rules.

Question 11: **Do you agree that firms should be able to invest in the same range of secure liquid assets as they can now in the interim state? If not, please explain why.**

Question 12: **Do you agree that firms should continue to be able to invest relevant funds in secure liquid assets in the end state? If not, please explain why.**

Question 13: **Do you agree that Payments Firms should be able to hold the assets they invest in, or should they always be held by a custodian? If you disagree that Payment Firms should be able to hold the assets they invest in, please explain why.**

Insurance and comparable guarantees

Issues and risks

6.28 Under the PSRs and EMRs, Payments Firms can safeguard relevant funds through an insurance policy or comparable guarantee. This method of safeguarding gives firms an opportunity to use additional working capital. Payments Firms can use money received from consumers, protected through the insurance policy or guarantee, as their own funds.

6.29 We believe that appropriate policies can provide adequate protection for consumers, as well as benefits for firms including access to increased liquidity. However, we are concerned by the risk of a cliff-edge at the end of the insurance or guarantee term. For instance, if a firm is not able to renew their policy or does not want to because of higher premiums. In addition, there is a risk of a delay in reimbursing consumers while a claim is processed. In particular, where this scenario is not factored into wind-down plans and where a firm provides services to vulnerable customers. We will continue to monitor whether the use of insurance policies and guarantees is suitable as a means of safeguarding. We will consider how firms can manage cliff-edge risks as part of their wind-down plans and how they can show that they have considered wind-down planning where an insurance policy is not renewed.

Proposed provisions for interim state

6.30 We will replace existing guidance with new rules as follows:

- There must be no condition or restriction on the prompt paying out of the insurance or guarantee, except certification of an insolvency event.
- Firms must decide whether to extend an insurance policy/comparable guarantee at least 3 months before it expires.
- If a firm does not have arrangements in place to extend its cover, and the policy/guarantee term has less than 3 months remaining, it must prepare to safeguard all its relevant funds using the segregation method.
- If the firm is unable to safeguard all its relevant funds using segregation, it should consider its financial position. This includes considering whether it is appropriate to place the firm into administration so a claim can be made under the policy or guarantee before the cover lapses. The firm should keep us informed at all stages

so we can take any appropriate action, such as applying to the court to appoint an insolvency practitioner.
- Firms must assess whether there would be any increase in operational risk. This should include considering whether restrictions on access to funds held outside a safeguarding account could adversely impact the institution's short-term liquidity.

6.31 Our rules will address how insurance policies or comparable guarantees should be reflected in a firm's reconciliations, with the aggregate value of relevant funds protected using the insurance or guarantee method included in the safeguarding resource.

6.32 The proceeds of the insurance policy or guarantee must be paid into a relevant funds bank account. In practice, this means that the firm will need to maintain such an account for at least the full term of the insurance policy or guarantee.

Proposed provisions for end state

6.33 We intend to maintain the option for Payments Firms to safeguard relevant funds through insurance or comparable guarantee. However, we will continue to monitor this option, including its risk to consumers and markets. We will consult before making any future change to our rules on safeguarding through insurance or guarantees.

6.34 To ensure that consumers are fully protected when a firm uses the insurance or guarantee method, we propose that the rights under and proceeds of the insurance policy or guarantee will be included in the statutory trust.

6.35 Where a firm relies exclusively on the insurance or guarantee method, our rules will require that the amount of insurance or guarantee cover exceeds the amount of funds it is being relied on to protect at all times.

Question 14: **Do you agree with our proposals to maintain the use of insurance policies and comparable guarantee for safeguarding in both the interim and end state? If not, please explain why.**

Question 15: **Do you agree that the use of insurance policies and guarantees leads to the risks identified above? Are there other risks of which you are aware? Please explain your answer.**

Chapter 7

Holding funds under a statutory trust

Imposing a statutory trust

Issues and risks

7.1 The Ipagoo judgment found that the EMRs do not create a statutory trust over an EMI's safeguarded asset pool, rather they create a special type of priority interest for consumers in the event of insolvency. The judgment also determined that any shortfall in an insolvent EMI's safeguarded asset pool should be topped-up. This means that there is solely a creditor/debtor relationship between a firm and its clients rather than a fiduciary relationship (as in a trust).

7.2 The practical implications of the judgment remain unclear, particularly if a firm fails with a shortfall in safeguarded funds and where there are secured creditors. Those creditors may challenge the priority given to the top-up of safeguarded funds. This could result in IPs seeking further court directions or their actions being challenged, resulting in additional delay and losses to consumers through increased insolvency costs. In addition, the top-up may not benefit consumers where the insolvent firm has insufficient assets outside the safeguarded asset pool.

7.3 In any event, when the safeguarding requirements in the PSRs and EMRs are revoked the principles in the Ipagoo judgment will no longer apply. At that point, we will need to introduce a new safeguarding regime to replace the one currently in the PSRs and EMRs. We believe that imposing a statutory trust is the only way to ensure adequate consumer protection under our current powers.

Proposed provisions of the interim state

7.4 We do not intend to impose a statutory trust in the interim state as the current safeguarding requirements in the PSRs and EMRs will still apply.

Proposed end-state provisions

7.5 We propose to impose a statutory trust over relevant funds; secure, liquid assets those funds are invested in; the rights and proceeds under insurance policies and guarantees; and cheques and other payable instruments received for the execution of a payment transaction or purchase of electronic money. We cannot replicate the effect of the current regime, as applied by the Ipagoo judgment, but even if we could we believe that the imposition of a statutory trust is the better approach.

7.6 The Payments Firm would hold the assets in the statutory trust on the following terms:

- for the purposes of, and on the terms of, the relevant funds rules (which set out the safeguarding regime) and the relevant funds failure rules (which will apply if the firm, or a third party they use for safeguarding purposes, becomes insolvent)
- for the purposes of distribution in line with the Payment and Electronic Money Institution Insolvency Regulations 2021
- for clients for whom those assets are held, according to their respective interests
- on the failure of the safeguarding firm, for the payment of costs properly attributable to the distribution of the relevant funds
- after all valid claims and costs have been met, for the Payments Firm itself

7.7 The trust will provide better protections for consumers, who will be the principal beneficiaries. As a trustee, the Payments Firm will have well-established fiduciary duties, such as acting in the best interests of the beneficiaries. This could be particularly important when a firm is in financial difficulty and may be facing difficult choices.

7.8 The trust will also give greater certainty when a firm fails. Anything in the trust will fall outside the firm's general estate, so will not be available to other creditors. Any shortfall can be made good through the well-established principles of tracing, rather than relying on the novel approach in the Ipagoo judgment. This certainty will help reduce the costs of distribution, allowing more funds to be distributed to consumers sooner.

7.9 While imposing a statutory trust is a legally significant change to the current regime, we do not consider that it will require firms to make significant changes to the way they protect funds. Firms will be required to get acknowledgement letters from third parties to reflect that the relevant funds are now held on trust, but as set out in the CBA we consider this will be a negligible cost. We have also set out above, and in the CBA, the impact on secure, liquid assets.

7.10 We also propose the following changes:

- **Creation of a single asset pool:** Some EMIs also provide payment services that are not connected to issuing e-money. Under the PSRs and EMRs they must hold funds relating to issuing e-money separately from those received for unrelated payment services. Our proposals would create a single asset pool, comprising all relevant funds, so that consumers of these firms would be beneficiaries in the same statutory trust, regardless of whether they held e-money or simply used the payment services. Firms would be able to safeguard funds in a single relevant funds bank account, subject to the new diversification requirement, which should make safeguarding cheaper and simpler for these firms. On insolvency, both e-money and payment service consumers would share proportionately in the asset pool of the safeguarded funds, making distribution simpler.
- **Unclaimed relevant funds:** EMIs are currently required to safeguard unclaimed relevant funds for at least 6 years. Firms can incur significant costs dealing with very small amounts of relevant funds that have been unclaimed for a long time. We intend to retain the requirement that firms must safeguard unclaimed balances for at least 6 years.
  However, the proposed terms of the statutory trust would give firms an optional mechanism to deal with unclaimed funds. They would be able to gift them to charity if certain conditions were met, including taking reasonable steps to trace the consumer. The costs associated with this would be paid from the firm's own funds.

7.11 A firm that makes use of this additional flexibility would still be subject to any legal right of the consumer to return of the funds. Where the unclaimed relevant funds are more than £25 for retail consumers or £100 for other consumers, the Payments Firm must unconditionally undertake to repay consumers, or ensure that another member of its group does so.

Question 16: **Do you agree that a statutory trust is the best replacement for the safeguarding regime in the EMRs and PSRs? If not, please explain why.**

Question 17: **Do you agree with the proposed terms of the trust, including the Payments Firm's interest after all valid claims and costs have been met? If not, please explain why.**

When the safeguarding obligation starts and ends

Issues and risks

7.12 Currently, as set out in paragraph 10.28 of the Approach Document, the safeguarding obligation starts as soon as a Payments Firm receives relevant funds. However, insolvency processes may become more efficient if rules provided more certainty about when the obligation starts and ends, including for example, when relevant funds are received by card through an acquirer.

7.13 A lack of clarity on when the safeguarding obligation starts and ends can result in Payments Firms holding incorrect amounts of funds in their safeguarding account. For example, where a Payments Firm's customer uses a card issued by the Payments Firm to make a payment to a retailer. The customer's account with the Payments Firm could be debited before the Payments Firm's settlement account is debited in the card scheme.

Proposed provisions in interim state

7.14 We do not intend to make any rule changes in the interim state as the current safeguarding requirements in the PSRs and EMRs will still apply. However, we will consider what additional guidance we can give in the Approach document.

Proposed provisions in end state

7.15 The rules replicate existing guidance clarifying that the obligation to safeguard relevant funds begins as soon as the funds are received by a payment firm, which is when the firm has an entitlement to them. The rules on reconciliation specify that the safeguarding resource should include funds held with an acquirer and in an account used to enable participation in, or receipt of funds through, a payment system.

7.16 We will clarify our expectations on how relevant funds received via physical receipt (ie bank notes and coins), or via cheques and other payable orders, are to be treated and protected.

7.17 The rules and guidance also specify that:

- When a Payments Firm uses a cheque or other payable order to pay funds out of the trust on behalf of a consumer, those funds will be relevant funds until the cheque or order is presented and paid.
- Where a chain of payment service providers is involved, the funds remain relevant funds until the funds are paid out to the payee or a payment service provider acting on behalf of the payee.
- Where transactions are executed via a payment system, the funds will be paid out when the safeguarding institution's account with the payment system is debited.

Question 18: **Do you agree with our proposals to clarify when the safeguarding requirement starts and ends? If not, please explain why.**

Chapter 8

Our intended approach to implementation and transitional arrangements

Implementation

8.1 We recognise that some of these proposals are a significant shift in how Payments Firms safeguard their relevant funds, and that firms will continue to operate while making these changes. We propose to give firms a transition period of 6 months to implement the changes in the interim rules from when the final version is published. When the revocation of the safeguarding requirements in the EMRs and PSRs is commenced, we will publish the final end-state rules (including new rules for when a Payments Firm fails or where a third-party used for safeguarding purposes fails). We propose to give firms another 12 months to implement these additional changes.

8.2 We propose to give firms time between the rules being published and coming into force so they can make the necessary arrangements. This will be:

- 6 months for the interim rules
- 12 months for the end-state rules – this reflects that Payments Firms are likely to need to make more significant changes to implement the end-state rules

Transitional arrangements

8.3 We have set out proposed transitional provisions for both the interim and end-state rules. These include the following:

Interim-state transitional provisions

8.4 The new CASS rules will not apply to a Payments Firm if an insolvency event happens before they come into force.

8.5 Payments Firms will be required to periodically review their use of third parties for safeguarding purposes. They will be required to review existing arrangements **within 3 months of the rules coming into force**.

8.6 The rules set out conditions that have to be met to use insurance policies or comparable guarantees. They will not apply to an insurance or policy or guarantee obtained before the rules come into force, provided it was obtained in line with the relevant requirements in the PSRs and EMRs. They will, though, apply if the policy or guarantee is renewed or extended.

8.7 The remaining rules will be effective after the 6 month period and will not be subject to the transitional arrangements.

End-state transitional provisions

8.8 The amendments to the CASS rules will not apply to a Payments Firm if a primary pooling event happens before they come into force.

8.9 The imposition of the trust will apply to funds and assets held at the time the rules come into effect. We consider that this approach is both proportionate, and necessary to protect consumers. Otherwise, those funds and assets would not be subject to any safeguarding regime when the revocation of the current regime in the PSRs and EMRs is commenced.

Question 19: **Do you agree that the implementation arrangements give Payments Firms sufficient time to prepare for the interim and end-state rules coming into force? If not, please explain why.**

Question 20: **Do you agree that the transitional provisions are appropriate? If not, please explain why.**

Question 21: **Do you consider that any other transitional provisions are needed? If so, please explain why.**

Annex 1

List of questions

Question 1: Do you agree with our proposed rules and guidance on record-keeping, reconciliation of relevant funds and the resolution pack in both the interim and end state? If not, please explain why.

Question 2: To what extent will firms incur operational costs relating to record keeping, reconciliation and resolution packs when moving from the interim to end state?

Question 3: Do you agree with our proposals for requiring external safeguarding audits to be carried out in both the interim and end state? If not, why not?

Question 4: Do you agree with our proposals to require that safeguarding audits are submitted to the FCA? If not, why not?

Question 5: Do you agree that small EMI's should be required to arrange an annual safeguarding audit? If not, why not?

Question 6: Do you agree with our proposals for safeguarding returns to be submitted to the FCA and the frequency of reporting, in both the interim and end state? If not, please explain why.

Question 7: Do you agree with the proposed data items to be included in the report? If not, please explain why.

Question 8: Do you agree with our proposals to make prescriptive rules on the segregation of relevant funds in both the interim and end state? If not, please explain why.

Question 9: Do you agree with our proposals to require relevant funds to be received directly into a designated safeguarding account subject to specified exceptions? If not, please explain why.

Question 10: Do you agree that funds received through agents or distributors should either be paid directly into the principal firm's designated safeguarding account, or protected through agent and distributor segregation? If not, please explain why.

Question 11: Do you agree that firms should be able to invest in the same range of secure liquid assets as they can now in the interim state? If not, please explain why.

Question 12: Do you agree that firms should continue to be able to invest relevant funds in secure liquid assets in the end state? If not, please explain why.

Question 13: Do you agree that Payments Firms should be able to hold the assets they invest in or should they always be held by a custodian? If you disagree that Payment Firms should be able to hold the assets they invest in, please explain why.

Question 14: Do you agree with our proposals to maintain the use of insurance policies and comparable guarantee for safeguarding in both the interim and end state? If not, please explain why.

Question 15: Do you agree that the use of insurance policies and guarantees leads to the risks identified above? Are there other risks of which you are aware? Please explain your answer.

Question 16: Do you agree that a statutory trust is the best replacement for the safeguarding regime in the EMRs and PSRs? If not, please explain why.

Question 17: Do you agree with the proposed terms of the trust, including the Payments Firm's interest after all valid claims and costs have been met? If not, please explain why.

Question 18: Do you agree with our proposals to clarify when the safeguarding requirement starts and ends? If not, please explain why.

Question 19: Do you agree that the implementation arrangements give Payments Firms sufficient time to prepare for the interim and end state rules coming into force? If not, please explain why.

Question 20: Do you agree that the transitional provisions are appropriate? If not, please explain why.

Question 21: Do you consider that any other transitional provisions are needed? If so, please explain why.

Question 22: Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons.

Question 23: Do you have any views on the cost benefit analysis, including our analysis of costs and benefits to consumers, firms and the market?

Question 24: Do you have any views on whether our proposals will materially impact any of the groups with protected characteristics under the Equality Act 2010? If so, please say how?

Annex 2

Cost benefit analysis

Executive summary

1. Payments Firms (e-money institutions (EMIs), credit unions that issue electronic money and payment institutions) are used by consumers and businesses (jointly referred to as clients) across the UK for day-to-day transactions and money transfers. Businesses rely on such firms to accept and process card payments, while some consumers use e-money accounts in lieu of current bank accounts to receive salaries or pay household bills. At least 7% of UK consumers hold an account with a Payment Firm and many more use their services.

2. Certain Payment Firms are required to safeguard funds received from clients to protect them in the event of insolvency. The 630 Payment Firms required to safeguard, in a sector of over 1,000 firms, hold almost £22bn of client funds and process almost £2tn of transactions a year.

The harm

3. We are concerned that the current high-level safeguarding regime lacks clarity and does not allow for sufficient oversight. This can lead to shortfalls pre-insolvency where firms do not follow appropriate safeguarding practices causing; shortfalls in the funds available to return to clients, delays in returning funds through lengthy insolvency processes and less funds being returned due to associated fees; and systemic risks where Payments Firms hold funds on behalf of other Payments Firms. This can lead to financial loss for clients of these firms, and subsequently undermine trust and confidence in the market.

Proposals

4. We propose to create a new regime to govern how Payments Firms protect funds received from clients while they hold them. This regime will aim to ensure that clients of Payments Firms experience less harm in the event of firm failure through more funds being returned more quickly. We intend to deliver this regime in two stages: an "interim" stage that is primarily focussed on ensuring compliance with the current safeguarding regime; followed by an "end-state" that will replace that safeguarding regime when it is repealed.

Costs and benefits

5. We estimate £150.8m (PV-adjusted) benefits and £106.2m (PV-adjusted) costs from our proposals, leading to a net PV-adjusted benefit of £44.6m over a 10-year appraisal period. The majority of costs and benefits are incurred following the implementation of our interim proposals, which then continue to be incurred as ongoing costs and benefits into the end-state. The estimated annual net direct cost to business (EANCB) is £12.3m.

Table 1: Total benefits and costs of proposals over 10 years, PV-adjusted

	PV Benefits	PV Costs	NPV (10 yrs)
Total impact	**£150.8m**	**£106.2m**	**£44.6m**
-of which interim	£137.5m	£65.6m	£71.9m
-of which end-state	£13.3m	£40.7m	-£27.3m

Key assumptions

6. Our estimates are dependent on some key assumptions. First, compliance with the current regime is partial, but this increases to complete compliance under our proposed regime. Second, all firms will be able to obtain appropriate safeguarding accounts following our interventions. Third, that insolvencies occur, on average, at the same rate and with the same characteristics as we have seen in the past. We present sensitivity analysis for these assumptions in the *Risks and uncertainties section*.

Monitoring and evaluation

7. We intend to measure the effectiveness of our proposals through monitoring insolvency outcomes following our interventions, supervisory cases and interventions, and information submitted by audit reports.

Introduction

8. When making rules, the FCA has a duty to consult and produce a cost benefit analysis (CBA) under the Financial Services and Markets Act 2000 (FSMA). Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.[1]

9. We propose to create new detailed rules and guidance for how authorised payments institutions (APIs), authorised e-money institutions and small e-money institutions (jointly referred to as EMIs), and credit unions that issue e-money (all collectively referred to as 'Payments Firms' or 'non-bank payments sector') protect funds they hold on behalf of clients as part of payments transactions or the issuance of e-money. Most Payments Firms safeguard using the segregation method, placing client funds in an account separate from their operational accounts, but some use insurance, a guarantee, or secure liquid assets.

10. Our proposed rules will replace the safeguarding requirements in the Payment Services Regulations 2017 (PSRs) and the Electronic Money Regulations 2011 (EMRs) once HMT commences their repeal under FSMA 2023. They will also replace and build on guidance we issued in 2017 and updated in 2021. These rules will be set out in chapter 15 of the Client Asset Sourcebook (CASS) and include requirements that are not reflected in our current guidance.

11. We propose to deliver our safeguarding regime in two stages: an "interim" stage that is primarily focussed on ensuring compliance with the current safeguarding regime in the PSRs and EMRs; followed by an "end-state" that will replace that safeguarding regime when it is repealed, and amend the interim stage rules so they ensure compliance with the new safeguarding regime.

12. The proposed safeguarding regime will apply to all Payments Firms currently required to safeguard funds under the PSRs and EMRs. Small payment institutions (SPIs) will continue to be able to opt-in to our safeguarding regime on a voluntary basis, and small e-money institutions will continue to be able to opt-in to safeguard in respect of payment services that are unconnected with the issuance of e-money.

13. Our CBA for the proposed safeguarding regime is set out below. Where, in our opinion, the costs or benefits cannot be reasonably estimated or it is not reasonably practicable to produce an estimate, we have not attempted to do so. In these cases, we include a statement of our opinion and an explanation of it. We have not quantified costs that are of minimal significance.

High-level description of the non-bank payments sector

14. Payments Firms are used by consumers and businesses (jointly referred to as clients) across the UK for day-to-day transactions and money transfers. Businesses may rely on such firms to accept and process card payments, while some consumers use EMI accounts in lieu of current bank accounts to receive salaries or pay household bills.

1 The provisions of FSMA referred to in this CBA include those provisions as applied with modification by the regulation 122 and schedule 6 to the Payment Services Regulations 2017 and regulation 62 and schedule 3 to the Electronic Money Regulations 2011.

Services offered

15. In general, these Payment Firms provide a range of payment services, including:

- Services related to the issuance and use of e-money;
- Money remittance services to facilitate the transfer of money from one person to another; and
- Merchant acquiring to enable merchants to accept payment by credit and debit cards.

16. Firms provide these services to a wide range of businesses and consumer clients, generally charging a fixed or percentage fee per transaction. The main costs to Payments Firms are infrastructure, in setting up the system to process payments; staff costs both technical and support; scheme fees to other members of the payments ecosystem; and compliance costs.

Market structure and trends

17. The non-bank payments sector comprises more than 1,000 firms, summarised in the following table. Of these, 380 APIs and 250 EMIs are required to safeguard in accordance with the requirements in the PSRs and EMRs, which are supplemented by guidance in chapter 10 of our Approach Document. The sector also includes 602 SPIs. These firms may choose to safeguard in accordance with the PSRs on a voluntary basis. Currently only 38 SPIs choose to safeguard.

Table 2: Firms in the non-bank payments sector

Firm Type	Number of Firms	Safeguarded Funds	Transactions Processed
APIs (excluding firms with only PISP or AISP permissions)	380	£4.0bn	£919bn
EMIs	250	£17.9bn	£1.0tn
of which, small e-money institutions	*27*	*£9.0m*	*£920m*
SPIs	602		*£7.4bn*
of which, safeguarding on a voluntary basis	*38*	*£34.4m*	*£441m*
Total	**1,232**	**£22.0bn**	**£1.9tn**

Source: Internal FCA data (2023)

18. The importance of Payments Firms for consumers is demonstrated in the findings of the Financial Lives Survey 2022 (FLS 2022):

- 7% of consumers surveyed have an e-money account, of which

  - around 10% use e-money accounts as their main day-to-day transactional accounts, and
  - around 40% have characteristics of vulnerability (eg low ability to withstand financial shocks), rising to 71% of consumers with an e-money account as their main day-to-day transactional account

- 10% of consumers surveyed have used an international money transfer service

19. Since the EMRs and PSRs were introduced, the sector has grown considerably. According to Financial Lives Survey data, the number of consumers using an e-money account has consistently grown over the last 5 years, from 1% in 2017, to 4% in 2020, and to 7% in 2022. The amount of client funds held on any given day has also increased over time, rising from approximately £11bn to £18bn from 2021 to 2023.

20. The FCA currently supervises 380 APIs and 250 EMIs. Almost a quarter of these firms are classed as money remitters. Regulatory returns submitted by firms over 2022 and 2023 suggest there are around 58m e-money accounts open, with clients often having more than one account. E-money accounts hold £17.9bn of outstanding e-money on aggregate and process £1tn in payments a year through 6.3bn transactions. The market is concentrated with the 10 largest firms having issued 77% of outstanding e-money and processing 43% of transactions by value.

21. Information on the number of client accounts with API firms is not available. However, the latest regulatory returns data suggest that APIs hold around £4bn of client funds on aggregate and process £919bn in payments through 12bn transactions annually. This is a significant increase in value from £536bn in 2020. The 10 largest firms safeguard 69% of client funds and process 39% of transactions.

22. An additional 602 SPIs, to whom the safeguarding elements of the PSRs and EMRs apply on a voluntary basis, processed £7.4bn in payments through 27.5m transactions over their last annual regulatory reporting period. Of these 602 firms, 38 currently opt-in to safeguarding, with £34.4m of client funds held as of their latest regulatory returns.

23. Finally, credit unions may also issue e-money, but we are not aware of any that do so. Following discussions with trade bodies, we consider it unlikely that credit unions will be affected by our proposals.

Nature of competition

24. Payment Firms compete both within their sector and with other adjacent sectors such as banks, fintech and tech giants. Competition is focused on improving the user experience while reducing costs and friction. Many firms operate at a loss as they compete for market share.

25. The industry has relatively low capital barriers to entry; it is a primarily technology-based service with potential for high economies of scale. However, there are significant regulatory and technical barriers due to the complexity of the market and large number of entities in the payments ecosystem.

26. Many firms offer largely homogenous products, so clients choose which Payments Firms they use based on trust, price, and experience. Clients want to have confidence that their transactions will be reliably completed and that their money is not at risk during the process.

Problem and rationale for intervention

Drivers of harm – Limitations of the existing regulatory regime

27. The safeguarding provisions in the second Payment Services Directive[2] and the second Electronic Money Directive[3], implemented respectively by the PSRs and EMRs, were designed to provide a proportionate system of regulation to limit harm to clients in the event of insolvency of a Payments Firm. The legislation was drafted when the industry was nascent and had a relatively limited footprint, as such the current provisions are high-level, lack clarity and do not adequately support regulatory oversight. As the non–bank payments sector has grown, so has the complexity of firms' business models and the potential impact that firm failure could have on clients. As set out in Chapter 2 of the consultation paper, we are concerned the current regime gives rise to 4 main issues in the non-bank payments sector:

- Lack of understanding of appropriate safeguarding practices
- Challenges in supervision and enforcement
- Inefficient insolvency processes
- Operational dependency on EMIs

We discuss these in more detail below.

Lack of understanding of appropriate safeguarding practices

28. We are concerned that the current high-level obligations make it difficult for some firms to identify where their safeguarding practices may fall short of our expectations, including weaknesses in some firms' understanding of their obligations on areas such as record keeping, reconciliation requirements and segregation of client funds. This can lead to shortfalls and delays in returning funds to clients. In particular, we are concerned about safeguarding practices in two situations.

Safeguarding before D+1

29. Under the PSRs and EMRs, Payments Firms may hold client funds outside of designated safeguarding accounts (DSAs) until the end of the business day following the day of receipt (a period commonly referred to as D+1). Over that period, the firms may hold funds in non-designated safeguarding accounts (NDSAs).

30. We are concerned about the extent to which Payments Firms adequately segregate client funds in their NDSAs from funds held for other purposes. As noted in our 2023 portfolio letter, we have identified a number of common failings in firms' safeguarding

2 Directive 2015/2366/EU.
3 Directive 2009/110/EC.

practices, including a lack of documented processes for consistently identifying which funds are "relevant funds" for the purposes of the PSRs/EMRs. Where firms do not segregate client funds appropriately, additional time and cost may be required for insolvency practitioners (IPs) to establish the total value and location of client funds, and clients may face shortfalls in the event of insolvency.

Safeguarding practices of agents and distributors

31. Payments Firms frequently provide services through agents or distributors. Agents and distributors may hold client funds in their own (segregated) accounts until D+1, at which point the funds must be passed to the principal for safeguarding.

32. Our 2023 portfolio letter noted significant issues around the ways in which principal firms monitor the processes of agents and distributors. Where the agents and distributors do not segregate client funds appropriately before D+1, it increases the risk of shortfalls in the event of failure of the principal firm and can make it harder for IPs to identify relevant client funds. These issues can be more severe if the insolvent principal firm has hundreds or thousands of agents/distributors. Our analysis of past insolvencies identified a principal firm that had multiple agents holding funds at the point of the insolvency. This led to a significant effort by the IP to return these funds. 18 months after the insolvency of the firm, only a small proportion of funds has been returned to clients.

Challenges in supervision and enforcement

33. In some firm failures there has been evidence of safeguarding failings which put client funds at risk and resulted in shortfalls. The current light-touch regime around reporting requirements means that supervisors have insufficient information to identify firms that fall short of our expectations. This then prevents the FCA from being able to prioritise resources, be that support or enforcement, on firms that pose the greatest risk to clients prior to insolvency.

34. In particular, we are concerned about 2 areas. First, regulatory returns do not contain sufficient detail to assess whether firms are meeting their safeguarding obligations. Second, the safeguarding audits provided for in the Approach Document do not have to submitted to the FCA, further limiting our oversight.

35. Furthermore, the lack of clarity and precision in current provisions leads to difficulties in enforcement as firms may be able to contest findings. This can undermine the credibility of enforcement as a deterrence.

Inefficient insolvency processes

36. The current regime does not address uncertainties in parts of the insolvency process. Lack of clarity, particularly around the interpretation of regulatory requirements and the absence of a statutory trust, results in IPs relying more heavily on courts for guidance where there is a shortfall in the safeguarded funds, leading to additional costs and delays in returning funds to clients.

37. Evidence from past insolvencies suggests that insolvency fees drawn from client funds, including IP's time costs and legal fees, can exceed £2m in some cases and are on average around 7% of the clients' total claims. Much of these fees stem from difficulties in determining the asset pool and how to correctly distribute funds.

Operational dependency on EMIs

38. In paragraph 15, we noted that in the current regime, Payments Firms may hold D+1 funds in NDSAs. Such NDSAs may be offered not only by authorised credit institutions but also by EMIs. Evidence from our survey of Payments Firms in August 2023 suggest that 11% of EMIs and 18% of APIs use an NDSA supplied by a UK EMI. Based on the amount of funds these firms reported holding with UK EMIs on average, we estimate that up to a total of £25m of client funds are held in such accounts on any given day.

39. Where multiple Payments Firms hold client funds with the same NDSA provider, or where there is a 'chain' of accounts (firm A holds client funds with firm B, firm B holds client funds with firm C), there is a risk of operational disruption should a critical NDSA provider fail. Firms using accounts provided by an EMI that becomes insolvent will be unable to access their funds while the insolvency process is underway and be unable to process their client's transactions. This could lead to firms failing as they are unable to access funds frozen within an insolvency process. The risk is lower for accounts provided by authorised credit institutions, as these operate under stricter capital requirements that help mitigate the risk of failure (eg stronger capital requirements) and will not be a part of a chain with other EMIs.

Impact on clients

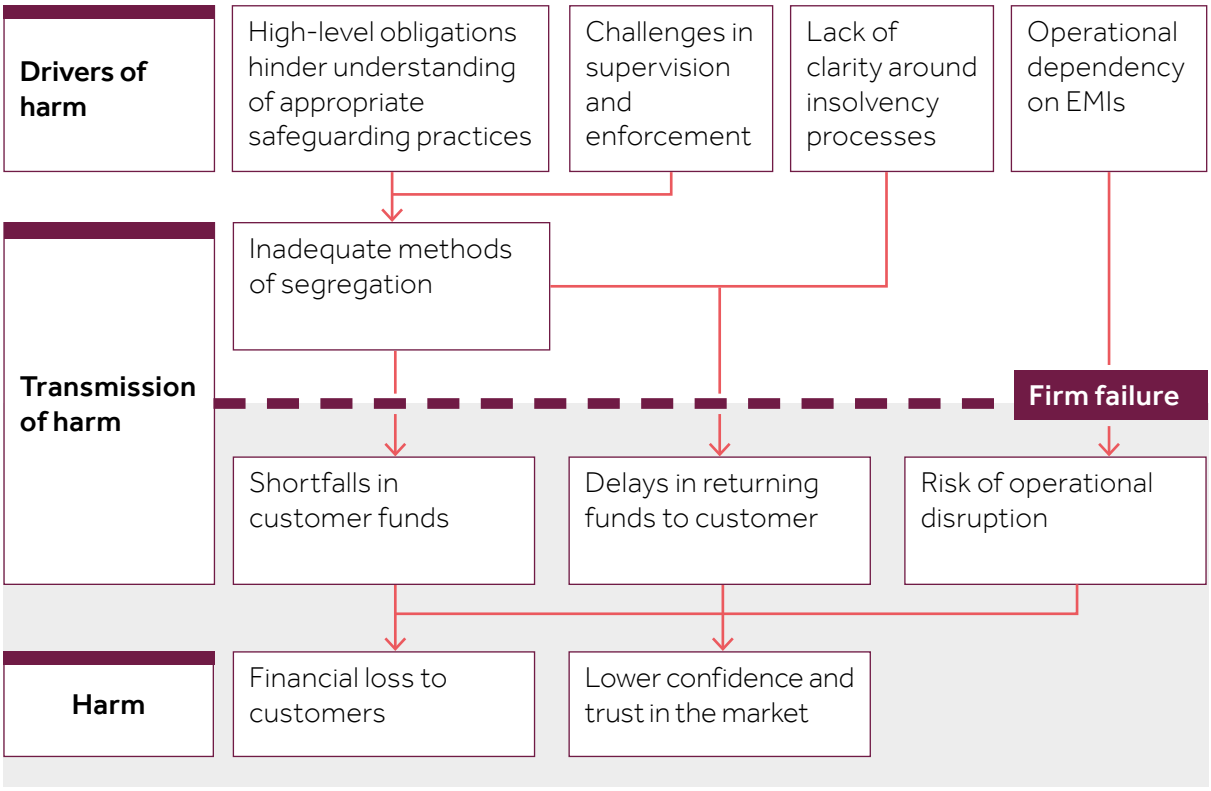
40. We believe that absent intervention, these issues may result in the following 3 risks materialising upon firm failure, to the detriment of clients.

- Where firms do not follow appropriate safeguarding practices, there may be shortfalls in client funds in the event of a firm insolvency, leading to financial loss and reduced confidence in Payment Firms for clients.
- Where there is limited clarity on the amount of client funds held by an insolvent firm, lengthy insolvency proceedings can delay the return of funds to clients, resulting in opportunity costs (eg foregone interest). The expenses associated with such proceedings can also reduce the amount of funds available to clients.
- Payments Firms that hold client funds in NDSAs provided by an EMI risk operational disruption should the account provider fail. In such an event, the clients of a large number of firms may face significant delays in getting their transactions processed, while being unable to withdraw the funds intended for these transactions.

41. Our intervention is not intended to reduce the number of firm failures, but to reduce harms caused by delays in returning, and losses to, client funds in this eventuality.

42. The following diagram (Figure 1) summarises the identified drivers of harm and the corresponding harms they lead to.

Figure 1: Harms in the current safeguarding regime



Impact from shortfalls and delays in returning client funds

43. In this section we discuss the harm to clients (both retail and business) due to the above issues, focusing on harms due to shortfalls in client funds and delays in the return of said funds. We present evidence of such harm from past insolvencies and quantify the impact of a hypothetical failure of a large provider. We are not aware of any significant operational disruption having occurred in the past, but we believe preventative measures are necessary to ensure as little impact as possible should a firm holding client funds fail.

44. We recognise that firm failure may have a disproportionate impact on retail clients with characteristics of vulnerability or that are particularly reliant on Payments Firms. For example, under-banked individuals who may be using EMIs to receive wages or benefit payments and so are crucial to their ability to function on a day-to-day basis, or diaspora communities that use money remitters to send funds to their families abroad. Some clients may need to borrow money while they cannot access their funds, incurring borrowing costs. This requirement to borrow money, as well as the general stress of not being able to access or potentially losing funds, may result in negative wellbeing effects for affected clients.

Evidence from recent insolvencies

45. Between Q1 2018 and Q2 2023, 5 EMIs and 7 APIs that would be subject to our proposals became insolvent with client funds. For the 9 firms for which we have size data from our Standardised Cost Model, eight were small and one was medium.[4] Table

4 Please see How we analyse the costs and benefits of our policies, Appendix 1, Box 4

1 demonstrates the average shortfall in client funds associated with these insolvencies, the time it took to distribute the funds to clients, and the fees and expenses deducted from client funds as a part of the insolvency process.

46. We note that the shortfalls reported in the table are likely underestimates of the actual shortfalls resulting from these insolvencies (which we define as the difference between safeguarded funds and funds owed to clients). This is because the data available to us did not record safeguarded funds, so we calculated the reported shortfall figures using each firm's *total assets* at the time of insolvency as a proxy.

Table 3: Selected averages for insolvent firms

	API[5]	EMI	All firms
Client funds owed [a]	£7.8m	£16.3m	£11.3m
Total assets available [b]	£4.6m	£3.3m	£4.0m
Shortfall [a-b]	£3.2m (41%)	£13.0m (80%)	£7.3m (65%)
IP fees & expenses deducted from client funds[6]	£0.4m	£1.9m	£0.8m
First distribution of funds[7, 8]	£5.0m	£2.2m	£4.5m
Time to first distribution (years)[9,10]	2.2	3.2	2.3

Sources: Companies House; information provided by insolvency practitioners

47. The above cases featured a weighted average shortfall in client funds of 65% (calculated as total shortfall over client funds owed across the 12 insolvency cases), and 7 of the 12 cases had shortfalls of over 50%.

48. Of the 6 cases where some funds have been distributed to clients, it has taken, on average, over 2 years for a first distribution to be made. Beyond introducing an inconvenience and potential harm from mental distress through being unable to access funds or pay off debts, we consider that delays in the return of funds to clients lead to harm in terms of opportunity cost. A client that receives funds earlier may use them productively elsewhere (eg save them in an interest-bearing account, invest them, use them to complete a transaction, or, in the case of businesses, deploy capital spending). Retail clients that face financial difficulties may need to borrow money until the funds are returned to them, paying interest on the amount likely at a higher interest rate.

49. We note additional findings, which further demonstrate the harms we outlined in the previous section:

- 8 out of 12 cases had a shortfall of more than £1m, and in two instances the shortfalls exceeded £20m.

5 Mean averages, calculated separate for all API insolvencies, all EMI insolvencies and all insolvencies (API and EMI)
6 Based on 6 of the 12 cases where data is available
7 We expect the first distribution to be the largest, however there may be subsequent payments.
8 Based on 6 of the 12 cases where a distribution has been made
9 We expect the first distribution to be the largest, however there may be subsequent payments.
10 Based on 6 of the 12 cases where a distribution has been made

- First distributions often took longer than 3 years. The average time to first distribution reported in the table is conservative, as it excludes cases where a distribution is yet to be made. For example, in one instance a firm entered insolvency in 2019 but has not yet paid any funds to clients. There has been a distribution in only 1 of the 6 insolvencies that happened since 2021.
- First distributions were often significantly short of the funds owed to clients.
- Insolvency Practitioner fees (incl. legal expenses) ultimately deducted from client funds were on average £0.8m, or 7% of client funds.

Hypothetical failure of a large provider

50. Client harm could be particularly severe if, hypothetically, a large provider were to fail and there were shortfalls in the client funds they held, for example through a lack of understanding of their safeguarding obligations, or the clients faced material delays in having said funds returned to them, for example through uncertainty in the legal process or poor record keeping.

51. For illustrative purposes, we consider the hypothetical failure of a firm that holds £1bn of client funds at the point of insolvency. According to publicly available information, client funds of the largest Payments Firms exceed this figure.

52. For such a firm, even a shortfall of 5% means £50m of client funds not being returned unless topped up by other assets. Given that the firm is insolvent, we do not think it is likely they will be able to provide a top-up.

53. Lengthy insolvency proceedings also have a material impact on clients. Assuming, upon receipt, that clients would move funds to a savings account with an indicative interest rate of 1.45% (compounded annually), a delay of returning £1bn funds to clients of just 6 months results in £7.2m of foregone interest. Our illustrative 1.45% figure is based on the Bank of England's base rate expectations over the next 3 years (3.25%) in their February 2024 Monetary policy report, from which we subtracted 1.8% as the average discount to the base rate on easy access accounts over the period 1870-2007 (FCA Cash Savings Market Review 2023). We chose this interest rate as a conservative estimate and note that the opportunity cost could be much higher should clients be required to borrow or face disruption to their business as a result of not being able to access their funds.

54. Our 5% shortfall and 6-month reduction in delay hypotheticals are conservative, as insolvencies over the period Q1 2018 – Q2 2023 featured an average shortfall of 65% and an average time to first distribution of client funds of more than 2 years.

55. While an insolvency of this scale has not occurred, these are sizeable risks that an inadequate safeguarding regime could crystallise.

Proposed intervention

56. We are concerned that, absent intervention, the harms outlined from firm failure in the previous section will continue to affect clients and may even increase given the continuing growth of the non-bank payments sector. We are not intending to prevent firms failing, but to improve the outcomes for clients in this eventuality.

57. To address these issues, we propose that when HMT commences the repeal of the current safeguarding regime under FSMA 2023 to replace assimilated EU law with rules set by the financial services regulators, it is replaced with more prescriptive rules aligned with CASS. We expect that these rules will lead firms to improve their safeguarding practices, as well as improve the efficiency of the insolvency distribution processes. We summarise our proposed rules in Figure 2 below. More details are provided in Chapters 3-7 of the CP.

58. We propose to implement these rules in a 2-staged process, with interim rules supplementing the current safeguarding framework in the PSRs and EMRs followed by end-state rules to replace that framework when it is repealed.

59. We have taken this approach as we believe there is potential for significant harm in the event of firm failure, as set out above, should we not act as soon as possible. We recognise this will require Payments Firms to make two sets of changes, but we are mitigating the associated costs by limiting the changes needed to the interim rules following the implementation of the end-state.

60. Our interim rules primarily aim to ensure compliance with both the current and future safeguarding regimes to reduce the incidence and extent of pre-insolvency shortfalls. Our end-state rules are additive to these and primarily aim to improve the speed and cost of distributing funds post-insolvency.

Figure 2: Summary of our proposals

Interim rules

Improved books and records

Record keeping and reconciliations
- Introduce comprehensive rules to ensure firms carry out accurate and consistent reconciliations.
- Require Payment firms to keep clear records of client funds and to put in place a resolution pack, containing information an IP would need to achieve a timely return of funds to clients.

Enhanced monitoring and reporting

Audit and reporting requirements
- Require firms to complete annual audits of compliance with safeguarding requirements.
- Require Payment firms to submit a new monthly safeguarding regulatory return.

Strengthening elements of the safeguarding regime

Use of third parties
- Payment Firms will be required to consider whether their approach to safeguarding is appropriately diversified.
- Ensure Payment Firms undertake due diligence in the selection of third parties.
- Require Payment Firms to have acknowledgement letters.

Insurance or comparable guarantee
Providers will only be able to cancel policies for non-payment of the premium, and will be required to give 90 days' notice.

End-state rules

Holding funds under a statutory trust

Statutory trust
All funds, assets and insurance policies/guarantees used for safeguarding are held on trust in favour of clients.

When the safeguarding obligation starts and ends
Maintain the existing approach, but clarify when the safeguarding obligation begins and ends with more prescriptive rules and guidance.

Investing client funds in secure liquid assets (SLAs)
Continue to allow Payment Firms to safeguard using SLAs. Payment Firms will need to consider whether they need additional permissions to invest client funds in SLAs.

Strengthening elements of the safeguarding regime

Segregation of relevant funds
Payment Finns must ensure that all client funds they receive are paid directly into a DSA with a central bank, an authorised credit institution or with a bank authorised in a third country, with a template acknowledgement letter except for accounts with acquirers and used solely to access a payment system.

Agents and distributors
- Agents and distributors have to deposit any client funds directly into the principal firm's safeguarding client account; or
- principal firms have to segregate the maximum value of estimated funds likely to be held by agents or distributors, in their own DSA.

Insurance or comparable guarantee
Setting out more stringent criteria that need to be satisfied by this safeguarding method and ensuring the policy is written in trust.

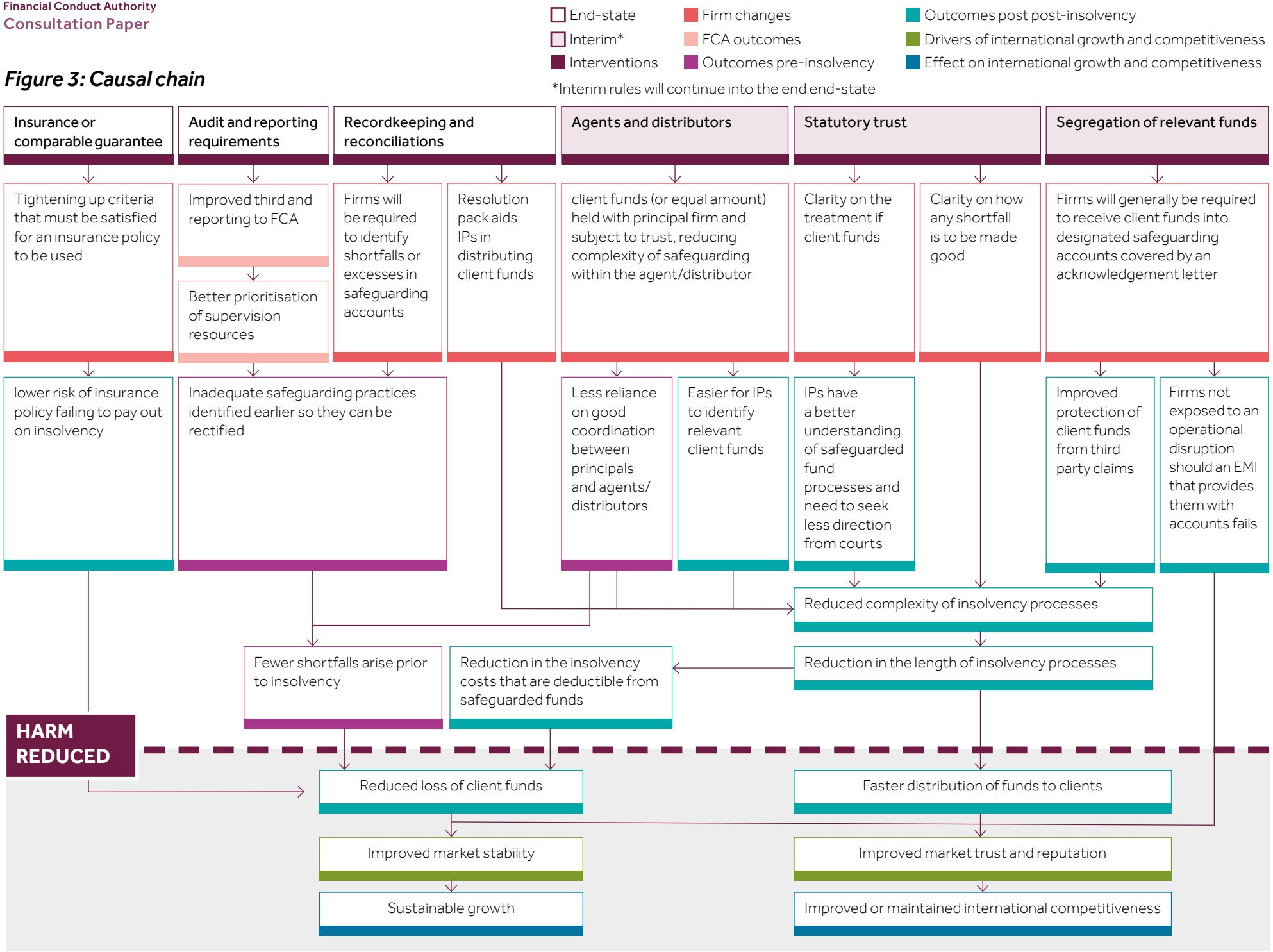
Fixed term, accounts
Restrict the use of fixed term accounts, applying additional safeguards where funds can only be withdrawn with 31 to 95 days' notice.

Causal chain

61. The following figure 3 presents the causal way we expect the above changes will improve client outcomes. Benefits in terms of our secondary international competitiveness and growth objective are discussed in more detail at the end of this CBA. Our interventions seek to reduce harm to clients and markets that arise from firm failures, rather than operate a zero-failure regime. We assume that:

- Existing high-level legislation hinders clear understanding of Payment Firms' safeguarding obligations, and not all firms follow guidance in the approach document, resulting in inadequate safeguarding practices.
- Firms comply with our rules.
- The rules provide sufficient legal clarity to IPs that reduces the need to seek court orders relating to client funds during an insolvency.
- FCA supervision and enforcement are effective in using the additional information.

Figure 3: Causal chain



Other considered policy options

62. Before arriving at our proposals, we considered different policy options. We set these, and their relative limitations that led us to dismiss them, out below.

Do not implement interim rules

63. We considered not taking a staged approach and instead implementing all of our proposals at once when HMT commences the repeal of the current safeguarding regime. While this would reduce the compliance burden for firms through a one-off implementation, harms would not be addressed sufficiently quickly to protect clients. Any delays in the timelines for delivery of legislation would further increase the risk of additional harm arising.

64. The inconsistent scale of firm insolvencies brings this issue to the fore. While we estimate an average harm per firm failure of around £8m, a large firm failure could result in much larger harm to clients. We believe our interim rules will allow us to act much more effectively to mitigate this harm. In addition, we have made every effort to ensure that firms incur minimal additional costs in the transition from interim to end-state.

Increased supervision resources and enforcement

65. Increasing resources relating to supervisory oversight could, to some extent, address the observed levels of non-compliance with current safeguarding requirements. However, our supervisory approach would continue to be limited by a lack of ongoing reporting and audit requirements. The large number of Payments Firms with a variety of business models mean that lots of repeated engagement with firms would be required, which would be disproportionately expensive for both the FCA and firms when compared with our proposals.

66. In addition, shortcomings caused by the high-level nature of the current regime would persist, including the risk of poor practices (particularly with regards to reconciliations and safeguarding audits). Finally, any new enforcement cases would take significant time and resource, with our ability to challenge divergent practices limited by the high-level nature of the requirements. Lastly, significant supervisory resource would need to be directed to achieve a successful impact, potentially drawing it away from other areas with resultant consumer harm.

Only implement interim proposals to support the PSRs and EMRs

67. We considered only implementing the interim rules to improve compliance with the safeguarding regime in the PSRs and EMRs. However, it is not within our gift to choose where the safeguarding regime should sit. Given that FSMA 2023 repeals the PSRs and EMRs, subject to commencement by HM Treasury, we will need to establish a new regime through our rules when the legislation revoking the current regime comes into force.

68. In our view the only viable option to provide adequate levels of client protection is the imposition of a statutory trust. We cannot replicate the current regime under our current powers and, in any event, consider that a trust is preferable for the reasons set out below.

69. First, a statutory trust provides certainty over the treatment of funds in the event of an insolvency.

- The Ipagoo judgment (see Chapter 2 of the CP for a full discussion) suggests that there is solely a creditor/debtor relationship between a firm and its clients rather than a fiduciary relationship. As a result, secured lenders could challenge the use of assets they have a charge over to top up the safeguarded funds. This will likely result in IPs seeking further court directions or their actions being challenged. A trust provides an established legal framework for IPs to rely on.
- Under a statutory trust clients remain the beneficial owners of safeguarded funds, with the firm acting as trustee over those funds. This will ringfence and protect the funds from the claim of other creditors should the firm fail.
- A statutory trust would allow trust funds to be recovered from the firm and, in some cases, third parties through established principles of tracing. It is not clear that would always lead to a better outcome, in terms of the size of the asset pool, than the status quo as it will vary on a case-by-case basis. However, a statutory trust provides greater certainty through its reliance on established principles leading to reduced costs and delay in distribution.

70. Our interim rules operate within the safeguarding regime set out in the PSRs/EMRs which allow firms to receive and hold client funds in non-designated safeguarding accounts (NDSAs). This means they cannot address the risk of an operational disruption to multiple Payments Firms should a critical EMI that provides NDSAs fails.

Exemption for FSMA permissions for firms investing in secure liquid assets

71. The trust may mean that firms incur additional costs to invest in SLAs. This is because they will need to ensure they have the necessary permissions to invest in and hold assets belonging to others. We considered seeking an exemption for payment services firms to carry on investment activity under FSMA where that activity consists of safeguarding as a trustee in compliance with our safeguarding rules. This would have included risk mitigation measures such as applying relevant elements of CASS 6 to payment services firms, including rules on record keeping and reconciliation to mitigate risks relating to the firms' investment in SLAs. Overall, we concluded that it would not be appropriate where they engage in substantive portfolio management with their clients' funds, and we considered that there should be parity with existing CASS firms where they are undertaking the same activity.

Do nothing – Delivering through the Consumer Duty

72. Finally, we considered not intervening in the sector and relying on the current rules and regulations – specifically the Consumer Duty– to improve safeguarding practices and insolvency processes.

73. The Consumer Duty is designed as a system-wide intervention that sets higher and clearer standards of consumer protection across financial services and requires firms to act to deliver good outcomes for retail customers. In the context of the concerns raised in this Consultation, the Consumer Duty requires firms to avoid causing foreseeable

harm to retail customers, including through poor safeguarding practices. In this instance firms could ensure that their safeguarding practices are of a high standard, for example by monitoring and regularly reviewing the outcomes that their customers are experiencing in practice and taking actions to address any risks to good customer outcomes. In this instance, however, we believe prescriptive rules are required because:

- Weaknesses we have seen in some firms' understanding of their obligations suggests that additional prescription is needed for them to have more clarity on our expectations and fully operationalise the Consumer Duty in this market.
- Insufficient reporting and auditing requirements limiting our ability to supervise and enforce against poor practices effectively.
- The inability to change the legal status of funds and prevent other creditors from exercising a claim through the Consumer Duty.
- The risk of contagion should an EMI providing accounts to other Payments Firms fail.
- The Consumer Duty will only cover a subset of Payment Firms' clients as it only applies to retail customers.

Our analytical approach

74. We analysed the impacts of our proposed policy against a baseline, or 'counterfactual' scenario, which describes what we expect will happen in the market in the absence of our proposed interventions. That is, we compare a 'future' under the policy, with an alternative 'future' without the policy.

75. We constructed this baseline by looking at evidence of the current situation in the sector and extending this into the future. Our counterfactual is based on evidence from the following sources, which we discuss in more detail in the following subsection:

- A firm survey undertaken in August 2023 and supplementary data gathered from other firm engagement
- Insolvency data on 12 firms that entered insolvency between Q1 2018 and Q2 2023, which we gathered through a review of publicly available data from legal proceedings and firm financials, and through engagement with IPs
- Views and insights gathered as part of our engagement with the industry
- Internal data from the financial services register and regulatory returns
- Data from other sources, including previous work done by the FCA and feedback to prior consultations
- Our experience and wider knowledge of the costs associated with regulation, including using our Standardised Cost Model (see Annex 1 here).

76. We also used these data to inform our estimates of the benefits of our proposals and the costs we expect to arise from their implementation. We look at the following elements:

- The likely costs to Payments Firms, as well as any costs to other stakeholders
- The elements of our proposals that may increase costs to clients
- The likely benefits to clients, including illustrative scenarios of benefits in the event of a large firm failure

77. We are proposing to implement our rules through a staged approach. We consider the impact of our proposals over a 10-year period with costs and benefits occurring from the assumed time of implementation. We account for any costs and benefits arising from moving between the interim and end-state rules. When estimating net present value of costs and benefits, we use a 3.5% discount rate as per The Treasury's Green Book.

Data

78. In this subsection we describe in more detail the firm survey data and insolvency data used for our analysis.

Firm survey and supplementary engagement

79. We asked a representative sample of 51 APIs and 48 EMIs covering a range of business models and sizes. We selected the sample as follows.

- We randomly selected 30 EMIs by splitting the entire population of authorised EMIs in deciles based on transaction values and picking 3 random firms from each decile. 19 (63%) of EMIs selected this way responded.
- We randomly selected 30 APIs following the same approach. 19 (63%) of APIs selected this way responded.
- In addition to the above we selected another 3 APIs and 8 EMIs that, according to regulatory returns, safeguard using secure liquid assets ("SLAs"). Following this inclusion, our sample covers all Payments Firms that safeguard through investing in SLAs according to our regulatory returns. 9 firms (56%) responded.
- We added a further 17 APIs and 4 EMIs that, according to our regulatory returns, use agents in their business models. Following this inclusion, our sample covers all 20 API and 5 EMI firms that have over 10 agents, 9 of which have over 100 agents. 67% of firms with over 100 agents responded and 69% of firms with over 10 agents responded.
- We also included an additional 4 firms (all EMIs) that use distributors, selected according to our best understanding of firms using a large number of distributors in their business model following engagement with supervisory colleagues. One firm responded.
- Finally, we added another 3 firms (1 API and 2 EMIs) in our sample that did not fit any of the above criteria, but which supervisory colleagues identified as being of interest, for example where they had previously found it difficult to find a bank to provide a DSA. One of these firms responded.

80. Our sample does not include any firms that did not report transaction values for their latest reporting period as we consider them to be inactive. It also does not include firms for which we have strong supervisory concerns, as we considered these to be unrepresentative. Finally, it does not include firms that only offer account information services or payment initiation services as these firms do not hold relevant funds. We did not survey SPIs as safeguarding is not a mandatory requirement for them.

81. We consider this to be a representative sample of all Payments Firms in the sector as it covers firms processing different levels of transactions, all firms utilising material numbers of agents and/or distributors, and all firms that report using SLAs.

82. We received 35 responses from APIs and 27 responses from EMIs. Based on the transaction values of the surveyed firms, we estimate that responses to the survey covered approximately 47% of the EMI market and 6% of the API market. In addition to the firm survey, we also engaged with some of the larger firms on an ad hoc basis. Taking into account data gathered through this supplementary firm engagement, we estimate that our responses from API market coverage exceeds 34% in terms of transaction value. Given the response rate and the market coverage of our survey, we consider extrapolations to the entire sector based on them to be robust.

Insolvency data

83. To obtain a view on the harm to clients in the event of firm insolvencies under the current legislation, we reviewed Payments Firm insolvencies from Q1 2018-Q2 2023. Our review covered 12 out of all 46 insolvencies related to Payments Firms in that period. The 34 insolvencies that we excluded from our review are not relevant to the type of issues our proposed rules are aiming to address because they involved the following types of firms:

- Firms that were Account Information Service Providers only, as they do not hold client funds.
- Firms that entered Members Voluntary Liquidation, as the firm is required to be solvent to liquidate in this way.
- Firms that did not hold client funds at the time of insolvency, as we consider that these insolvencies did not harm clients in the means considered in this consultation.
- Small Payment Institutions, as they can choose whether to comply with the current safeguarding regime, and will be able to choose whether to comply with our proposed safeguarding rules.
- Agents and distributors of Payments Firms, as the safeguarding requirements apply to the principal firm.

84. As we do not hold internal data on firms after they become insolvent, we used information from publicly available insolvency documents on Companies House. This data are not complete but allowed us to obtain an estimate for:

- the amount of client funds a firm may owe when entering insolvency,
- the amount of assets available to be used to reimburse clients following the insolvency,
- the amount of funds distributed to clients and over what length of time,
- the amount of administration fees and expenses incurred during insolvency.

85. Following our review of these 12 insolvencies, we reached out to the IPs that worked on these cases for further information and clarifications. Table 1 summarises the key information in respect of insolvent firms in some of the areas our proposals seek to address.

Baseline

86. In this section we outline the state of the sector as well as some key assumptions underpinning our CBA.

87. We assume that absent our proposed intervention, the issues we outlined earlier in this document will continue harming clients to the same degree over the next 10 years.

88. In practice, the harm to clients may increase over time as the sector grows, as the number of clients affected by firm insolvencies may also increase proportionally with sectoral growth. This may occur as newer firms are more likely to become insolvent.[11] If growth continues through transactions volumes and values instead, there may be fewer insolvencies but with a greater risk of harm should a firm become insolvent.

89. In addition, further issues may arise in the future due to legal uncertainty introduced by the Ipagoo court case judgment. The judgment found that the EMRs do not create a statutory trust over relevant funds; instead, they create a special type of priority interest for clients in the event of insolvency. These principles were applied to safeguarding under the PSRs by the Allied Wallet case.[12] This unique approach to insolvency protection results in uncertainty, as, unlike a trust, the legal consequences of the special status under the PSRs/EMRs are not clear. This risks IPs seeking further court directions resulting in delay and additional costs which may subsequently reduce the funds returned to clients.

90. Finally, the Payments & Electronic Money Special Administration Regime (PESAR), came into force in July 2021. The PESAR is intended to reduce loss in client funds through lower IP costs and speed up the distribution of funds to clients. However, it does not affect safeguarding practices prior to insolvency.

Key assumptions

91. Our cost and benefit calculations take into account the impact of our rules on All Payments Firms currently safeguarding under the PSRs and EMRs (630 firms).

92. As with our existing rules, our proposed rules will apply to SPIs on a voluntary basis only. For this reason, we do not consider them in our costs and benefits calculations as we cannot be sure how many firms will choose to follow our proposed rules. However, we still comment on how our proposals may affect their incentives to voluntarily comply.

93. Our proposals apply to credit unions that issue e-money. Following engagement with the trade bodies representing credit unions, we have been unable to identify any firms that regularly issue e-money, therefore we do not consider these firms in our costs.

94. Alongside e-money-related services regulated under the EMRs, some EMIs also provide unrelated payment services regulated under the PSRs, such as money remittance. We assume that our proposed rules will not require EMIs to incur duplicate compliance costs for their EMR and PSR activities.

95. Following the introduction of the PESAR, all insolvent firms have entered this regime. Therefore, we assume that all future firms will enter the PESAR, despite the process not being mandatory. As outcomes of the regime are still yet to be realised, we also assume

11 Kücher, A., Mayr, S., Mitter, C. et al. Firm age dynamics and causes of corporate bankruptcy: age dependent explanations for business failure. Rev Manag Sci 14, 633–661 (2020). https://doi.org/10.1007/s11846-018-0303-2

12 Re: Allied Wallet Ltd (in liquidation) [2022] EWHC 1877 (Ch), see paragraph 8.

that our baseline, including firms both in and out of the PESAR, remains representative of the time taken to distribute funds on average.

96. While the sector is growing, we assume that the population of firms that will need to implement changes following our rules remains the same. This is because it is impracticable to estimate the growth of firms in the sector accurately.

97. Overall, we anticipate that firms of different sizes will incur different costs. We categorise firms as Large, Medium or Small based on our Standardised Costs Model (SCM).

Table 4: Break down of firms included in our cost calculations, by SCM size

Firm type		Estimated number
API	Large	6
	Medium	55
	Small	319
EMI	Large	15
	Medium	195
	Small	40
Total		**630**

98. We assume that our end-state proposals will come into force a year after our interim proposals, but this is dependent on when the revocation of the current safeguarding regime is commenced. This assumption is based on our engagement with HMT but there is a risk that the requisite legislative changes do not happen on this timetable.

99. We also make the following assumptions:

- We assume that all firms will fully comply with our proposed rules, and that compliance with existing legislation and guidance is partial (see Drivers of harm section).
- While we are aware that compliance with the existing legislation and guidance is partial, we assume full compliance when we estimate the costs of our proposals. This is because we do not know current levels of compliance, and to prevent firms benefitting from their non-compliance by increasing the costs of introducing our rules (see paragraph 174 for a discussion).
- Firm's regulatory returns have been filled out correctly and the data provided are accurate.
- Firms will continue to be able to access and use their DSAs following implementation of our proposals and can obtain additional DSA capacity as required.
- Market structure and the nature of competition remain the same following the implementation of our proposals.

100. And use the following terms:

- Unless stated otherwise, all references to 'average' are the mean average.
- All price estimates are nominal.

101. We note that the per-firm estimates we set out in this CBA have been generated to increase the robustness of industry-level estimates. Per-firm cost estimates correspond to the mean cost, and do not capture the potentially wide range of costs that a particular firm may incur. For the avoidance of doubt, individual firms may in practice bear costs greater or lower than the per-firm averages used to estimate overall costs to the industry. This will depend, among other things, on the firm's individual size, makeup, and current practices. Firms should consider our proposals in relation to their specific operation and provide feedback on this basis, supported by evidence where they believe costs differ.

Summary of costs and benefits

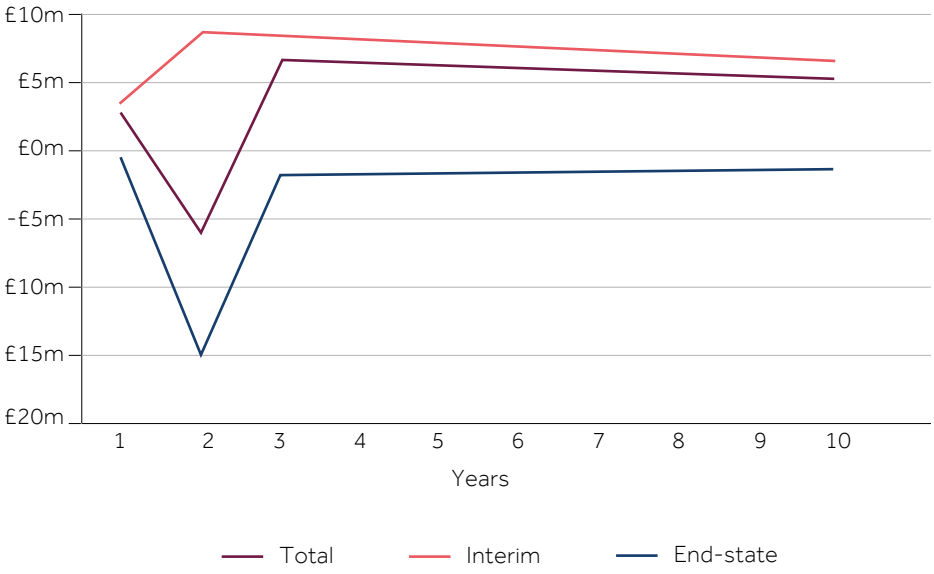
102. Over our 10-year appraisal period, and assuming firm insolvencies in that period will follow the trend of insolvencies in the period Q1 2018 – Q2 2023 and the interim proposals are in place for 1 year, we estimate £150.8m (PV-adjusted) benefits and £106.2m (PV-adjusted) costs, leading to a net PV-adjusted benefit of £44.6m. These are set out in Table 4, with their respective net present values over time in figure 4.

103. The above net present values are estimated using past trends alone, which generally featured insolvencies of small firms. We expect significantly more substantial benefits would arise if a large firm were to fail over the appraisal period (although we do not assign a probability to such an event happening). Based on our illustrative calculations in table 3, we estimate a large firm failure will bring an additional £56m of monetised benefits to clients should it fail in the end-state or £50m in the interim. See the *"Illustrative large firm failure"* section for details of estimation.

Table 5: Total benefits and costs of proposals over 10 years, PV-adjusted

	PV Benefits	PV Costs	NPV (10 yrs)
Total impact	**£150.8m**	**£106.2m**	**£44.6m**
-of which interim	£137.5m	£65.6m	£71.9m
-of which end-state	£13.3m	£40.7m	-£27.3m
Total impact + Large firm failure in end-state	£208.0m	£106.2m	£101.8m
Key unquantified items to consider	Reduced risk of contagion Increased legal certainty	Risk of firms being unable to find adequate safeguarding account capacity	

Figure 4: Estimated net present value of proposals over 10-year appraisal period



Interim

104. Over the 10-year appraisal period, we expect direct costs to firms related to our interim proposals of £65.6m (PV-adjusted) and benefits of £137.5m (PV-adjusted), giving a PV-adjusted benefit of £71.9m. Our interim rules primarily aim to prevent shortfalls arising pre-insolvency as a result of non-compliance with the current and future safeguarding regimes.

End-state

105. An additional £40.7m (PV-adjusted) of costs are incurred following the implementation of the end-state rules, with an additional £13.3m (PV-adjusted) benefits for a net PV-adjusted cost of £27.3m. Our end-state rules are focused on

- providing legal certainty around the treatment of relevant funds, and
- mitigating the risk of contagion should an account-providing EMI or other third party used for safeguarding purposes fail.

106. We note that the NPV of our end-state proposals is negative, but we believe they are proportionate due to the unquantified benefits arising from legal certainty and the mitigation of contagion risk. Our end-state rules are also needed to ensure adequate consumer protection when HMT commences the repeal of the safeguarding requirements in the PSRs and EMRs.

107. For our end-state rules to breakeven, provided that insolvencies retain the same average characteristics, the number of firm insolvencies per year would be required to increase threefold to 6.6. This would lead to 44 more insolvencies over the 10-year appraisal period. Alternatively, an increase in the amount of client funds held of £500m, through one or many larger insolvencies, would also lead to our end-state rules breaking even.

Proposal costs and benefits

108. Tables 6, 7 and 8 present a summary of the estimated annual ongoing and one-off costs and benefits to stakeholders from our proposals overall and at the interim and end-state, respectively.

Table 6: Summary table of overall benefits and costs

Group affected	Item description	Benefits (£)		Costs (£)	
		One off	Ongoing	One off	Ongoing
Firms	Familiarisation & legal costs			£5.6m	
	Statutory trust			Negligible	£3.6m
	Investing client funds in secure liquid assets				£3.6m
	Acknowledgement letters			Negligible	
	Strengthening elements of the safeguarding regime			£13.5m	*£3.0m*
	Switching to DSAs			£11.5m	
	Loss of revenue to NDSA providers				*£2.8m*
	Renegotiating terms of insurance or guarantee			£0.3m	Unquantified
	Safeguarding agents' and distributors' funds			Negligible	
	Due diligence and diversification requirements			£1.7m	£0.2m
	Enhanced monitoring and reporting				£6.8m
	Monthly safeguarding return				£1.2m
	Annual audits				£5.6m
	Improved books and records			£0.5m	
	Record keeping and reconciliations			Negligible	

Group affected	Item description	Benefits (£)		Costs (£)	
		One off	Ongoing	One off	Ongoing
	Resolution packs			£0.5m	
Insolvency Practitioners	Less likely to exceed approved compensation		Unquantified		
DSA providers	Increased revenue from account provision		*£2.8m*		
Clients	Pass-through costs				Negligible
	Faster return of funds		£0.5m		
	Lower shortfalls in client funds		£16.0m		
	Reduction in administration fees		£1.3m		
	Reduced risk of contagion		Unquantified		
	Funds better insulated from other creditors		Unquantified		
Total			**£17.7m**	**£19.6m**	**£10.5m**

Note: Where estimates are in a range, the central scenario is presented.

Italicised values are a transfer and do not contribute to the NPV calculation.

Table 7: Summary table of interim benefits and costs

Group affected	Item description	Benefits (£)		Costs (£)	
		One off	Ongoing	One off	Ongoing
Firms	Familiarisation & legal costs			£3.7m	
	Due diligence & diversification requirements			£1.7m	£0.2m
	Monthly safeguarding return				£1.2m
	Annual audits				£5.6m
	Record keeping and reconciliations			Negligible	

Group affected	Item description	Benefits (£)		Costs (£)	
		One off	Ongoing	One off	Ongoing
	Resolution packs			£0.5m	
	Renegotiating terms of insurance or guarantee			£0.3m	Unquantified
Clients	Pass-through costs				Negligible
	Lower shortfalls in client funds		£16.0m		
Total			**£16.0m**	**£6.2m**	**£7.0m**

Note: Where estimates are in a range, the central scenario is presented.
Italicised values are a transfer and do not contribute to the NPV calculation.

Table 8: Summary table of end-state benefits and costs

Group affected	Item description	Benefits (£)		Costs (£)	
		One off	Ongoing	One off	Ongoing
Firms	Familiarisation & legal costs			£1.9m	
	Investing client funds in secure liquid assets				£3.6m
	Acknowledgement letters			Negligible	
	Switching to DSAs			£11.5m	
	Loss of revenue to NDSA providers				*£2.8m*
	Renegotiating terms of insurance or guarantee			£0.2m	Unquantified
	Safeguarding agents' and distributors' funds			Negligible	
Insolvency Practitioners	Less likely to exceed approved compensation		Unquantified		
DSA providers	Increased revenue from account provision		*£2.8m*		
Clients	Pass-through costs				Negligible

Group affected	Item description	Benefits (£)		Costs (£)	
		One off	Ongoing	One off	Ongoing
	Faster return of funds		£0.5m		
	Reduction in administration fees		£1.3m		
	Reduced risk of contagion		Unquantified		
	Funds better insulated from other creditors		Unquantified		
Total			£1.8m	£13.5m	£3.6m

Note: Where estimates are in a range, the central scenario is presented.

Italicised values are a transfer and do not contribute to the NPV calculation.

Costs

Costs to firms

109. In this section we consider the costs of our interim and end-state proposals in turn. Where additional considerations arise in the end-state as a consequence of implementing interim proposals, we refer to these by the same heading.

Interim proposals

110. This section outlines the direct costs to firms when the interim rules are introduced, in year 1 of the 10-year appraisal period.

Familiarisation and gap analysis

111. We expect that the new rules and guidance would be contained in a standard FCA publication. Firms will incur costs in resources needed to familiarise themselves with the rules in accordance with our SCM to identify and address any compliance gaps. As we are consulting on both interim and end-state proposals at the same time, we expect firms to undertake full familiarisation and gap analysis at the outset and then repeat end-state familiarisation upon implementation of these proposals.

112. We use standard assumptions from our SCM to produce an estimate of familiarisation costs. We anticipate 80 pages of policy documentation excluding the legal instrument. Assuming 300 words per page and a reading speed of 100 words per minute, it would take around 4 hours to read the document. We assume that the document will be read only by compliance staff; 20 staff in large firms, 5 in medium and 2 in small. The hourly compliance staff salary assumption is based on the Willis Towers Watson 2022 Financial

Services Report, adjusted for subsequent annual wage inflation, and including 30% overheads. We expect all firms in scope to incur familiarisation costs. For an individual firm, this cost translates to approximately:

- Small firm - £390
- Medium firm - £1,200
- Large firm - £5,100

113. Hence, for the 630 firms affected, the total familiarisation cost is estimated to be £0.5m.

Legal costs

114. We anticipate 151 pages of legal text across our interim and end-state rules. We anticipate that 4, 2 and 1 legal staff will read the legal instrument in large, medium, and small firms respectively, taking 7 hours each. Basing the legal staff salary on the Willis Towers Watson 2022 Financial Services Report, uprated for wage inflation, we calculate total legal costs for individual firms, translating to approximately:

- Small firm - £1,400
- Medium firm - £8,700
- Large firm - £25,000

115. Hence, for the 630 firms affected, the total legal cost is estimated to be £3.2 million.

Strengthening elements of the safeguarding regime

Use of third parties

116. Firms will be required to exercise due skill, care and diligence when appointing third parties that provide accounts for relevant funds or assets, or provide insurance or comparable guarantees. As part of this, firms will be required to consider the concentration risk and the need for diversification.

117. This will incur a one-off cost in the establishment of new processes to ensure that due diligence and diversification are properly considered, and an ongoing cost for the adherence to these processes in the future. There may also be costs associated with changing third party providers if these checks find their current provider to be inadequate, but we do not consider it practicable to determine how many firms this may apply to.

118. We do not anticipate there to be any costs to small firms as they are unlikely to safeguard sufficient funds for diversification to be a concern and account providers are more likely to be able to meet their requirements.

119. We use our SCM to estimate the one-off costs to all the 271 medium and large firms required to safeguard. We assume a very small project change: 14 person days for medium firms and 45 for large firms. We find a total cost of approximately £1.7m, broken down as follows:

- Medium firm - £5,200 for 250 firms
- Large firm - £17,700 for 21 firms

120. In addition, firms will be required to use due diligence in the appointment of third parties to manage relevant assets and periodically review the diversification of third parties used for safeguarding purposes in line with their organisational requirements. We have assumed, as a representative figure, that this will happen 4 times per year and require 3 hours of one compliance professional's time. This leads to an annual ongoing cost of £0.2m per year. For both the one-off and ongoing cost, we estimate a total cost of £3.3m (PV-adjusted) over the 10-year appraisal period.

121. In the interim, firms will have to obtain new acknowledgement letters from safeguarding institutions to reflect the new terminology in our rules. As the FCA provides the template for these letters and the changes are minor, we believe the cost will be negligible.

Insurance or comparable guarantee

122. We are proposing rules relating to insurance policies and guarantees that go beyond our current guidance in respect of cancellation. Insurance policies and guarantees will only be able to provide for cancellation for non-payment of the premium, and will have to require the provider to give 90 days' notice. These changes may result in firms needing to renegotiate their policies where they do not meet these requirements.

123. This renegotiation may result in two further costs to firms, a one-off cost in renegotiating, and a further ongoing cost if premiums are to rise. The additional requirements are relatively minor compared to insurance policies we have seen, which already feature cancellation periods of 90 days. Therefore, we expect minimal changes to premiums and consider it impracticable to estimate the change.

124. We use our SCM to estimate the one-off costs the 29 firms (13 EMIs and 16 APIs) that currently safeguard using insurance or a comparable guarantee will face in renegotiating their policy or guarantee. We assume a very small project change (3 person days for small firms; 13 for medium firms; 45 for large firms; as well as time for board and executive review to sign-off on the new policy). We find a total cost of approximately 0.2m, broken down as follows:

- £1,100 per small firm, for 12 firms
- £6,700 per medium firm, for 15 firms
- £20,600 per large firm, for 2 firms

125. If a firm is unable to agree new terms with an insurer or guarantor, or find an alternative provider, they may need to bring together additional capital to adequately protect client funds in-line with the segregation method of safeguarding. We do not consider it reasonably practicable to estimate the likelihood that an agreement is not reached, nor the additional costs a firm should incur in such an event.

Enhanced monitoring and reporting

Monthly safeguarding return

126. All 630 Payments Firms required to safeguard will face ongoing costs in terms of completing a monthly safeguarding return. We believe that firms will not need to collect any further data to complete the monthly safeguarding return and that it will

take one compliance professional 3 hours to complete the return, without board and executive sign-off required. As above, we use assumptions from our SCM on compliance professional salaries to estimate the annual cost to firms of completing the return. For an individual firm this translates to annual costs of approximately:

- Small firm - £1,800
- Medium firm - £2,100
- Large firm - £2,300

127. Hence, this leads to total annual costs of £1.2 million, reaching £10.4m (PV-adjusted) over the 10-year appraisal period.

Annual audits

128. Our proposed rules require that authorised payment institutions and electronic money institutions arrange annual audits of their safeguarding compliance. For the purposes of this CBA, we only consider the audit costs for such firms that qualify for the audit exemption for small companies under the Companies Act 2006. This is because we assume all other Payments Firms complete the safeguarding compliance audit referred to in the AD, as expected.

129. We estimate these costs by multiplying the approximate costs of a safeguarding compliance audit per firm by the number of additional firms that we consider will require this audit.

130. Based on feedback from firms to our proposed safeguarding guidance, as set out on page 35 of PS21/19, we assume that safeguarding audits will cost £12,000 per year for a small firm, £100,000 per year for a medium firm, and £200,000 per year for a large firm.

131. We estimate the number of additional firms that will require an audit based on the criteria for the small company audit exemption in the Companies Act 2006. The qualification is based on 3 criteria: the firm's total turnover, the size of its balance sheet and the number of its employees. We estimate the number of firms previously exempted using turnover alone, as we do not have information on the other criteria. On this basis, we estimate that 325 firms will be affected. We assign these 325 firms size classifications based on our SCM, and so we estimate a total of 306 small firms, 19 medium firms and no large firms.

132. Using these firm numbers and safeguarding audit cost figures, we estimate a total annual cost of £5.6m. Over the 10-year appraisal period, this amounts to a total cost of £48m (PV-adjusted).

133. Unlike our existing guidance, our proposed rules specify that all safeguarding compliance audits will need to be carried out by a person eligible to be appointed as a statutory auditor. As per page 49 of CP21/3, we assume that all audits carried out under the current guidance are carried out by a statutory auditor. As such, we assume that the statutory auditor requirement imposes no additional costs to firms that are expected to arrange an audit under our current guidance.

134. Auditors will also have an additional duty of submitting the safeguarding report to the FCA. We consider this a very small increase in work. While these costs may be passed through to the Payments Firms, we expect them to generally be negligible.

Improved books and records

Record keeping and reconciliations

135. We are proposing to move the current guidance on record keeping and reconciliation into rules. This will include providing additional detail on the records to be maintained and the methodology for reconciliations, and clarifying when the safeguarding obligation starts and ends. We do not anticipate there to be material changes to the current expectations on firms and, consequently, no additional costs will be incurred.

Resolution packs

136. Payments Firms will be expected to put in place a resolution pack to assist in the winding up of a firm. This pack will contain key information to assist IPs following firm insolvency, for example how to retrieve relevant documents. As firms should already have all the required information available, we expect a one-off cost to be incurred for the collation of the pack with negligible ongoing costs to maintain the information.

137. We assume that it will take 1 compliance professional 2 days to collate the pack and one senior compliance officer 3 hours to check the pack. For an individual firm this translates to one-off costs of approximately:

- Small firm - £680
- Medium firm - £1,100
- Large firm - £1,200

138. Hence, for all 630 firms, this leads to total costs of £0.5 million.

End-state proposals

139. This section outlines the direct costs to firms when the end-state rules are introduced. These costs are assumed to be incurred from year 2 of the 10-year appraisal period.

Familiarisation, gap analysis and legal costs

140. We expect firms will have to refamiliarise themselves with our proposed changes as we move to the end-state rules. Following the same methodology as in the interim but for end-state rules only, we anticipate 80 pages of policy documentation and 62 pages of legal text. This leads to an estimated total cost to all 630 firms of £1.8m (PV-adjusted).

Holding funds under a statutory trust

Investing client funds in secure liquid assets

141. The introduction of a statutory trust over client funds means that firms will need to be mindful of FSMA requirements when investing in SLAs. To invest in SLAs, they will need

to obtain the necessary FSMA authorisations or outsource their investment activities to a third party with those authorisations.

142. For the purposes of our cost estimation, we assume that all firms wishing to safeguard through investments in SLAs will outsource the safeguarding, administration, and management of them to an external manager. In practice, firms may find it more economical to seek the necessary FSMA authorisations or to stop using this method of safeguarding altogether. For these firms, we believe that our outsourcing-based cost estimates act as a reasonable upper bound of their compliance costs and note the FCA may face additional costs of authorisation and firms may face business interruptions during this process.

143. We received survey responses from 8 of the 16 firms that reported safeguarding client funds using SLAs. Of these, only 1 was already using an external manager for all their SLAs and would not need to make any changes following our proposals. The remaining 7 firms were safeguarding £3.2bn in SLAs.

144. For the remaining 8 firms that did not respond to our survey, we took the average proportion of the respondents' total safeguarded funds that they stored in SLAs (54%) and applied this to each non-respondent firm's safeguarded funds. This provided an estimated £351m of additional funds safeguarded in SLAs, to bring a total estimate of £3.6bn.

145. We assume that, under our proposed rules, these firms will appoint an external FSMA-authorised investment manager for these investments.

146. Based on firm responses, we assume the investment manager will be paid a market-average rate of between 0.05% and 0.25% per annum, with a central estimate of 0.1% of their total invested assets and that this rate will remain representative over the appraisal period. This leads to an annual total cost to these firms of £1.8 million to £8.9 million, with a central estimate of £3.6 million. Over the 10-year appraisal period, this results in total costs of £13.5 million to £67.6 million, with a central estimate of £27.1 million (PV). There may be additional one-off costs of liquidating or transferring their current investments, but we consider these to be impracticable to quantify as we do not have extensive knowledge of their current investments.

147. Firms appointing an investment manager may make a small saving by no longer needing to manage their own investments but based on responses from firms we anticipate this to be negligible.

Acknowledgement letter repapering

148. After the implementation of our end-state proposals, we expect all 630 firms will need to seek new acknowledgment letters to reflect that their relevant funds are held on trust. This will incur a one-off repapering exercise in the reissue of a safeguarding bank acknowledgement letter. We believe this cost will be negligible as the FCA will provide the template for the acknowledgement letter.

Strengthening elements of the safeguarding regime

Protection of client funds held within D+1

149. Under our proposed rules Payments Firms will generally be required to receive client funds into DSAs. Currently, relevant funds have to be placed in a DSA by the end of the business day following the day on which they were received (D+1). Firms use NDSAs to process transactions that are settled within D+1 and are generally used by firms that move their customers' funds on very quickly for operational efficiencies.

150. Firms that currently receive relevant funds into NDSAs, including NDSAs offered by EMIs, will have to switch to DSAs offered by approved providers. The proposal will not apply to client funds received through an acquirer, funds received into accounts used solely to access a payment system, or funds that are received as cash or cheques.

151. We expect these changes will result in the following costs to firms.

- **One-off – Switching costs:** Firms that will have to switch away from their current NDSAs will face one-off switching costs. These include the cost of changing account provider and the cost of rerouting funds currently going through NDSAs. We estimate this one-off cost to be around £11.1m (PV-adjusted).
- **Ongoing – Additional transaction costs:** Payments Firms that will have to switch away from their current NDSAs may also face ongoing costs in terms of additional transaction fees charged by their new provider. However, our analysis of survey responses did not find evidence of systematic differences in transaction fees between NDSAs and DSAs, so we assume that any differences in transaction fees are not material.
- **Ongoing – Loss of revenue:** EMIs that provide NDSA services to other Payments Firms will face a loss of revenue. We estimate this loss of revenue will equal £2.8m per year. This loss will correspond to an equal increase in the revenues of DSA providers (ie a transfer), therefore we do not consider this to be a cost or benefit for the purposes of this CBA.

Switching costs

152. To estimate the costs associated with our proposals for pre-D+1 funds, we first estimate the number of firms that are currently using NDSAs for these funds. Our firm survey responses suggest that only 10 out of the 27 (37%) EMI firms and 15 out of the 44 (34%) API firms that responded to our survey received or held client funds in NDSAs. Extrapolating this proportion to the entire population of firms (630 firms), we estimate that 223 firms (93 EMIs and 130 APIs) would have to switch to a DSA for pre-D+1 funds under our proposed rules. We apply the proportional size make-up of the market to this population to estimate there are:

- 124 small firms
- 91 medium firms
- 8 large firms[13]

13 Please note these numbers do not sum to 223 due to rounding.

153. We estimate the one-off switching costs using our SCM. Based on survey responses, we assume that the 134 APIs and 101 EMIs required to switch away from their NDSAs would face systems and IT changes and the cost of issuing an acknowledgement letter to their DSA provider.

154. Firms may need to change their internal processes and governance for our proposals. For example, they may need to find a new provider of DSAs and adjust their flow of funds to accommodate this new provider. As we expect these costs to vary with the number of accounts a firm operates, and responses to our survey indicated that large firms operate a greater number of accounts, we consider the required changes to be more significant for large firms.

155. In line with our SCM, the total number of person days for the project team and manager are assumed to be 540 for large firms, 140 for medium firms, and 6 for small firms.

156. For an individual firm, this cost translates to approximately:

- Small firm - £1,800
- Medium firm - £53,100
- Large firm - £219,000

157. These costs are calculated by taking the daily salary cost for four different teams within each firm type (project manager, project team, board oversight and executive committee oversight) and multiplying this by how many days each team spends on the proposed changes. This results in a total one-off cost of process changes to the industry of £6.7m.

158. We recognise that firms will likely also require an IT project to implement the new system to route funds directly to their DSA rather than through their current processes into their NDSA. Additionally, funds will be paid out of their DSA which may require further changes.

159. We estimate that the project will require, across the standard IT project team structure, 546 person days to set up for large firms, 78 person days for medium, and 6 person days for small firms. For an individual firm, this cost translates to approximately:

- Small firm - £1,800
- Medium firm - £31,100
- Large firm - £229,700

160. As above, this is calculated by taking the daily salary for each of the various staff members involved in IT changes and multiplying this by the total number of days each member is involved in the project. Applying this to firms required to switch accounts as detailed above leads to total estimated IT costs of £4.8m.

161. Together, the process changes and IT changes are anticipated to bring a total one-off cost to the industry of £11.1m (PV-adjusted). Some firms may have NDSAs with banks that can also offer DSAs. These firms may incur costs if they are unable to obtain a DSA account from their bank so have to change provider. These costs are not reflected above because their NDSA provider is not an EMI, but we consider it impracticable to determine which banks may take this approach.

Additional transaction costs

162. We asked firms the difference in the fees they face for their NDSAs and DSAs. Based on 25 responses from firms that use NDSAs, we found that where firms do not have trouble opening a DSA, there is no systematic difference in fees faced. Therefore, we do not consider there to be a material cost to these firms.

163. 17 firms out of 71 (24%) that responded to our survey reported difficulties in opening DSAs. Of these: 8 stated this was due to the prices faced; 2 reported a low risk appetite from DSA provider; 7 a lack of offering banks; and 7 reported other reasons[14]. While we acknowledge that these firms will face additional costs from using a DSA and a few may not be able to find a suitable provider, we consider it impracticable to estimate these costs based on the data received and because of uncertainty over the applicability of these conditions to other firms. Should firms not be able to find a suitable provider, we acknowledge they may no longer be able to continue operating.

Loss of revenue

164. We estimated the ongoing loss of revenue to EMI suppliers of NDSAs using the formula $R * N$, where;

- R is the average revenue that EMI firms in our sample earn from supplying NDSAs to an individual client firm, £40k for EMIs and £25k for APIs.
- N is our estimate of the number of firms that use NDSAs supplied by EMIs. We estimate this as in paragraph 135 based on the proportion of firms that responded to our firm survey and said they use EMI-provided NDSAs, multiplied by the entire population of firms (630). This leads to 87 firms (42 EMIs and 45 APIs).

165. Multiplying these estimates of the number of firms using EMI-provided NDSAs with the average revenue associated with providing an account to each firm gives an estimated annual ongoing loss of revenue of £2.8m, resulting in a total loss in revenue to firms of £21.3m (PV-adjusted). There will likely be a corresponding benefit to approved DSA providers as they gain this business, as estimated in paragraph 183, so we consider this a transfer and do not include it in our overall NPV calculations. We note that this may negatively impact competition in the provision of safeguarding accounts by restricting the type of firms that may offer such accounts.

166. Combined with the switching costs, this is an estimated total cost to firms over the 10-year appraisal period of £32.4m (PV).

Safeguarding agents' and distributors' funds

167. Where a firm uses agents or distributors as part of its business model, we propose that firms safeguard through one of the following two methods.

- Funds are received directly into the principal firm's DSA, rather than the agent or distributor's account.

14 Firms could report multiple reasons for difficulties in opening DSAs, therefore reasons exceed respondents.

- Principal firms hold sufficient funds in their DSA to cover the estimated funds received and held by agents or distributors in connection with services provided on behalf of the principal.

168. We asked firms that use at least 10 agents in their business models how they currently safeguard. We received responses from a total of 21 firms (16 APIs and 5 EMIs), all of whom indicated that they safeguard the funds received by their agents in ways that are consistent with our proposed rules. Extrapolating from these responses, we assume that all Payments Firms currently safeguard in ways consistent with our proposed rules. As such, we expect that this policy will not require material and costly adjustments in the practices of any firm with agents.

169. We also received responses from 4 EMIs that use distributors in their business model, all of whom indicated that their distributors do not receive funds. Therefore, we also do not anticipate any additional costs to firms using distributors.

Insurance or comparable guarantee

170. We are making further changes to the insurance or guarantee method of safeguarding in the end-state. We are proposing:

- that the rights under and proceeds of policies and guarantees are held on trust,
- to replace guidance on the use of guarantees with rules,
- additional requirements where only the insurance or guarantee method is used, and
- that policies and guarantees must pay out on the failure of the institution as defined in the Handbook Glossary, rather than an insolvency event as defined in the PSRs and EMRs.

171. These changes may result in firms needing to renegotiate their policies where they do not meet these requirements. As in the interim, we expect two further costs to firms, a one-off cost in renegotiating, and a further ongoing cost if premiums are to rise. We estimate the one-off renegotiation costs as in the interim approach (paragraphs 105-108) at a total cost of £0.1m (PV-adjusted). We note that there may be an increase in premiums as a result of these changes, but it is not reasonably practicable to estimate these changes. This is because we lack information on firms' current agreements and the pricing mechanisms that underwriters use in these scenarios. In any case, we consider our additional requirements to be relatively minor.

172. We continue to note that if a firm is unable to agree new terms with their current or an alternate insurer or guarantor, they may need to bring together additional capital to adequately protect client funds in-line with the segregation method of safeguarding. We do not consider it reasonably practicable to estimate the likelihood that an agreement is not reached, nor the additional costs a firm should incur in such an event.

Enhanced monitoring and reporting

Monthly safeguarding monthly return

173. Firms will still be required to submit the monthly safeguarding return once our end-state proposals have been implemented. While some of the elements included in the return

will change to reflect the new safeguarding regime, we anticipate the ongoing costs to complete it to remain similar. Hence, we do not anticipate any additional costs to the ongoing £1.2m annually estimated in interim to arise in end-state.

Annual audits

174. Payment Firms will continue to be required to conduct an annual audit in the end-state. We do not anticipate any additional costs to be incurred compared to the interim as auditors will be providing a very similar service. As such, we consider no increase in the ongoing £5.6m annual cost estimated in the interim.

Indirect costs

175. There is a risk that some firms may no longer be able to operate as a result of our proposals. We are aware that some firms in the market struggle to find DSAs that can support their operations and, due to our proposed rules around pre-D+1 funds, firms may need to have a larger number of DSAs and/or process a greater number of transactions through existing DSAs. This requirement may put a greater burden on firms to find these accounts. As discussed above, we cannot estimate the costs associated as we do not know the extent to which banks are able to provide appropriate accounts. If firms are unable to obtain these accounts, that may limit the extent they can grow their business or cause them to leave the market. While we cannot estimate how likely this risk is to materialise as it is unclear from current evidence the extent of this problem, we consider it proportionate to the higher level of protection our proposals will provide for client funds.

176. There is a risk that certain SPIs, which currently choose whether to opt-into the current safeguarding regime, and who will also be able to choose whether to opt-into our proposed rules, may find the cost of compliance too high and choose not to voluntarily safeguard. We are also introducing further steps that SPIs need to undertake to opt in, for example to make and maintain a written record of the election to safeguard, which may further deter SPIs from opting-in to the regime. Given that SPIs are small firms and hold relatively fewer client funds, we expect any impact to be low.

177. Firms' client funds becoming subject to a statutory trust and the beneficial interest in those funds transferring to clients may have an impact on the firms' balance sheets, and thereby on investor appetite. However, we do not believe this would result in costs to firms; firms would still be able to disclose to investors the amount of client funds held to indicate the size of their business.

Costs to insolvency practitioners

178. Our proposed rules may result in lower revenue to IPs and other firms involved in the insolvency process of Payments Firms, as we expect they will significantly simplify these processes. Assuming IPs do not earn additional income beyond that needed to cover their services and that they also reduce their own costs proportionately through providing fewer services, we consider that there are no additional costs to IPs.

179. In practice, the impact on IP revenue may be smaller, as in the cases we have seen IPs often incur expenses in excess of their court approved allowance, meaning they are not compensated for some of their time. In addition, IPs may use any resulting excess capacity to compete for business on insolvency cases in other sectors, to the ultimate benefit of clients. As we do not know how much business firms have in the pipeline, we cannot quantify how much of this income loss may be mitigated.

Costs to Clients

180. Although the costs to individual firms due to our proposed rules are expected to be low, any costs incurred may ultimately be passed onto clients through higher fees and charges. However, we believe significant cost increases are unlikely, as Payments Firms face competitive constraints from other firms not affected by our rules (e.g. retail banks). There is a risk that if firms cannot pass through costs, it may lead to them cutting operating costs by reducing the quality of their offering, which could undermine the benefits of our proposals, or exiting the market which could lead to price rises. As the products are reasonably homogenous, demand is likely to be fairly elastic, which will limit the ability of firms to pass costs through to clients.

181. In the event of a firm's business model becoming unviable as a result of our proposals, clients may face reduced choice in the financial services they are able to access. This may lead to clients being unable to complete transactions they were previously able to or they may need to pay a higher cost to do so. We do not consider it reasonably practicable to estimate these costs as it is unclear exactly which individual firms will be affected and how many clients will be impacted as a result. However, given the large number of active Payments Firm providers, and that retail banks often offer such services, we do not expect that a material number of clients will face issues finding alternative providers.

182. There is a risk that a small number of firms may choose to operate outside of the UK while providing payment services to UK clients. If these firms are not subject to our safeguarding requirements, their UK clients may remain at risk of harm depending on the regime the firm operates under. Similarly, should a firm move their safeguarding account overseas as a result of our proposals, there is a risk that there may be additional difficulties in returning funds to customers. We do not consider it reasonably practicable to estimate which firms would choose to do this as it will be dependent on their specific business model, financial position, and the regime they operate under.

Costs to the FCA

183. We are not expecting additional significant supervisory costs, as we expect the new prescriptive rules would improve firms' compliance. The FCA may incur additional costs to review the firms' monthly safeguarding returns, auditors' safeguarding reports, and undertake any authorisation of firms that choose to seek FSMA permissions to invest in secure liquid assets. However, we consider these to be included in the FCA's normal operating budget.

Benefits

Benefits to clients

184. In Chapter 4 of the CP we set out how we expect each of our proposed rule changes will benefit clients. We generally expect clients will enjoy monetary benefits in two ways: by having their funds returned to them faster, and having more of their funds returned to them through reduced shortfalls pre-insolvency and insolvency costs. We calculate these below in turn.

185. To quantify benefits we rely on our review of insolvencies over the period Q1 2018 – Q2 2023 (see Table 1) and assume that insolvencies over the next 10 years will occur at the same rate and feature on average the same characteristics. Extrapolating from these data we assume that over the next 10 years the sector will experience on average 2.2 insolvencies per year. Each year, these insolvencies will feature on average:

- £16m total annual shortfall (£137m over 10 years, PV-adjusted)
- 2.3 years until first distribution of funds to clients, with an upper estimate of 3.5 and a lower estimate of 1.2 years (the minimum and maximum lengths of time for which a distribution had been paid)
- £2.2m of annual administration fees drawn from client funds (£19.3m over 10 years, PV-adjusted)

186. We assume that estimated insolvency outcomes are distributed evenly across the appraisal period as we cannot determine when a firm may become insolvent. Interim benefits are estimated to occur from year 1 of the appraisal period while end-state benefits occur from year 2.

Interim benefits

Reduction in pre-insolvency shortfalls

187. Our interim proposals are focussed on improving compliance with the current and future safeguarding regimes. Through improving firms' safeguarding practices and our oversight of them, we expect that our rules will ensure that shortfalls do not arise in the event of insolvency. We assume our rules will mean that all firms safeguard funds in line with the PSRs/EMRs in year 1, and then our proposed rules, meaning that all client funds will be safeguarded in the event of firm failure. As such, following the implementation of our interim rules, we expect that our proposed rules will benefit clients by eliminating the £16m of shortfalls per year (£137m over 10 years, PV-adjusted).

188. These estimated benefits are reliant on compliance with the safeguarding requirements in the PSRs/EMRs rising to 100%, and remaining at that level for our safeguarding rules. We are aware that this assumption is unlikely to be achieved but we believe it is the best analytical approach for the following reasons:

- While we observe non-compliance following firm insolvency, we are unable to understand current levels of compliance among all Payments Firms. Therefore, we cannot accurately estimate the increased compliance we expect following our

interim rules, nor do we have a strong comparator for expected compliance. While we see non-compliance in CASS firms, we do not believe these provide a credible basis for assuming a particular level of compliance.
- Assuming 100% compliance allows us to compare costs without some firms facing higher costs from not complying with our proposals. This prevents firms from benefitting from non-compliance by increasing the costs associated with introducing our rules.

189. We believe that the additional reporting and supervisory tools along with rules on reconciliations are likely to deliver these results because:

- Better reconciliations and record keeping requirements will improve firm practice by ensuring that firms can accurately identify the level of funds they should be safeguarding.
- Our interim proposals improve the FCA's supervisory capabilities substantially through the introduction of monthly safeguarding returns. This will allow earlier interventions where firms are identified as not adequately safeguarding.
- The annual audit requirement will introduce another layer of third-party oversight for all firms which will also identify shortcomings in insolvency prior to firm failure.
- Due diligence and diversification should reduce the risk of shortfalls caused by a third party by ensuring that relevant funds are held at an appropriate institution.

Faster return of client funds and reduction in fees charged by Insolvency Practitioners

190. In addition, we expect that our interim rules will allow for customer funds to be returned faster for two reasons. First, resolution packs will assist IPs with the distribution of client funds through making necessary information easier to find. Second, better safeguarding practices should make it easier to constitute the asset pool. While this should help the IP in the initial stages of the insolvency, we think the impact will be limited, so have assigned these benefits to the end state rules. This is principally because there will still not be the legal certainty provided by a statutory trust, or the greater protections for relevant funds from receipt.

End-state benefits

Faster return of client funds

191. We expect client funds to be returned faster in the end-state due to the imposition of a statutory trust providing legal certainty and a well-understood framework for IPs to work under. As set out above, we assume that our interim rules will lead to 100% compliance, but acknowledge that is unlikely to be the case in practice. Where there is a shortfall, the trust will provide legal certainty and a well-established legal framework around how to address it. This will speed the process of distribution and lessen the need to incur the costs and the delay of seeking direction from the courts.

192. In addition, improved safeguarding practices, such as the rules around agents and distributors, and funds held in the pre-D+1 period, should allow the IP to more easily identify relevant funds and constitute the asset pool.

193. We assume that our proposed rules, which are aligned with CASS, will achieve a similar outcome. While we understand that processes can vary significantly, in recent insolvencies in the CASS regime the majority of funds have generally been returned to clients within 1 year, for example in the 2022 failure of Sova Capital. As we are unable to identify the extent to which different elements of our proposals will impact the speed at which client funds are returned, we have maintained this assumption. We note this may lead to an overestimate of benefits.

194. Compared to the average time to first distribution we observe from our insolvencies analysis, we assume our rules will result in time savings of 0.2 to 2.5 years, with a central estimate of 1.3 years.

195. During the period that clients are unable to access their funds, we assume that they will incur an opportunity cost as they cannot use those funds productively elsewhere. We estimate the monetised benefits of this opportunity cost based on the formula $F(1+R)^t - F$, where:

- F is the total client funds estimated to be associated with insolvencies after the end-state proposals are introduced during the 10-year appraisal period, £188m PV-adjusted.
- R is the interest rate of 1.45% (compounded annually; see paragraph 39 on why we picked this indicative interest rate)
- t is the estimated time saving in years from aligning with CASS.

196. This leads to an estimated reduction in opportunity cost of between £0.5m to £6.9m with a central estimate of £3.6m (PV-adjusted), following the introduction of our end-state rules in year 2. We consider this to be a conservative estimate, as some retail clients will face a higher opportunity cost in the absence of money tied up in firm failures if they need to borrow money to fund non-discretionary purchases. In this instance the opportunity cost measure would be the cost of borrowing.

Reduction in fees charged by Insolvency Practitioners

197. In the end-state, we expect our rules will benefit clients by reducing the deductions in client funds that are required to cover fees and related expenses incurred in the distribution of client funds.

198. Absent our proposals, we assume that administration fees will continue to be incurred and drawn from client funds at the same rate through the 10-year appraisal period as they did in Q1 2018 – Q2 2023. We expect that £2.2m of client funds would be lost due to administration expenses every year, calculated by summing each firm type's (EMI or API) average IP fees incurred by their average annual number of failures. As shown in the previous section, we estimate our rules will result in time savings of 1.3 years (central estimate), compared to an average of 2.3 years to first distribution absent our remedies – a 57% reduction in time taken. We assume that client funds lost due to administration expenses every year will fall by a similar proportion, leading to estimated client benefits of £1.3m per year (£2.2m * 57%), leading to a total benefit of £9.8m (PV-adjusted) over the 10-year appraisal period, following the introduction of our end-state rules. This may be an overestimate of the benefits as some IP costs will be fixed, but we do not have evidence of this split.

199. While the benefit clients receive from reduced fees and expenses related to distribution will result in a loss of revenue to IPs, we do not consider it to be a transfer. This is because IPs will benefit from proportionate cost savings due to providing a more limited service, while they will also be able to allocate freed resources to other cases.

Illustrative benefits from large firm failure

200. The above benefits are estimated using past trends alone, which generally featured insolvencies of small firms. We expect significantly more substantial benefits would arise if a large firm were to fail over the appraisal period. Based on the illustrative calculations we showed earlier, if a large firm holding £1bn client funds fails over our 10-year appraisal period, and absent our rules its insolvency features a 5% shortfall in client funds and an additional 6-month delay in returning funds to clients compared to under our proposed regime, we expect that our rules will bring an additional £57.2m of monetised benefits to clients (£50m from reducing the hypothesised shortfall; £7.2m in opportunity cost savings).

201. Our 5% shortfall and additional 6-month delay hypotheticals are conservative, as insolvencies over the period Q1 2018 – Q2 2023 featured an average shortfall of 65% and an average time to first distribution of client funds of more than 2 years.

Unquantified benefits

Reduced risk of contagion

202. In addition to the quantified benefits above, we expect our end-state proposals for pre-D+1 funds to bring benefits through a reduction in the risk of contagion should a payments firm which holds funds for other payment firms fails. This could create a chain reaction within Payments Firms that causes more firms to fail, potentially crystallising harm and greatly undermining confidence in the sector, leading to a reduction in business going forwards.

203. Individual respondents to our firm survey reported up to £20m held on any given day for approximately 60 firms. We do not consider these firms more or less likely to fail than any others, but they provide a useful indication of the scale of the funds at risk. Were a firm of this scale to fail, those funds could not be released to other Payments Firms, which could prevent them from providing services to their customers while insolvency processes are ongoing and potentially putting them at risk of insolvency themselves. This will depend on the extent of their exposure and the availability of other assets, which we cannot assess.

Consumer wellbeing

204. There may also be welfare impacts on consumers if they are unable to access funds required for non-discretionary purchases following firm failure and so need to borrow. We think this could affect up to 40% of consumers using payments and e-money firms who have characteristics of vulnerability, meaning they will be less able to withstand financial shocks. We expect our proposals to reduce the amount of time these consumers cannot access funds for and increase the amount of funds returned to them, both of which would have a positive impact on wellbeing.

Increased competition

205. Our proposals may result in increased competition within the Payment Firms sector through standardising approaches into a well-established framework. For example, alignment with CASS may lead to firms in adjacent sectors providing additional competition to incumbent firms. This would result in better outcomes for consumers in terms of price or product.

Benefits to firms

206. Through our more prescriptive proposed rules, we expect that firms will benefit from greater clarity around their safeguarding obligations. Although not practicable to quantify, additional clarity may in some cases translate into lower compliance and legal costs, as firms will need less advice on the interpretation of the PSRs/EMRs and our rules. There may also be benefits in terms of competition if clients are more comfortable using Payments Firms as their money is at lower risk in the event of failure.

207. Firms may also benefit from our proposals around the treatment of unclaimed funds. Firms can face significant uncertainty in dealing with relatively small balances of relevant funds that cannot be returned to consumers. Our proposals would give Payments Firms an option to gift these unclaimed funds to charity, provided certain conditions are met, including taking reasonable steps to trace the consumer. While there would be costs associated with taking this approach to unclaimed funds, it is optional. We consider that firms would only choose to do it where they deem it beneficial.

Benefits to designated safeguarding account providers

208. Where firms are using NDSAs provided by EMIs, they will need to replace these accounts with DSAs, to the benefit of the DSA providers. As we find no systematic differences in fees between NDSAs and DSAs, we consider that switching will result in an equivalent transfer of revenues from EMI NDSA providers to DSA providers. We estimate the benefit to DSA providers will be £2.8m a year, equal to the foregone revenues of EMI NDSA providers estimated in paragraphs 147-152.

Benefits to the FCA

209. There may be benefits to the FCA in terms of increased efficiency. Supervisors will have greater access to better data which will enable them to act more quickly and reduce the burden of acquiring ad hoc data from firms. This increased efficiency may allow them to reprioritise resources and intervene more effectively.

Distributional impacts

Impact on vulnerable clients

210. While we consider the costs associated with our proposed rule changes to be proportionate, we recognise that they may in some cases lead firms to exit the market. Firm exit may have particularly adverse effect on individuals with vulnerability

characteristics who rely on Payments Firms for their day to day lives, such as clients with poor credit histories who cannot access bank accounts or members of diaspora communities that send money to their families abroad.

211. Through our firm survey we gathered data to assess whether our proposals are likely to adversely influence clients with vulnerability characteristics. Overall, we found no evidence of this.

212. Out of the 62 respondents to our survey only 5 APIs and 2 EMI consider the majority of their clients to belong in underserved groups (eg migrants with lack of access to bank services; micro- and nano-businesses) or to have vulnerability characteristics. Closer examination of these firms' business models suggests that they are unlikely to require significant changes in their processes as a result of our proposed rules, so we consider the likelihood of them exiting the market due to our rules to be limited.

213. Finally, we have not seen evidence to suggest that, in the event of firm exit, clients are likely to face severe difficulties in finding practical alternatives (eg access the services of a different Payments Firm).

Clients of SPI firms

214. Currently c.70 SPIs choose to safeguard voluntarily under the PSRs. Our proposed rules may lead some of these firms, to whom our rules will also apply on a voluntary basis only, to stop safeguarding if costs of our proposals are too great. Clients of those firms would not be protected by a statutory trust. Therefore, they may not be able to recover as much of their funds as they would, compared to the status quo.

215. While the available data do not allow us to calculate the number of SPIs likely to choose to opt out, on balance we do not consider this risk to be of significant concern. We will continue to encourage these firms to safeguard and may, if necessary, provide general guidance and where appropriate individual guidance to support their safeguarding compliance. That some of these firms already safeguard suggests that there is some benefit to them of complying with our rules.

Safeguarding account providers

216. In our end-state proposals, we intend to limit firms that can provide safeguarding accounts to DSA providers, with exceptions for acquirers and accounts used solely to access payment systems. In doing so NDSA providers will no longer receive revenue from providing these accounts. It will instead be transferred to DSA providers. We recognise that this will be a cost to NDSA providers and benefit to DSA providers and have estimated the difference in the costs and benefits section. We consider this transfer to be proportional due to the additional security provided by the prudential requirements imposed on DSAs and the mitigation of risks around operational disruption.

Risks and uncertainty

217. We recognise that establishing potential costs and benefits before the intervention takes effect is inherently subject to uncertainties. If our assumptions do not hold or if

we have not accounted for all market dynamics, the costs and benefits discussed in this CBA may be over or understated. Moreover, data limitations and imperfections in our methodologies could lead to inaccuracies in our estimates. In some cases, we were unable to provide any quantification. In others, we have estimated upper and lower bounds to capture uncertainty. In these scenarios, overall benefits range from £141.3m to £156.6m in the low and high respectively.

Compliance levels do not reach 100%

218. We have assumed that levels of compliance would reach 100% as a result of our proposals and this is our central case based on our expectations of the market. However, as per best practice, we have conducted sensitivity analysis to estimate the NPV for compliance levels of 50% and 75%.

219. Assuming that levels of compliance are related 1:1 to the amount of harm we see in firm failures and making no adjustments to costs faced by firms, we observe that at 75% compliance the policy remains net positive over the 10-year appraisal period at £9.6m. At 50% compliance, the policy is expected to provide a net cost of £25.3m. Our proposals breakeven at a compliance rate of 68%.

Table 9: Net present values at different levels of compliance

Compliance	PV Benefits	PV Costs	NPV
100%	£150.8m	£106.2m	£44.6m
75%	£115.9m	£106.2m	£9.6m
50%	£80.9m	£106.2m	-£25.3m

Future insolvencies do not follow the same path as past insolvencies

220. Insolvencies in the period following our intervention may not follow the path of past insolvencies, as firm insolvencies are characterised by inherent heterogeneity and macroeconomic factors may have significant impact on the number of insolvencies that occur. The difference in growth in the market may lead to alternative outcomes for firm failures. If growth is driven by firm entry, then there may be a greater number of insolvencies, and subsequently benefits, as new firms are more likely to fail. On the other hand, if growth is driven by size of firms, there may be an ambiguous effect on benefits as more funds are at risk, but the firms may be less likely to fail.

221. To capture uncertainty, in Table 10 we present estimates of an increase and decrease in the number of insolvencies in our appraisal period by 10%. For the policy to breakeven there could still be a reduction of the assumed insolvency rate over the 10-year appraisal period of close to 30%.

Table 10: Net present values following change in number of insolvencies

	PV Benefits	PV Costs	NPV
10% increase in insolvencies	£165.9m	£106.2m	£59.6m
No change in insolvencies	£150.8m	£106.2m	£44.6m
10% decrease in insolvencies	£135.7m	£106.2m	£29.5m
30% decrease in insolvencies	£105.6m	£106.2m	-£0.7m

The impact of the PESAR

222. The impact of the PESAR on the speed and efficacy of distribution of client funds in the event of insolvency is yet to be realised. It may be that over time we see that it also speeds up the rate of distribution in the event of firm failure, which could lead to an overestimate of the benefit to clients in this CBA.

Delivery of end-state

223. As noted earlier, there is significant uncertainty that could impact our ability to deliver our end state proposals. To capture this uncertainty, we present scenarios below in which either (i) interim rules are all that are ever implemented, or (ii) end-state rules come into force without the need for an interim. In the latter scenario, end-state rules include the costs and benefits of the interim rules, as they form part of the end-state. Within these estimates will be contained the range of possible outcomes should the end-state be implemented at any point during the 10-year appraisal period. These are set out in Table 8.

Table 11: Net present values if only Interim or end-state are implemented

	Costs	Benefits	NPV
Interim rules only	£65.6m	£137.5m	£71.9m
No interim rules; only end state	£105.4m	£152.5m	£47.1m

Impact on the competitiveness and growth of the UK's financial system

224. Our proposals advance our secondary international competitiveness and growth objective (SICGO) by making sure that the UK payments sector remains one which business can continue to trust and rely on to support their operations. In that way, our proposed rules help the UK continue to be considered an attractive environment for doing business.

225. This is achieved in 2 ways, also illustrated in our causal chain (Figure 3):

- **Consumer protection** – By improving client protection through reductions in shortfalls and the faster return of client funds, our proposed new rules minimise disruptions to a failing Payment Firm's business clients. This limits the extent to which such a failure may erode trust and confidence of businesses in the UK payments sector.
- **Market integrity** – By limiting the exposure of Payments Firms to the operational resilience of EMIs that supply NDSAs, our proposed rules reduce the risk of more widespread operational disruption should a critical EMI firm fail, supporting market stability.

226. We expect significant benefits in terms of our SICGO to arise in the event of a large firm failure, where, absent our proposed rules, substantial consumer and business losses may more materially erode confidence and trust in the UK payments sector.

227. We recognise that the costs associated with meeting our proposed requirements may lead some Payments Firms to move their operations abroad while continuing to serve UK clients. However, we believe that any such unintended consequence is likely to be of limited scale for the following reasons.

- We consider the costs of our proposed rules to be proportionate and at a level that most firms in the UK non-bank payments sector can tolerate without significant adjustments to their operations.
- There are limited business models where firms could establish overseas and continue to serve UK markets.

228. As set out above, we believe that our proposals advance our primary statutory objectives, namely consumer protection and market integrity, while also supporting the secondary objective through improving confidence in the UK as a place where payment services can reliably support businesses.

Monitoring and evaluation

229. We intend to measure the effectiveness of our interventions through:

- Monitoring insolvencies following our interventions to understand whether client outcomes have changed as expected in the areas of harm we set out above: lower shortfalls pre-insolvency, fewer IP fees drawn from client funds, and funds returned to clients more quickly.
- Monitoring the number of supervisory cases that are raised relating to safeguarding, and formal interventions such as Voluntary Requirements (VREQs) to address failures to comply with safeguarding requirements. This number may rise immediately after our rules come into force, but we would expect it to fall in the medium- to long-term.
- New information submitted to the FCA from audit reports. The number of breaches reported to us should fall over time – as should the ratio between clean, except for, and adverse reports.

Consultation with the FCA Cost Benefit Analysis Panel

230. We have consulted the CBA Panel in the preparation of this CBA in line with the requirements of s138IA(2)(a) FSMA. Overall, the panel considered the CBA *"a carefully detailed piece of work that aimed to seriously understand the impact of the policy proposals."* A summary of the main group of recommendations provided by the CBA Panel and the measures we took in response to Panel advice is provided in Table 9 below. We also undertook further changes based on additional feedback from the CBA Panel on specific points of the CBA. The CBA Panel publishes a summary of their feedback on their website.

Table 12: CBA Panel feedback

CBA panel main recommendations	Our response
Communication and format. The CBA is a substantial document. It would benefit from an Executive Summary which clearly and succinctly lays out its main argument and conclusions. It would also benefit from a clearer structuring of its content around a single line of analysis.	We have added an executive summary to the CBA.
Market analysis. The CBA could focus more on high-level analysis of the market in question, and the impact of the proposed policy change on the market. Such high-level analysis would provide greater clarity around the nature and size of likely individual costs and benefits.	We have added additional market context and further consideration on competition implications throughout the CBA.
Sensitivity analysis. The CBA does not include analysis of how sensitive its results are to variations in its main assumptions and estimates. Such analysis is important to inform consultation by identifying which assumptions are most critical to the expected costs and benefits.	We have added sensitivity analysis considering: Changes in the level of compliance following implementation of our proposals. Different rates of insolvency among Payment Firms.
Distributional analysis. The CBA values the costs and benefits of the proposed intervention for consumers and businesses in the same way for both groups. Future CBAs could be improved by developing a consistent method for analysing these two groups differently.	We have been unable to find information for the split of business and consumer clients. We have noted to make greater efforts to consider this in future CBAs.

Question 22: **Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons.**

Question 23: **Do you have any views on the cost benefit analysis, including our analysis of costs and benefits to consumers, firms and the market?**

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA), including those requirements as applied by the Electronic Money Regulations 2011 and the Payment Services Regulations 2017. References to provisions of FSMA below include references to those provisions as applied by the Electronic Money Regulations 2011 and the Payment Services Regulations 2017.

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules (a) is compatible with its general duty, under section 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, (b) so far as reasonably possible, advances the secondary international competitiveness and growth objective, under section 1B(4A) FSMA, and (c) complies with its general duty under section 1B(5)(a) FSMA to have regard to the regulatory principles in section 3B FSMA. The FCA is also required by s 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.

5. This Annex includes our assessment of the equality and diversity implications of these proposals.

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

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective to protect consumers by helping to ensure they receive the maximum value of their funds if a payment firm fails. We also consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well by supporting stability and resilience in the payments sector. Also, our proposals support early identification of potential risk factors and helping to ensure that where firms do fail, they can do so in a more orderly manner and reduce the risk of contagion were a non-bank provider of safeguarding accounts to fail. For the purposes of the FCA's strategic objective, "relevant markets" are defined by section 1F FSMA.

8. We consider these proposals comply with the FCA's secondary objective in advancing competitiveness and growth by improving confidence in the UK as a place where payment services can reliably support businesses. Our proposals advance the SICGO by limiting the extent to which the failure of a payment firm may erode trust in the sector and undermine confidence. The improved safeguarding practices and faster return of client funds will improve client protection and consequently confidence in UK-based payment services while minimising disruptions to business. This will help ensure the UK remains a stable environment for doing business, promoting growth.

9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s 3B FSMA.

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

10. The proposals will help us to improve supervisory oversight of safeguarding requirements. Data from the monthly returns and audits will facilitate oversight and assurance of a firms' safeguarding practices. Our proposals will also help to ensure that firms have the necessary systems and controls to protect relevant funds at all times, reducing the need for supervisory interventions.

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

11. We have carefully considered the proportionality of our proposals, including engagement with internal and external stakeholders throughout the development of our proposals.

12. The proposals will require firms to make operational changes, with associated costs, as set out in the CBA. However, we consider that our proposals are proportionate and the benefits outweigh the costs. The CBA in Annex 2 sets out the costs and benefits of our proposals.

The need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) [and section 5 of the Environment Act 2021 (environmental targets)

13. This principle in not relevant to our proposals.

The general principle that consumers should take responsibility for their decisions

14. Our proposals will provide greater protection for consumers. They do not inhibit consumers' ability to purchase the products they wish to purchase, nor do they seek to remove from consumers the need to take responsibility for their own decisions.

The responsibilities of senior management

15. Under our proposals a director or senior manager of a Payments Firm will be required to have oversight of a firms safeguarding compliance. They will also have to make reports to the firms governing body with respect to that oversight.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

16. Our proposals recognise that different types of Payment Firms require a different approach. Our proposals maintain the existing scope for SPIs, Small E-Money Institutions and credit unions to choose whether to safeguard in respect of payment services unrelated to the issuance of electronic money.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

17. This principle is not relevant to our proposals

The principle that we should exercise our functions as transparently as possible

18. By explaining the rationale for our proposals and the anticipated outcomes, we have had regard to this principle.

In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s 1B(5)(b) FSMA).

19. This principle is not relevant to our proposals

Expected effect on mutual societies

20. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

21. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. This is set out in more detail in paragraphs 2.20 and 2.21 of the Consultation Paper.

Equality and diversity

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

23. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.31 and 2.32 of the Consultation Paper.

Legislative and Regulatory Reform Act 2006 (LRRA)

24. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance. We consider that these parts of the safeguarding proposals are compliant with the five LRRA principles – that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

25. **Transparent** – We are consulting on our proposed changes with industry to articulate our proposals. Through consultation and pro-active engagement both before and during consultation, we are being transparent and providing a simple and straightforward way to engage with the regulated community.

26. **Accountable** – We are consulting on these changes and will publish final rules, for the interim and end state rules, after considering all feedback received. We are acting within our statutory powers, rules and processes.

27. **Proportionate** – Small Payment Institutions will continue to be able to choose whether to comply with safeguarding requirements. Small EMIs and credit unions will continue to be able to choose whether to safeguard funds for payment services unrelated to issuing electronic money. This helps ensure the proportionality of our proposals. We recognise that firms will be required to make some operational changes and have provided for an implementation period to give them time to do so. The CBA sets out further detail on the costs and benefits of our proposals.

28. **Consistent** – Our proposals will ensure greater consistency in, and standards of, safeguarding practices. They will apply consistently across the sector, with smaller Payments Firms and credit unions able to choose whether to safeguard as set out above. .

29. **Targeted** – Our proposals will enhance our ability to provide targeted firm engagement and consider how to best deploy our resources.

30. **Regulators' Code** – Our proposals have been developed to support firms in understanding and complying with the safeguarding requirements. The additional information provided by Payments Firms will allow us to base supervisory engagement on a greater understanding of the risks they pose. We will consider their feedback via the CP and refine our proposals where necessary. Our CP, CBA, draft instrument, accompanying annexes, public communications and communications with firms are provided in a simple, straightforward, transparent and clear way to help firms meet their responsibilities.

Annex 4

Abbreviations in this document

Abbreviation	Description
AISP	Account Information Service Providers
APIs	Authorised Payments Institutions
CASS	Client money and assets
CBA	Cost Benefit Analysis
CP	Consultation Paper
EMRs	Electronic Money Regulations 2011
FSCR	Financial Services Contract Regime
FSCS	Financial Services Compensation Scheme
FSMA 2023	Financial Services and Markets Act 2023
IP	Insolvency Practitioner
PESAR	Payment and Electronic Money Institution Insolvency Regulations 2021
PSR	Payment Service Regulations 2017
SI	Statutory Instrument
SICGO	Secondary International Competitiveness and Growth
SPI	Small Payment Institutions
SRO	Supervised Run Off
SUP	Supervision manual

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Appendix 1

Draft Handbook text

PAYMENTS AND ELECTRONIC MONEY (SAFEGUARDING) INSTRUMENT 2025

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"), including as applied by Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) and Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 138C (Evidential provisions);
(d) section 139A (Power of the FCA to give guidance); and
(e) section 340 (Appointment);

(2) regulation 49 of the Electronic Money Regulations 2011 (Reporting requirements);

(3) regulations 109 (Reporting requirements) and 120 (Guidance) of the Payment Services Regulations 2017; and

(4) the rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act, including that provision as applied by the Electronic Money Regulations 2011 and the Payment Services Regulations 2017.

Commencement

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

Amendments to the Handbook

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

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

Citation

E. This instrument may be cited as the Payments and Electronic Money (Safeguarding) Instrument 2025.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

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

authorised custodian	(in accordance with regulation 21(7) of the *Electronic Money Regulations* and regulation 23(18) of the *Payment Services Regulations*) a *person* authorised for the purposes of the *Act* to safeguard and administer *investments*.
designated system	(in accordance with regulation 2(1) of the *Payment Services Regulations*) has the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979).
electronic money distributor	(in accordance with the definition of 'distributor' in regulation 2(1) of the *Electronic Money Regulations*) a *person* who distributes or redeems *electronic money* on behalf of an *electronic money institution* but who does not provide *payment services* on its behalf.
external safeguarding reconciliation	the reconciliation described in *CASS* 15.12.46R.
funds	(in *CASS* 15, *CASS* 16.14A and *SUP* 3A) (in accordance with regulation 2(1) of the *Payment Services Regulations*) banknotes and coins, scriptural money and *electronic money*.
individual safeguarding balance	the total amount of all *funds* the *safeguarding institution* should be safeguarding for a particular *client* (see *CASS* 15.12.24R).
individual relevant funds deposit balance	the total amount of all *funds* the *safeguarding institution* should be segregating in a *relevant funds bank account* for a particular *client* (see *CASS* 15.12.31R).
insolvency event	(in accordance with regulation 22(3) of the *Electronic Money Regulations* and regulation 23(18) of the *Payment Services Regulations*) any of the following procedures in relation to a *safeguarding institution*: (a) the making of a winding-up order; (b) the passing of a resolution for voluntary winding-up; (c) the entry of the institution into administration;

(d) the appointment of a receiver or manager of the institution's property;

(e) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);

(f) the making of a bankruptcy order;

(g) in Scotland, the award of sequestration;

(h) the making of any deed of arrangement for the benefit of creditors or, in Scotland, the execution of a trust deed for creditors;

(i) the conclusion of any composition contract with creditors;

(j) the making of an insolvency administration order or, in Scotland, sequestration, in respect of the estate of a deceased person;

(k) the entry of the institution into special administration under the *PEMII Regulations*; or

(l) the entry of the institution into special administration under the *IBSA* Regulations.

insurance or guarantee method the method of safeguarding *relevant funds* described in regulation 22 of the *Electronic Money Regulations* or regulation 23(12) and (13) of the *Payment Services Regulations*.

internal safeguarding reconciliation the reconciliation described in *CASS* 15.12.16R.

PEMII Regulations the Payment and Electronic Money Institution Insolvency Regulations 2021 (SI 2021/716).

relevant assets assets held by a *safeguarding institution* for the purposes of regulation 21(2)(b) of the *Electronic Money Regulations* or regulation 23(6)(b) of the *Payment Services Regulations*.

relevant assets account an account held at an *authorised custodian* which holds *relevant assets* for the purposes of regulation 21(2)(b) of the *Electronic Money Regulations* or regulation 23(6)(b) of the *Payment Services Regulations*.

relevant funds in accordance with regulation 20(1) of the *Electronic Money Regulations* and regulation 23(1) of the *Payment Services Regulations*:

(1) sums received in exchange for *electronic money* that has been issued;

(2) sums received from, or for the benefit of, a *payment service user* for the execution of a *payment transaction*; and

	(3) sums received from a *payment service provider* for the execution of a *payment transaction* on behalf of a *payment service user*.
relevant funds bank account	an account held at an *approved bank* or the Bank of England which: (1) holds *relevant funds* for the purposes of regulation 21(2)(a) of the *Electronic Money Regulations* or regulation 23(6)(a) of the *Payment Services Regulations*; or (2) is an account of the type described in regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations* (Bank of England settlement accounts).
relevant funds deposit requirement	the total amount of *funds* a *safeguarding institution* is required to segregate in a *relevant funds bank account* under the *Electronic Money Regulations* or the *Payment Services Regulations* (see *CASS* 15.12.29G and *CASS* 15.12.30R).
relevant funds deposit resource	the total amount of *relevant funds* segregated by a *safeguarding institution* in its *relevant funds bank accounts* (see *CASS* 15.12.21R).
relevant funds regime	the *relevant funds rules*, regulations 20 to 22 of the *Electronic Money Regulations* and regulation 23 of the *Payment Services Regulations*.
relevant funds rules	*CASS* 15.1 to *CASS* 15.12.
relevant institution	a *person* required to appoint an auditor under *SUP* 3A as specified in *SUP* 3A.1.1R(1)(a).
safeguarding account acknowledgment letter	a letter in the form of the template in *CASS* 15 Annex 1R.
safeguarding institution	*persons* that are obliged to safeguard relevant funds under regulation 21 of the *Electronic Money Regulations* or regulation 23 of the *Payment Services Regulations* (including *persons* that opt-in to those requirements).
safeguarding requirement	the total amount of *relevant funds* a *safeguarding institution* is required to safeguard (see *CASS* 15.12.22G and *CASS* 15.12.23R)
safeguarding resource	the total amount of *relevant funds* safeguarded by a *safeguarding institution* (see *CASS* 15.12.18R).
safeguarding return	a return containing the information specified in *SUP* 16 Annex 29BR.

segregation method		the method of safeguarding *relevant funds* described in regulation 21 of the *Electronic Money Regulations* or regulation 23(5) to (11) of the *Payment Services Regulations*.
unique identifier		(in accordance with regulation 2(1) of the *Payment Services Regulations*) a combination of letters, numbers or symbols specified to the *payment service user* by the *payment service provider* and to be provided by the *payment service user* in relation to a *payment transaction* in order to identify unambiguously one or both of:
	(1)	another *payment service user* who is a party to the *payment transaction*;
	(2)	the other *payment service user's payment account*.

Amend the following definitions as shown.

acknowledgement letter	(1)	(in *CASS* 7) a *client bank account acknowledgement letter* (a letter in the form of the template in *CASS* 7 Annex 2R), a *client transaction account acknowledgement letter* (~~s~~ a letter in the form of the template in *CASS* 7 Annex 3R) or an *authorised central counterparty acknowledgment letter* (a letter in the form of the template in *CASS* 7 Annex 4R).
	(2)	(in *CASS* 15 and *SUP* 16 Annex 29BR) a *safeguarding account acknowledgement letter* (a letter in the form of the template in *CASS* 15 Annex 1R).
acknowledgement letter fixed text	…	
	(3)	…
	(4)	(in *CASS* 15) the text in the *acknowledgement letter* in *CASS* 15 Annex 1R that is not in square brackets.
acknowledgement letter variable text	…	
	(3)	…
	(4)	(in *CASS* 15) the text in the *acknowledgement letter* in *CASS* 15 Annex 1R that is in square brackets.
approved bank	(1)	(except in *COLL* and *CASS* 15) (in relation to a *bank* account opened by a ~~firm~~ *firm*):
		…

(2) (in *COLL*) any person falling within (a-c) and a *credit institution* established in an *EEA State* and duly authorised by the relevant *Home State regulator*.

(3) (in *CASS* 15) (in accordance with regulation 21(7) and (8) of the *Electronic Money Regulations* and regulation 23(18) and (19) of the *Payment Services Regulations*):

(a) a person authorised for the purposes of the *Act* to carry on the activity of *accepting deposits*;

(b) the central bank of a state that is a member of the *OECD* ('an *OECD* state');

(c) a *credit institution* that is supervised by the central bank or other banking regulator of an *OECD* state;

(d) a *credit institution* that:

(i) is subject to regulation by the banking regulator of a state that is not an *OECD* state;

(ii) is required by the law of the country or territory in which it is based to provide audited accounts;

(iii) has minimum net assets of £5m (or its equivalent in any other currency at the relevant time);

(iv) has a surplus of revenue over expenditure for the last 2 financial years; and

(v) has an annual report which is not materially qualified,

that is not part of the same *group* as the *safeguarding institution*.

asset pool (1) (in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) an asset pool within the meaning of Regulation 3 of the *RCB Regulations*.

(2) (in *CASS* 15) (in accordance with regulation 24(4) of the *Electronic Money Regulations* and regulation 23(18) of the *Payment Services Regulations*):

(a) any *relevant funds* segregated in accordance with the *segregation method*;

(b) any *relevant funds* held in a *relevant funds bank account*;

(c) any *funds* that are received into a *relevant funds bank account* held at the Bank of England upon settlement in respect of transfer orders that have been entered into the designated system on behalf of *payment service users*,

whether settlement occurs before or after the *insolvency event*;

(d) any *relevant assets* held in a *relevant assets account*; and

(e) the proceeds of an insurance policy or guarantee held for the purpose of the *insurance or guarantee method*.

business day (1) (except in *CASS* 15, *SUP* 3A, *SUP* 16.14A, *DISP* 1.6.2A and *DISP* 2.8) (in relation to anything done or to be done in (including to be submitted to a place in) any part of the *United Kingdom*):

…

(3) (in *CASS* 15, *SUP* 3A, *SUP* 16.14A, *DISP* 1.6.2A and *DISP* 2.8) any *day* on which the relevant *payment service provider* is open for business as required for the execution of a *payment transaction*.

CASS resolution pack those documents and records which are specified in *CASS* 10.2 and *CASS* 10.3 or, in relation to *safeguarding institutions*, in *CASS* 10A.2 and *CASS* 10A.3.

director (1) (except in *COLL*, *DTR*, *UKLR* and *PRR*) (in relation to any of the following (whether constituted in the *United Kingdom* or under the law of a country or territory outside it)):

…

(c) (in *SYSC*, *APER*, *COCON*, *MIPRU* 2 (Responsibility for insurance distribution and *MCD* credit intermediation activity), *CASS* 10A, *CASS* 15, *SUP* 3A, *SUP* 10A (FCA Approved persons in Appointed Representatives) and *SUP* 10C (FCA senior managers regime for approved persons in SMCR firms) a *partnership*;

(d) (in *SYSC*, *CASS* 10A, *CASS* 15, *SUP* 3A, *SUP* 10A (FCA Approved persons in Appointed Representatives) and *SUP* 10C (FCA senior managers regime for approved persons in SMCR firms) a *sole trader*;

…

…

fund (except in *CASS* 15, *SUP* 3A and *SUP* 14.16A) an *AIF* or a *collective investment scheme*.

governing body the board of *directors*, committee of management or other governing body of a *firm*, *safeguarding institution*, *relevant institution* or *recognised body*, including, in relation to a *sole trader*, the *sole trader*.

group (1) (except as specified in this definition) as defined in section 421 of the *Act* (Group) (in relation to a *person* ("A")) A and any *person* who is:

…

(3B) …

(3C) (in *CASS* 10A and *CASS* 15) (in accordance with regulation 2(1) of the *Payment Services Regulations*) a group of:

(a) *undertakings* linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU of the European Parliament and of the Council of 26th June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; or

(b) *undertakings* as defined in Articles 4 to 7 of Commission Delegated Regulation (EU) No 241/2014 of 7th January 2014 supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, which are linked to each other by a relationship referred to in Article 113(6) of the *UK CRR*.

internal controls the whole system of controls, financial or otherwise, established by the management of a *firm* or *safeguarding institution* in order to:

(a) carry on the business of the *firm* or institution in an orderly and efficient manner;

…

(c) safeguard the assets of the *firm* or institution and other assets for which the firm is responsible; ~~and~~

(d) secure as far as possible the completeness and accuracy of the *firm*'s or institution's records (including those necessary to ensure continuous compliance with the requirements or standards under the *regulatory system* relating to the adequacy of the *firm*'s or institution's financial resources)~~.~~; and

(e) (in *CASS* 15 and *SUP* 3A) ensure sound administrative, risk management and accounting procedures.

material outsourcing (1) (except in relation to a *Solvency II firm* and in *SUP* 3A) *outsourcing* services of such importance that weakness, or failure, of the services

would cast serious doubt upon the *firm's* continuing satisfaction of the *threshold conditions* or compliance with the *Principles*.

(2) …

(3) (in *SUP* 3A) the outsourcing of an operational function that satisfies the criteria in regulation 25(3) of the *Payment Services Regulations* or regulation 26(3) of the *Electronic Money Regulations*.

mixed remittance a remittance that is part *client money* or *relevant funds* and part other *money* or *funds*.

regulatory system (1) …

(2) in *PRIN*, ~~and in~~ *BCOBS*, *CASS* 15 and *SUP* 3A in addition to (1), the arrangements for regulating *payment service providers* and *electronic money issuers* in or under the *Payment Services Regulations* and *Electronic Money Regulations*, including conditions of authorisation or registration set out in those regulations, the *Principles* and other *rules*, codes and guidance, including any relevant provisions of an *onshored regulation*.

requirement (1) a requirement included in:

(a) a firm's *Part 4A permission* under section 55L(3) of the *Act* (Imposition of requirements by the FCA), section 55M(3) of the *Act* (Imposition of Requirements by the PRA) or section 55O of the *Act* (Imposition of requirements on acquisition of control)~~.~~; or

(b) a *safeguarding institution's* authorisation or registration under Part 2 of the *Electronic Money Regulations* or Part 2 of the *Payment Services Regulations*.

senior manager an *individual* other than a *director*:

(a) who is employed by:

(i) a *firm* or *safeguarding institution*; or

(ii) a *body corporate* within a *group* of which the *firm* or *safeguarding institution* is a member;

(b) to whom the *governing body* of the *firm* or *safeguarding institution*, or a member of the *governing body* of the *firm* or *safeguarding institution*, has given responsibility, either alone or jointly with others, for management and supervision;

…

shortfall …

(3) …

(4) (in relation to *relevant funds*) the amount by which the *safeguarding resource* is lower than the *safeguarding requirement*.

skilled person a *person* appointed to make a report required by section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the ~~Act~~ *Act*, including as applied by the *Payment Services Regulations* or the *Electronic Money Regulations*, for provision to the *appropriate regulator* and who must be a person:

…

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

1 Application and general provisions

1.1 Application and purpose

Application

1.1.1 R *CASS* applies to a *firm*, *electronic money institution* or *payments institution* as specified in the remainder of this chapter.

…

1.2 General application: who? what?

General application: who?

…

1.2.2 R …

1.2.2A R This chapter, *CASS* 10A and *CASS* 15 apply to an *electronic money institution,* a *payment institution* or a *credit union* with respect to:

(1) the issuance of *electronic money*; and

(2) the provision of *payment services*.

…

Investments and money held under different regimes

1.2.11 R …

(3) …

(4) A *firm* must not keep *funds* in respect of which *CASS* 15 applies in a *client bank account* held for the purpose of any other chapter of *CASS*.

…

1.3 General application: where?

1.3.1 G …

1.3.1A G The territorial scope of *CASS* 15 is set out in *CASS* 15.1.3R.

…

1.5 Application: electronic media and E-Commerce

Application to electronic media

…

1.5.3 G …

1.5.4 G In this section, references to a *firm* should be read as including a *safeguarding institution*.

Insert the following new chapter, CASS 10A, after CASS 10 (CASS resolution pack). All the text is new and is not underlined.

10A Payment services and electronic money: resolution pack

10A.1 Application, purpose and general provisions

Application

10A.1.1 R This chapter applies to a *safeguarding institution* when it receives or holds *relevant funds* in accordance with *CASS* 15.

Purpose

10A.1.2 G The purpose of the *CASS resolution pack* is to ensure that a *safeguarding institution* maintains and is able to retrieve information that would:

(1) in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of *relevant funds* held by the *safeguarding institution* to its *clients*;

(2) in the event of a *firm's* resolution, assist the Bank of England or *FSCS*; and

(3) in either case, assist the *FCA*.

General provisions

10A.1.3 R A *safeguarding institution* must maintain and be able to retrieve, in the manner described in this chapter, a *CASS resolution pack*.

10A.1.4 G A *safeguarding institution* is required to maintain a *CASS resolution pack* at all times when *CASS* 10A.1.1R applies to it.

10A.1.5 G (1) The *rules* in this chapter specify the types of documents and records that must be maintained in a *safeguarding institution*'*s CASS resolution pack* and the retrieval period for the pack. The *safeguarding institution* should maintain the component documents

of the *CASS resolution pack* in order for them to be retrieved in accordance with *CASS* 10A.1.7R and should not use the retrieval period to start producing these documents.

(2) The contents of the documents that constitute the *CASS resolution pack* will change from time to time (for example, because reconciliations must be included in the pack).

(3) A *safeguarding institution* is only required to retrieve the *CASS resolution pack* in the circumstances prescribed in *CASS* 10A.1.7R.

10A.1.6 R For the purpose of this chapter, a *safeguarding institution* will be treated as satisfying a *rule* in this chapter requiring it to include a document in its *CASS resolution pack* if a member of that *safeguarding institution's group* includes that document in its own *CASS resolution pack*, provided that:

(1) that *group* member is subject to the same *rule*; and

(2) the *safeguarding institution* is still able to comply with *CASS* 10A.1.7R.

10A.1.7 R In relation to each document in its *CASS resolution pack*, a *safeguarding institution* must:

(1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and

(2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FCA* or Bank of England request.

10A.1.8 R Where documents are held by members of a *safeguarding institution's group* in accordance with *CASS* 10A.1.6R, the *safeguarding institution* must have adequate arrangements in place with its *group* members which allow for delivery of the documents within the timeframe referred to in *CASS* 10A.1.7R.

10A.1.9 E (1) For the purpose of *CASS* 10A.1.7R, the following documents and records should be retrievable immediately:

(a) the document identifying the institutions referred to in *CASS* 10A.2.1R(2) and *CASS* 10A.2.1R(4);

(b) any acknowledgement letters referred to in *CASS* 10A.2.1R(3);

(c) a copy of each policy or guarantee referred to in *CASS* 10A.2.1(5);

(d) the document identifying *individuals* pursuant to *CASS* 10A.2.1R(10); and

(e) the most recent *internal safeguarding reconciliations* and *external safeguarding reconciliations* records referred to in *CASS* 10A.3.1R(4).

(2) Where a *safeguarding institution* is reliant on the continued operation of certain systems for the provision of component documents in its *CASS resolution pack*, it should have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.

(3) Contravention of (1) or (2) may be relied upon as tending to establish contravention of *CASS* 10A.1.7R.

10A.1.10 G Where a *safeguarding institution* anticipates that it might be the subject of an insolvency order, it is likely to have sought advice from an external adviser. The *safeguarding institution* should make the *CASS resolution pack* available promptly, on request, to such an adviser.

10A.1.11 R (1) A *safeguarding institution* must ensure that it reviews the content of its *CASS resolution pack* on an ongoing basis to ensure that it remains accurate.

(2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in *CASS* 10A.2.1R, a *safeguarding institution* must ensure that any inaccuracy is corrected promptly and, in any event no more than 5 *business days* after the change of circumstances arose.

10A.1.12 G For the purpose of *CASS* 10A.1.11R(2), an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to *CASS* 10A.2.1R(2).

10A.1.13 G A *safeguarding institution* may hold in electronic form any document in its *CASS resolution pack* provided that it continues to be able to comply with *CASS* 10A.1.7R and *CASS* 10A.1.11R in respect of that document.

10A.1.14 R A *safeguarding institution* must ensure that its *governing body* receives a report in respect of compliance with the *rules* in this chapter at least annually.

10A.1.16 R A *safeguarding institution* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, *CASS* 10A.1.3R.

10A.2 Core content requirements

10A.2.1 R A *safeguarding institution* must include within its *CASS resolution pack*:

(1) a master document containing information sufficient to retrieve each document in the institution's *CASS resolution pack*;

(2) a document which identifies the institutions the *safeguarding institution* has appointed (including through an *agent* or *electronic money distributor*):

(a) for the receipt or holding of *relevant funds*; and

(b) for the holding of *relevant assets*;

(3) for each institution identified in (2), a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the *safeguarding institution* that relates to the holding of *relevant funds* or *relevant assets* including any *acknowledgement letters* sent or received pursuant to *CASS* 15.10;

(4) a document which identifies the institutions the *safeguarding institution* has appointed to provide insurance or a guarantee in accordance with regulation 22 of the *Electronic Money Regulations* or regulation 23(12) of the *Payment Services Regulations*;

(5) for each institution identified in (4), a copy of each executed policy or guarantee, including any side letters or other agreements used to clarify or modify the terms of the executed policy or guarantee;

(6) a document which identifies each *agent* or *electronic money distributor* of the *safeguarding institution*;

(7) a document which:

(a) identifies each member of the *safeguarding institution's group* involved in operational functions related to the safeguarding obligations imposed on the institution under the *Electronic Money Regulations*, the *Payment Service Regulations* or *CASS* 15; and

(b) for each *group* member identified in (a), the type of entity (such as *branch*, subsidiary or *nominee company*) the group member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;

(8) a document which:

(a) identifies each third party which the *safeguarding institution* uses for the performance of operational functions related to any of the safeguarding obligations imposed on the institution by the *Electronic Money Regulations*, the *Payment Services Regulations* or *CASS* 15;

(b) describes how to gain access to relevant information held by that third party; and

(c) describes how to affect a transfer of any *relevant funds* or *relevant assets* held by the *safeguarding institution*, but controlled by that third party;

(9) a copy of the *safeguarding institution's* procedures for the management, recording and transfer of the *relevant funds* and *relevant assets* that it holds; and

(10) a document which identifies:

(a) each *senior manager* and *director* and any other *individual* and the nature of their responsibility within the *safeguarding institution* who is critical or important to the performance of operational functions related to any of the safeguarding obligations imposed on the institution by the *Electronic Money Regulations*, the *Payment Services Regulations* or *CASS* 15; and

(b) the *individual* to whom responsibility for *CASS* operational oversight has been allocated under *CASS* 15.2.2R.

10A.2.2 G For the purpose of *CASS* 10A.2.1R(10)(a), examples of *individuals* within the *safeguarding institution* who are critical or important to the performance of operational functions include:

(1) those necessary to carry out both internal and external *relevant funds* and *relevant assets* reconciliations and record checks; and

(2) those in charge of *client* documentation for business involving *relevant funds* and *relevant assets*.

10A.2.3 R For the purpose of *CASS* 10A.2.1R(2), a *safeguarding institution* must ensure that the document records:

(1) the full name of the individual institution in question;

(2) the postal address, email address and telephone number of that institution; and

(3) the numbers of all accounts opened by that *safeguarding institution* with that institution.

10A.3 Existing records forming part of the CASS resolution pack

10A.3.1 R A *safeguarding institution* must include, as applicable, within its *CASS resolution pack* the records required under:

(1) *CASS* 15.6.16R (Appointment of a third party to manage relevant assets) and *CASS* 15.9.7R (Selection and Appointment of third parties);

(2) *CASS* 15.12.1R (Policies and procedures);

(3) *CASS* 15.12.3R and *CASS* 15.12.6R (Records and accounts);

(4) *CASS* 15.12.7R (Records and accounts); and

(5) customer contracts.

10A.3.2 G *CASS* 10.3.1R does not change the record keeping requirements of the rules referred to therein.

Insert the following new chapter, CASS 15, after CASS 14 (Temporary permissions regime – client assets rules). All the text is new and is not underlined.

15 Payment services and electronic money: relevant funds

15.1 Purpose and application

General purpose

15.1.1 G Regulation 20 of the *Electronic Money Regulations* and regulation 23 of the *Payment Services Regulations* require *safeguarding institutions* to safeguard *relevant funds*. The *rules* and *guidance* in this chapter supplement those requirements.

Who?

15.1.2 R (1) This chapter applies to the following *persons* that receive or hold *relevant funds*:

(a) *authorised payment institutions*;

(b) *small payment institutions* that voluntarily safeguard under regulation 23 of the *Payment Services Regulations*;

(c) *electronic money institutions*; and

(d) *credit unions* that issue *electronic money*.

What? Where?

15.1.3 R This chapter applies with respect to the provision of *payment services* or issuance of *electronic money* that is within the scope of the *Payment Services Regulations* or *Electronic Money Regulations*.

15.1.4 G *PERG* 15 provides guidance on the territorial scope of the *Payment Services Regulations*. *Funds* received by *safeguarding institutions* that relate to

transactions that are not in scope of the *Payment Services Regulations* or *Electronic Money Regulations* do not need to be safeguarded and, where the *safeguarding institution* uses the *segregation method,* such *funds* must be kept separate from *relevant funds*.

15.1.5 G One of the effects of *CASS* 15.1.3R is that *CASS* 15 does not apply where *payment services* are being provided to both the *payer* and the *payee* from outside of the *UK* (eg, a transfer between an account operated by a *PSP* from a branch in Japan to an account operated by another *PSP* in Hong Kong). *Funds* received for these transactions should not be mixed with *relevant funds*, even if *funds* are routed through a correspondent *PSP* in the *UK*.

Opt-in to the relevant funds rules

15.1.6 R If a *small payment institution* makes an election pursuant to regulation 23(16) of the *Payment Services Regulations* to voluntarily safeguard, the *rules* and *guidance* in this chapter will apply to the *small payment institution* as if it were an *authorised payment institution*.

15.1.7 R If a *small electronic money institution* or a *credit union* makes an election pursuant to regulation 23(16) of the *Payment Services Regulations*, as applied by regulation 20(6) of the *Electronic Money Regulations*, to voluntarily safeguard the *rules* and *guidance* in this chapter will apply to the *small electronic money institution* or *credit union* as if it were an *authorised electronic money institution*.

15.2 Organisational requirements: relevant funds

Protection of relevant funds

15.2.1 R A *safeguarding institution* must, when holding *relevant funds,* maintain adequate arrangements to safeguard the *client's* rights and prevent the use of *relevant funds* for its own account.

Requirement to have adequate oversight

15.2.2 R A *safeguarding institution* must allocate to a single *director* or *senior manager* of sufficient skill and authority responsibility for:

(a) oversight of the institution's operational compliance with the safeguarding requirements of the *Electronic Money Regulations,* the *Payment Services Regulations* and *CASS* 15; and

(b) reporting to the institution's *governing body* in respect of that oversight.

Allocation of relevant funds receipts

15.2.3 R (1) A *safeguarding institution* must allocate any *relevant funds* it receives to an individual *client*:

(a) promptly and in a way that enables it to meet its obligations under the *Payment Services Regulations* and where relevant its obligations under the *Electronic Money Regulations*; and

(b) in any case, no later than the end of the *business day* following the *day* of receipt (or where, after the receipt of *funds,* it has identified that the *funds*, or some of them, are *relevant funds* under *CASS* 15.2.7R, no later than the end of the *business day* following that identification).

(2) Pending a *safeguarding institution's* allocation of a *relevant funds* receipt to an individual *client* under (1), it must record the received *relevant funds* in its books and records as 'unallocated relevant funds'.

15.2.4 G *CASS* 15.2.1R requires a *safeguarding institution* to:

(1) consider how to clearly identify *relevant funds* that are not held in *relevant funds bank accounts*. The word 'safeguarding' should be included in the account name wherever possible; and

(2) promptly identify the *client* to whom a *relevant funds* receipt relates. Once identified, the receipt of *relevant funds* must be recorded and allocated to the *client* in the *safeguarding institution's* accounts. Where the crediting of these accounts amounts to the crediting of a *payment account*, it must be carried out within the time periods required by the *Payment Services Regulations.*

15.2.5 G Where the *safeguarding institution* receives *relevant funds* on behalf of a *payee* who does not have a *payment account* with the *safeguarding institution,* the *relevant funds* may need to be allocated immediately so that they can be made available to the *payee* immediately after they have been credited to the *safeguarding institution's* account in accordance with regulation 87 of the *Payment Services Regulations*.

15.2.6 G Where the receipt of *relevant funds* relates to the issuance of *electronic money*, the *relevant funds* may need to be allocated without delay so that the *safeguarding institution* can comply with its obligations to issue *electronic money* without delay under regulation 39 of the *Electronic Money Regulations*.

Unidentified receipts of funds

15.2.7 R If a *safeguarding institution* receives *funds* (whether in a *relevant funds bank account* or another account) which it is unable to immediately identify as *relevant funds* or other *funds*, it must:

(1) take all necessary steps to identify the *funds* as either *relevant funds* or other *funds*; and

(2) record the *funds* in its books and records as 'unidentified relevant funds' while it performs the necessary steps under (1).

15.2.8 G *CASS* 15.2.3R and *CASS* 15.2.7R recognise that it might not always be possible to identify whether *funds* are *relevant funds* and, if they are, the *client* to which they relate. Where a *safeguarding institution* is unable to identify the *client* entitled to the *funds* it has received, the *safeguarding institution* may still be able to identify that the *funds* have been received from a *client* to execute a *payment transaction* or in exchange for *electronic money* (as opposed to being unable to identify why the *funds* have been received). Where *relevant funds* have been received but cannot be allocated (for example, because they do not have the correct *unique identifier*) they must still be treated as *relevant funds* and recorded as 'unallocated relevant funds'.

15.2.9 G If a *safeguarding institution* is unable to identify *funds* that it has received as either *relevant funds* or other *funds*, it should consider whether it would be appropriate to return the *funds* to the *person* who sent them (or, if that is not possible, to the source from where it was received, for example, the bank).

15.2.10 G A *safeguarding institution* should have regard to its obligations under the *Electronic Money Regulations* and *Payment Services Regulations* when considering whether to return funds under *CASS* 15.2.9G.

15.2.11 G Where a *payment service user* provides an incorrect *unique identifier*, the *safeguarding institution* will also need to consider the steps it is required to take under regulation 90 of the *Payment Services Regulations*.

15.3 [to follow]

15.4 [to follow]

15.5 The segregation method

15.5.1 R [to follow]

Mixed remittance

15.5.2 R [to follow]

15.5.3 R [to follow]

15.5.4 R A *safeguarding institution* that receives *mixed remittances* must maintain a written policy for the purposes of demonstrating their approach to complying with regulation 20(3) of the *Electronic Money Regulations* and regulation 23(2) of the *Payment Services Regulations*.

15.5.5 R [to follow]

15.5.6 R [to follow]

15.5.7 R [to follow]

15.5.8 R [to follow]

15.5.9 G [to follow]

15.5.10 G [to follow]

15.5.11 R [to follow]

15.5.12 R [to follow]

15.5.13 R [to follow]

15.5.14 G [to follow]

15.5.15 R [to follow]

15.5.16 R [to follow]

15.5.17 R [to follow]

15.5.18 R [to follow]

15.5.19 G [to follow]

15.5.20 R [to follow]

15.5.21 R [to follow]

15.5.22 R [to follow]

15.5.23 R [to follow]

15.5.24 R [to follow]

Segregation in a different currency

15.5.25 R (1) [to follow]

(2) A *safeguarding institution* that segregates *relevant funds* in a different currency from that in which they were received or in which the *safeguarding institution* is liable to the relevant *client* must ensure that the amount held is adjusted each *day* to an amount at least equal to the original currency amount (or currency in which the *safeguarding institution* has its liability to its *clients*, if different), calculated at the previous *day's* closing spot exchange rate.

15.6 Segregation: secure, liquid assets

15.6.1 G (1) Regulation 21(2)(b) of the *Electronic Money Regulations* provides that *safeguarding institutions* may invest *relevant funds* received in

exchange for *electronic money* in secure, liquid, low-risk assets. Assets are liquid if approved as such by the *FCA*.

(2) Regulation 23(6)(b) of the *Payment Services Regulations* provides that *safeguarding institutions* may invest *relevant funds* received for the execution of payment transactions unrelated to the issuance of *electronic money* in such secure, liquid assets as the *FCA* may approve.

15.6.2 G Subject to *CASS* 15.6.3G, the *FCA* has approved the following assets for the purposes of regulation 21(2)(b) of the *Electronic Money Regulations* and regulation 23(6)(b) of the *Payment Services Regulations*:

(1) items that fall into one of the categories set out in Article 114 of the *UK CRR*, for which the specific risk capital charge is no higher than 0%; or

(2) units in an undertaking for collective investment in transferable securities (UCITS), which invests solely in the assets in (1).

15.6.3 G The *FCA* may, in exceptional circumstances, determine that an asset falling within *CASS* 15.6.2G is not secure and liquid.

15.6.4 R Where a *safeguarding institution* wishes to seek approval of assets that do not fall within *CASS* 15.6.2G, it must submit an application in writing to the *FCA* that demonstrates:

(1) how the consumer protection objective of safeguarding will be met by investing in the assets in question; and

(2) how liquidity risks will be managed.

15.6.5 R [to follow]

15.6.6 R A *safeguarding institution* must take reasonable steps to ensure that investment in *relevant assets* conforms with the general principles and conditions in *CASS* 15.6.7R and *CASS* 15.6.8R.

15.6.7 R The general principles which must be followed are:

(1) there must be a suitable spread of *investments*;

(2) investments must be made in accordance with an appropriate liquidity strategy;

(3) the investments must be in accordance with an appropriate credit risk policy;

(4) any foreign exchange risks must be prudently managed; and

(5) the policies and procedures for complying with the general principles in (1) to (4) must be reviewed at least annually.

15.6.8 R The general conditions which must be satisfied in the segregation of *safeguarding assets* are:

(1) subject to (2), any redemption of an *investment* must be by payment into the *safeguarding institution's relevant funds bank account*; and

(2) where a *safeguarding institution* appoints a third party to manage the *relevant assets*, the mandate should provide for the proceeds from the sale of any *relevant assets* to be promptly reinvested in other *relevant assets* or paid into the *safeguarding institution's relevant funds bank account*.

15.6.9 G [to follow]

15.6.10 G [to follow]

15.6.11 G [to follow]

15.6.12 R [to follow]

Appointment of a third party to manage relevant assets

15.6.13 R A *safeguarding institution* may only appoint a third party to manage *relevant assets* if the third party is a *firm* with *permission* to carry out the *regulated activity* of *managing investments*.

15.6.14 R A *safeguarding institution* that appoints a third party to manage *relevant assets* must:

(1) exercise all due skill, care and diligence in the selection, appointment, and periodic review of the third party and the arrangements for managing the *relevant assets*;

(2) ensure that the mandate given to the third party prevents the third party from making investment decisions that are inconsistent with the *Electronic Money Regulations*, the *Payment Services Regulations,* or the requirements in this chapter; and

(3) ensure that the arrangements with the third party require the third party to provide the *safeguarding institution* with information on the number of *relevant assets* held. Such information should be provided or made available at least every *business day* and relate to the close of business on the previous *business day*.

15.6.15 R When a *safeguarding institution* makes the selection, the appointment and conducts the periodic review of the third party it must take into account the expertise and market reputation of the third party with a view to ensuring the protection of *clients'* rights.

15.6.16 R (1) A *safeguarding institution* must make a record of:

(a) the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under *CASS* 15.6.13R; and

(b) each periodic review of its selection and appointment of a third party under *CASS* 15.6.13R, its considerations and conclusions.

(2) A record under (1) must be made on the date the selection is made or the review completed (as the case may be) and kept for 5 years from the later of that date or the date that the *safeguarding institution* ceases to use the third party.

15.6.17 R A *safeguarding institution* that appoints a third party pursuant to *CASS* 15.6.13R remains responsible for ensuring that the *relevant funds* are only invested in accordance with the *relevant funds regime*.

15.6.18 G A *safeguarding institution* is not required to appoint a third party to manage *relevant assets*, but if it does it must comply with *CASS* 15.6.13R.

15.7 The insurance or guarantee method

Application

15.7.1 R This section applies when a *safeguarding institution* elects to protect some or all *relevant funds* using the *insurance or guarantee method*.

Using an insurance policy

15.7.2 R A *safeguarding institution* can protect *relevant funds* through an insurance policy if the policy complies with the conditions in *CASS* 15.7.4R.

Using a guarantee

15.7.3 R A *safeguarding institution* can protect *relevant funds* through a guarantee if the guarantee complies with the conditions in *CASS* 15.7.4R.

General conditions: insurance policy and guarantee

15.7.4 R The conditions are:

(1) the proceeds of the insurance policy or guarantee must be payable upon an *insolvency event* of the *safeguarding institution*;

(2) there must not be any condition or restriction on the prompt paying out of the insurance or guarantee, other than the certification of the *insolvency event*;

(3) a certification requirement for the purposes of (2) must be no more onerous than is practically necessary;

(4) the terms of the insurance policy or guarantee must provide for the proceeds of the insurance policy or guarantee to be promptly paid

into a *relevant funds bank account* of the *safeguarding institution*; and

(5) the terms of the insurance policy or guarantee must not permit or enable the provider to cancel the policy or guarantee prior to its expiry, unless such cancellation is:

(a) due to the non-payment of the premium; and

(b) the provider has given the *safeguarding institution* and the *FCA* at least 90 *days'* notice of its decision to cancel the policy or guarantee.

15.7.5 G (1) The effect of *CASS* 15.7.4R is that the insurance policy or guarantee must pay out the full amount of any claim regardless of why the *insolvency event* occurs. This includes, but is not limited to, where the *insolvency event* is caused by:

(a) any fraud or negligence on the part of the *safeguarding institution* or any of its directors, employees or agents; or

(b) something outside the control of the *safeguarding institution*.

(2) *CASS* 15.7.4R also means that there must be no level below which the insurance policy or guarantee does not pay out.

(3) *CASS* 15.7.4R(4) requires the proceeds of an insurance policy or guarantee to be payable into a *relevant funds bank account*. In practice, this means that the *safeguarding institution* will need to maintain such an account at least for the full term of the insurance policy or guarantee.

15.7.6 G A *safeguarding institution* may use more than 1 insurance policy or an insurance policy and a guarantee. However, the effect of the condition in *CASS* 15.7.4(2)R is that the terms of the insurance policy or guarantee must not enable the insurer or guarantor to refuse to pay out, in whole or in part, on the basis that *relevant funds* are covered by another insurer or guarantor.

15.7.7 R [to follow]

15.7.8 R [to follow]

15.7.9 R [to follow]

15.7.10 R [to follow]

Notification

15.7.11 R A *safeguarding institution* must notify the *FCA* at least 2 *months* before it intends to:

(1) rely on the *insurance or guarantee method* for the first time;

(2) change the amount of cover provided by its insurance policies or guarantees; or

(3) change its insurer or guarantor.

15.7.12 R The notification under *CASS* 15.7.11R must set out:

(1) the *person* providing the insurance policy or guarantee;

(2) how the insurance policy or guarantee complies with the requirements in *CASS* 15.7.4R;

(3) when the insurance policy or guarantee expires, and if it renews automatically;

(4) whether the *safeguarding institution* has alternative arrangements in place instead of renewal;

(5) an assessment by the *safeguarding institution* as to whether the use of the *insurance or guarantee method* or the change to the safeguarding arrangements will lead to any increase in operational risk;

(6) an explanation of how the assessment in (5) was carried out; and

(7) a statement as to how the *safeguarding institution* will mitigate any increased operational risk.

15.7.13 G The assessment referred to in *CASS* 15.7.12R(5) should consider operational risks such as:

(1) the insurance policy or guarantee not being extended or renewed, and the *safeguarding institution* not:

(a) being able to either find an alternative insurer or guarantor; or

(b) having sufficient liquid assets to safeguard using the *segregation method* on the expiry of the insurance policy or guarantee; and

(2) adverse impacts on the institution's short-term liquidity caused by restrictions on accessing *funds* that would otherwise be available if they were protected using the *segregation method*, contrary to regulation 6(5) of the *Electronic Money Regulations* and regulation 6(6) of the *Payment Services Regulations*.

Expiration of the insurance policy or guarantee

15.7.14 R A *safeguarding institution* must:

(1) decide whether it intends to continue to use the *insurance or guarantee method* in good time and at least 3 *months* before the expiry of its existing insurance policy or guarantee; and

(2) notify the *FCA* of its decision.

15.7.15 G If a *safeguarding institution* decides to continue to use the *insurance or guarantee method*, but there are changes to the insurer or guarantor, or to the amount of the cover, it will also need to comply with *CASS* 15.7.11R.

15.7.16 G A *safeguarding institution* should decide whether to continue using the *insurance or guarantee method* in good time before the expiry of the policy or guarantee. In practice, this means that a decision should be made while there is sufficient time to enable the *safeguarding institution* to make alternative arrangements to meet its obligations to customers. The greater the amount of cover provided by the *insurance or guarantee method*, the sooner a decision should be made. The safeguarding institution should keep the *FCA* informed at all stages in accordance with *Principle* 11.

15.7.17 R *CASS* 15.7.18R applies where a *safeguarding institution*:

(1) has less than 3 *months* remaining on an insurance policy or guarantee taken out for the purposes of safeguarding by the *insurance or guarantee method*; and

(2) does not have a replacement for, or renewal of, the insurance policy or guarantee in place.

15.7.18 R The *safeguarding institution* must:

(1) make a plan as to how it will use the *segregation method* to safeguard the *funds* that would have been protected by the insurance policy or guarantee if that policy or guarantee had been renewed or replaced; and

(2) provide the *FCA* with the plan referred to in (1).

15.7.19 G If the *safeguarding institution* is a *small payment institution*, *small electronic money institution* or a *credit union* that voluntarily safeguards under regulation 23 of the *Payment Services Regulations* (including as applied by regulation 20(6) of the *Electronic Money Regulations*) it may, alternatively, cancel its election to safeguard.

15.7.20 G (1) If a *safeguarding institution* is unable to use the *segregation method* to protect *funds* that were previously covered by an insurance policy or guarantee, it should consider its financial position and take any appropriate steps (such as placing the company into administration) in good time before the lapse of the policy or guarantee so that a claim can be made.

(2) Where a *safeguarding institution* is required to safeguard, it is a condition of its authorisation or registration that it takes adequate measures for the purpose of doing so. If it does not have adequate measures in place to protect *relevant funds* in good time before the expiry of an insurance policy or guarantee, the *FCA* may consider whether it is appropriate to use its supervision powers to protect the interests of customers, including, but not limited to, its powers to apply to court to appoint an insolvency practitioner.

15.8 [to follow]

15.9 Selection and appointment of third parties

15.9.1 R (1) A *safeguarding institution* must exercise all due skill, care and diligence:

(a) in the selection, appointment, and periodic review of third parties that provide:

(i) accounts where *relevant funds* are received, deposited or otherwise held;

(ii) accounts where *relevant assets* are deposited or otherwise held; or

(iii) insurance or a guarantee for the purpose of the *insurance or guarantee method*; and

(b) in the arrangements for the holding or protection of *relevant funds* or *relevant assets*.

(2) The *safeguarding institution* must consider the need for diversification as part of its due diligence under (1).

15.9.2 G *Safeguarding institutions* should ensure that their consideration of a third party focusses on the specific legal entity in question and not simply that *person's group* as a whole.

15.9.3 R When a *safeguarding institution* makes the selection, the appointment and conducts the periodic review of a third party, it must take into account:

(1) the expertise and market reputation of the third party with a view to ensuring the protection of *clients'* rights; and

(2) any legal or regulatory requirements or market practices related to the holding of *relevant funds* or *relevant assets* or the provision of insurance or a guarantee that could adversely affect *clients'* rights.

15.9.4 G In complying with *CASS* 15.9.3R, a *safeguarding institution* should consider, as appropriate, together with any other relevant matters:

(1) the capital of the third party;

(2) the amount of *relevant funds* or *relevant assets* placed, insured or guaranteed as a proportion of the third party's capital and (where relevant) *deposits*;

(3) the extent to which *relevant funds* or *relevant assets* that the *safeguarding institution* deposits or holds with any third party would be protected under a deposit protection scheme or other compensation scheme;

(4) the creditworthiness of the third party;

(5) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the third party and *affiliated companies*; and

(6) the arrangements referred to in *CASS* 15.2.1R (Protection of relevant funds).

15.9.5 R A *safeguarding institution* must:

(1) periodically review whether it is appropriate to diversify (or further diversify) the third parties with which it deposits, holds, invests, insures or guarantees some or all of the *relevant funds* it is required to safeguard; and

(2) whenever it concludes that it is appropriate to do so, it must make adjustments accordingly to the third parties it uses and to the amounts of *relevant funds* or *relevant assets* deposited or held with them or covered by them.

15.9.6 G In complying with the requirement in *CASS* 15.9.5R to periodically review whether diversification (or further diversification) is appropriate, a *safeguarding institution* should have regard to:

(1) whether it would be appropriate to deposit *relevant funds* in *relevant funds bank accounts* opened at a number of different *approved banks*;

(2) whether it would be appropriate to limit the amount of *relevant funds* or *relevant assets* the *safeguarding institution* holds with third parties that are in the same *group* as each other;

(3) whether risks arising from the *safeguarding institution's* business model create any need for diversification (or further diversification);

(4) the market conditions at the time of the assessment;

(5) the outcome of any due diligence carried out in accordance with *CASS* 15.9.1R; and

(6) the arrangements referred to in *CASS* 15.2.1R (Protection of relevant funds).

15.9.7 R (1) A *safeguarding institution* must make a record of:

(a) the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party under *CASS* 15.9.1R;

(b) each periodic review of its selection and appointment of a third party under *CASS* 15.9.1R, its considerations and conclusions; and

(c) each periodic review that it conducts under *CASS* 15.9.5R, its considerations and conclusions.

(2) A record under (1) must be made on the date the selection is made or the review completed (as the case may be) and kept for 5 years from that date, or from the date that the *safeguarding institution* ceases to use the third party, whichever is later.

15.10 Acknowledgement letters

15.10.1 G The main purposes of an *acknowledgment letter* are:

(1) to put third parties on notice of a *safeguarding institution's client's* interests in *relevant funds* or *relevant assets* that have been deposited or invested with that person;

(2) to ensure that a *relevant funds bank account* or *relevant assets account* has been opened in accordance and in compliance with the *Electronic Money Regulations*, the *Payment Services Regulations* and *CASS* 15, and is distinguished from any account containing *funds* or assets that are not *relevant funds* or *relevant assets*; and

(3) to ensure that a third party understands and agrees that it will not have any recourse or right against *funds* or assets standing to the credit of a *relevant funds bank account* or *relevant assets account* in respect of any liability of the *safeguarding institution* to the third party (or a *person* connected to the third party), except to the extent provided for by the *Electronic Money Regulations* or the *Payment Services Regulations* as the case may be.

Requirement for, and content of, safeguarding account acknowledgement letters

15.10.2 R *CASS* 15.10.3R does not apply to the type of *relevant funds bank account* specified in regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations* (Bank of England settlement accounts).

15.10.3 R For each *relevant funds bank account*, a *safeguarding institution* must complete and sign a *safeguarding account acknowledgement letter* clearly identifying the *relevant funds bank account* and send it to the *approved bank* with whom the *relevant funds bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *safeguarding institution*.

15.10.4 R For each *relevant assets account*, a *safeguarding institution* must complete and sign a *safeguarding account acknowledgement letter* clearly identifying the *relevant assets account* and send it to the *firm* with whom the *relevant asset account* is, or will be, opened, requesting the *firm* to acknowledge and agree to the terms of the letter by countersigning it.

Safeguarding account acknowledgement letters template

15.10.5 R In drafting *acknowledgement letters* under *CASS* 15.10, a *safeguarding institution* is required to use the template in *CASS* 15 Annex 1R.

15.10.6 R When completing an *acknowledgment letter* a *safeguarding institution*:

(1) must not amend any of the *acknowledgment letter fixed text*;

(2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and

(3) must not amend any of the *acknowledgment letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.

15.10.7 G *CASS* 15 Annex 2G contains *guidance* on using the template for *acknowledgement letters*, including *guidance* on when and how *safeguarding institutions* should amend the *acknowledgement letter variable text* that is in square brackets.

Countersignature of safeguarding account acknowledgement letters

15.10.8 R (1) If, on countersigning and returning the *acknowledgment letter* to a *safeguarding institution,* the relevant *person* has also made amendments to:

(a) any of the *acknowledgement letter fixed text*; or

(b) any of the *acknowledgment letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*,

the *acknowledgment letter* will have been inappropriately redrafted and no longer comply with *CASS* 15.10.6R.

(2) Amendments made to the *acknowledgement letter variable text* in the *acknowledgement letter* returned to a *safeguarding institution* by the

relevant *person* will not have the result that the letter has been inappropriately redrafted if those amendments:

(a) do not affect the meaning of the *acknowledgment letter fixed text*;

(b) have been specifically agreed with the *safeguarding institution*; and

(c) do not cause the *acknowledgement letter* to be inaccurate.

15.10.9 R A *safeguarding institution* must use reasonable endeavours to ensure that any *individual* that has countersigned an *acknowledgement letter* that has been returned to the *safeguarding institution* was authorised to countersign the letter on behalf of the relevant *person*.

15.10.10 R A *safeguarding institution* must retain each countersigned *acknowledgement letter* it receives from the date of receipt until the expiry of a period of 5 years starting on the date on which the last account to which the *acknowledgment letter* relates is closed.

15.10.11 R A *safeguarding institution* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the *individual* that has countersigned an *acknowledgement letter* that has been returned to the *safeguarding institution* was authorised to countersign the letter on behalf of the relevant *person*).

15.10.12 R [to follow]

Review and replacement of safeguarding account acknowledgement letters

15.10.13 R A *safeguarding institution* must periodically (at least annually, and whenever it becomes aware that something referred to in an *acknowledgement letter* has changed) review each of its countersigned *acknowledgement letters* to ensure that they remain accurate.

15.10.14 R Whenever a *safeguarding institution* finds a countersigned *acknowledgement letter* contains an inaccuracy, the *safeguarding institution* must promptly draw up a new replacement *acknowledgment letter* and ensure that the new *acknowledgement letter* is duly countersigned and returned by the relevant *person*.

15.10.15 G Under *CASS* 15.10.14R, a *safeguarding institution* should obtain a replacement *acknowledgement letter* whenever:

(1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or

(2) it becomes aware of an error or misspelling in the letter.

15.10.16 R If a *safeguarding institution's relevant funds bank account* or *relevant assets account* is transferred to another person, the *safeguarding institution* must promptly draw up a new *acknowledgement letter* under *CASS* 15.10 and ensure that the new *acknowledgement letter* is duly countersigned and returned by the relevant *person.*

15.11 [to follow]

15.12 Records, accounts and reconciliations

Policies and procedures

15.12.1 R A *safeguarding institution* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *safeguarding institution* (including in relation to any services provided through an *agent* or *electronic money distributor*) with the safeguarding provisions of the *Electronic Money Regulations* and the *Payment Services Regulations* and with the *rules* under this chapter.

15.12.2 G In complying with the requirement in *CASS* 15.12.1R*,* a *safeguarding institution* should establish and maintain policies and procedures that include (but are not limited to):

(1) the frequency and method of the reconciliations the *safeguarding institution* is required to carry out under this section;

(2) the resolution of reconciliation discrepancies under this section; and

(3) the frequency at which the *safeguarding institution* is required to review its arrangements in compliance with this chapter.

Records and accounts

15.12.3 R (1) A *safeguarding institution* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish between *relevant funds* and other *funds*.

(2) Where an *electronic money institution* provides payment services that are unrelated to the issuance of *electronic money*, the provisions of *CASS* 15.12 shall be read as if they apply separately to the institution's *payment services* asset pool and to its *electronic money* asset pool.

15.12.4 R A *safeguarding institution* must maintain its records and accounts in a way that ensures their accuracy, and in particular, their correspondence to the *relevant funds* held for *clients*.

15.12.5 G (1) The requirements in *CASS* 15.12.3R and *CASS* 15.12.4R are for a *safeguarding institution* to keep internal records and accounts of

relevant funds. Therefore, any records falling under those requirements should be maintained by the *safeguarding institution* and are separate to any records the *safeguarding institution* may obtain from any third parties, such as those with whom it may have deposited *relevant funds.*

(2) A *safeguarding institution's* records must cover all *relevant funds* held by an institution, including those not held in *relevant funds bank accounts*.

15.12.6 R (1) A *safeguarding institution* must maintain records so that it is able to promptly determine the total amount of *relevant funds* it should be holding for each of its *clients*.

(2) A *safeguarding institution* must ensure that its records are sufficient to show and explain its transactions and commitments for its *relevant funds*.

(3) Unless otherwise stated, a *safeguarding institution* must ensure that any record made under this chapter is retained for a period of 5 years starting from the later of:

(a) the date it was created; or

(b) if it has been modified since the date it was created, the date it was most recently modified.

15.12.7 R For each *internal safeguarding reconciliation* and *external safeguarding reconciliation* the *safeguarding institution* conducts, it must ensure that it records:

(1) the time and date it carried out the relevant process;

(2) the actions it took in carrying out the relevant process; and

(3) the outcome of its calculation of its *safeguarding requirement*, *safeguarding resource* and *relevant funds deposit resource*.

Internal safeguarding reconciliations

15.12.8 R An *internal safeguarding reconciliation* requires a *safeguarding institution* to carry out a reconciliation of its internal records and accounts to check that:

(1) the amount of *relevant funds* that it safeguards is equal to the amount of *relevant funds* it should safeguard; and

(2) the amount of *relevant funds* it holds in *relevant funds bank accounts* is equal to the amount of *relevant funds* it should hold in *relevant funds bank accounts*.

15.12.9 R Where a *safeguarding institution* does not hold *relevant funds* other than in a *relevant funds bank account* it is not required to carry out the reconciliation described in *CASS* 15.12.8R(2).

15.12.10 R In carrying out an *internal safeguarding reconciliation*, a *safeguarding institution* must use the values contained in its internal records and ledgers (eg, the *payment accounts* it operates, its cash book or other internal accounting records) rather than the values contained in the records it has obtained from banks and other third parties with whom it has placed *relevant funds* (eg, bank statements).

15.12.11 G An *internal safeguarding reconciliation* should:

(1) be one of the steps a *safeguarding institution* takes to arrange adequate protection for *relevant funds* when the *safeguarding institution* is responsible for them;

(2) be one of the steps a *safeguarding institution* takes to satisfy its obligations under regulation 27 of the *Electronic Money Regulations* or regulation 31 of the *Payment Services Regulations* (as the case may be) and *CASS* 15.2 (Organisational requirements: relevant funds) to ensure the accuracy of the *safeguarding institution's* records; and

(3) check whether the amount of *relevant funds* recorded in the *safeguarding institution's* records as being safeguarded meets the *safeguarding institution's* obligations to its *clients* under the *Electronic Money Regulations*, the *Payment Services Regulations*, and the *relevant funds rules*.

Frequency of internal safeguarding reconciliations

15.12.12 R *CASS* 15.12.13R and *CASS* 15.12.14R do not apply to a *safeguarding institution* that has entered special administration under the *PEMII Regulations*.

15.12.13 R Subject to *CASS* 15.12.14R, a *safeguarding institution* must perform an *internal safeguarding reconciliation*:

(1) as regularly as necessary and at least once each *business day*; and

(2) based on the most up to date records of the *safeguarding institution*.

15.12.14 R (1) following an *insolvency event* the *safeguarding institution* must:

(a) perform an *internal safeguarding reconciliation* that relates to the time of the *insolvency event* as soon as reasonably practicable after the *insolvency event*; and

(b) perform further *internal safeguarding reconciliations* as regularly as required under (2), based on the records of the

safeguarding institution as at the close of business on the *business day* before the *day* on which the reconciliation takes place.

(2) A *safeguarding institution* must determine when and how often to perform an *internal safeguarding reconciliation* under (1)(b) so as to ensure that:

(a) the *safeguarding institution* remains in compliance with *CASS* 15.12.3R to *CASS* 15.12.7R (Records and accounts); and

(b) the correct amounts of *relevant funds* are returned to *clients.*

15.12.15 G (1) The reference point for the *internal safeguarding reconciliation* under *CASS* 15.12.14R(1)(a) should be the precise point in time at which the *insolvency event* occurred.

(2) When a *safeguarding institution* decides whether it is necessary at any particular point in time to perform an *internal safeguarding reconciliation* under *CASS* 15.12.14R(1)(b), it should have particular regard to the need to maintain its books and accounts in order to ensure that:

(a) asset pools of *relevant funds* formed under regulation 24 of the *Electronic Money Regulations* or regulation 23 of the *Payment Services Regulations* are correctly composed and maintained;

(b) [to follow]

(c) [to follow]

(3) Depending on the circumstances of the *safeguarding institution* and the scale, frequency and nature of activity after an *insolvency event* that affects *relevant funds*, a *safeguarding institution* may conclude that it is necessary to perform *internal safeguarding reconciliations* each *business day* for a period of time after the *insolvency event*.

Internal safeguarding reconciliation: process

15.12.16 R A *safeguarding institution* must use the *internal safeguarding reconciliation* to check:

(1) whether its *safeguarding resource*, as at the time the reconciliation relates to (the 'reconciliation point') was equal to its *safeguarding requirement* as at the reconciliation point; and

(2) whether the *relevant funds deposit resource* as at the reconciliation point was equal to the amount of *relevant funds deposit requirement* as at the reconciliation point.

15.12.17 R A *safeguarding institution* that uses only the *insurance or guarantee method* to protect *relevant funds* and does so using an insurance policy or guarantee that is unlimited in the amount of cover it provides:

(1) does not need to carry out an *internal safeguarding reconciliation*; but

(2) must carry out a daily calculation of its *safeguarding requirement* and record:

(a) the date it carried out the calculation;

(b) the actions the *safeguarding institution* took in carrying out the calculation; and

(c) the outcome of its calculation.

Internal safeguarding reconciliation: safeguarding resource

15.12.18 R The *safeguarding resource* is the sum of:

(1) the aggregate balance of *funds* held in the *safeguarding institution's relevant funds bank accounts* (less any *funds* that are not *relevant funds* held in an account of the type described in regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations* (Bank of England settlement accounts)) ('item A');

(2) the aggregate balance of *relevant funds* that have been received but not yet placed into a *relevant funds bank account* ('item B');

(3) the aggregate value of *relevant assets* based on the *safeguarding institution's* records as at the close of business on the previous *business day* ('item C'); and

(4) the aggregate value of *relevant funds* that the *safeguarding institution* has protected using the *insurance or guarantee method* ('item D').

15.12.19 G [to follow]

15.12.20 R In determining item C, a *safeguarding institution* must ensure that any valuation of the *relevant assets* is performed impartially and with all due skill, care and diligence.

Internal safeguarding reconciliation: relevant funds deposit resource

15.12.21 R The *relevant funds deposit resource* is item A in *CAS*S 15.12.18R.

Internal safeguarding reconciliation: safeguarding requirement

15.12.22 G The *safeguarding requirement* is the total amount a *safeguarding institution* is required to safeguard.

15.12.23 R The *safeguarding requirement* is the sum of:

(1) *individual safeguarding balances* calculated in accordance with *CASS* 15.12.24R, ignoring any negative balances; and

(2) any amounts received but unallocated to an individual *client* under *CASS* 15.2.3R (Allocation of relevant funds receipts).

Internal safeguarding reconciliation: individual safeguarding balance

15.12.24 R A *safeguarding institution* must calculate a *client's individual safeguarding balance* in a way which captures the total amount of all *funds* the *safeguarding institution* should be safeguarding for that *client*.

15.12.25 G (1) A *safeguarding institution* may calculate either:

(a) one *individual safeguarding balance* for each *client*, based on the totality of all the *payment services* or *electronic money* products provided to that *client*; or

(b) multiple *individual safeguarding balances* for each *client*, based on the individual *payment services* or *electronic money* products provided to that *client*.

15.12.26 R When calculating an *individual safeguarding balance* for each *client*, a *safeguarding institution* must:

(1) include:

(a) all *relevant funds* received by the *safeguarding institution* for the *client*; and

(b) any amounts credited to the *client's* account by the *safeguarding institution* (for example interest due and payable on a *payment account*); and

(2) deduct:

(a) any payments executed for the *client* (provided the *funds* have been paid to the *payee* or the *payee's payment service provider*);

(b) any *electronic money* that has been redeemed; and

(c) any sums due and payable by the *client* to the *safeguarding institution* (eg, any fees and charges which are due and, under the *framework contract*, may be deducted from the *funds* held by the *safeguarding institution*).

15.12.27 G For the purpose of *CASS* 15.12.26R(2)(c), *a safeguarding institution* must not take into account any payment or sums due and payable by the *client* to the extent those payments or sums create a negative balance on an account operated by the *safeguarding institution* for the *client*.

15.12.28 G [to follow]

Internal safeguarding reconciliation: relevant funds deposit requirement

15.12.29 G The *relevant funds deposit requirement* is the total amount of *relevant funds* that a *safeguarding institution* should hold in its *relevant funds bank accounts*.

15.12.30 R The *relevant funds deposit requirement* is the sum of:

(1) *individual relevant funds deposit balances* calculated in accordance with *CASS* 15.12.31R; and

(2) any amounts received but unallocated to an individual *client* under *CASS* 15.2.3R (Allocation of relevant funds receipts) and paid into a *relevant funds bank account*.

(3) [to follow]

less:

(4) the aggregate value of *relevant assets* based on the *safeguarding institution's* records as at the close of business on the previous *business day*; and

(5) the aggregate value of *relevant funds* that the *safeguarding institution* has protected using the *insurance or guarantee method*.

Internal safeguarding reconciliation: individual relevant funds deposit balance

15.12.31 R A *safeguarding institution* must calculate a *client's individual relevant funds deposit balance* in a way which captures the total amount of all *funds* the *safeguarding institution* should hold in its *relevant funds bank accounts* for that *client*.

15.12.32 G (1) A *safeguarding institution* may calculate either:

(a) one *individual relevant funds deposit balance* for each *client*, based on the totality of all the *payment services* or *electronic money* products provided to that *client*; or

(b) multiple individual *relevant funds deposit balances* for each *client*, based on the *individual payment services* or *electronic money* products provided to that *client*.

15.12.33 R When calculating an *individual relevant funds deposit balance* for each *client*, a *safeguarding institution* must:

(1) include:

(a) any *relevant funds* received by the *safeguarding institution* for the *client* into a *relevant funds bank account*;

(b) any *relevant funds* that were received into an account that is not a *relevant funds bank account* before the end of the *day* 2 *days* before the *day* on which the reconciliation takes place;

(c) any cash received before the end of the *day* 2 *days* before the *day* on which the reconciliation takes place;

(d) the proceeds of any cheques or payable orders that were received before the end of the *day* preceding the *day* on which the reconciliation takes place; and

(e) any amounts credited to the *client*'s account by the *safeguarding institution* (for example, interest due and payable on a *payment account*); and

(2) deduct:

(a) any payments executed for the *client* (provided the *funds* have been paid to the *payee* or the *payee's payment service provider*);

(b) any *electronic money* that has been redeemed; and

(c) any sums due and payable by the *client* to the *safeguarding institution* (for example, any fees and charges which are due and, under the *framework contract*, may be deducted from the *funds* held by the *safeguarding institution*).

15.12.34 R For the purpose of *CASS* 15.12.33(2)(c), a *safeguarding institution* must not take into account any payment or sums due and payable by the *client* to the extent those payments or sums create a negative balance on an account operated by the *safeguarding institution* for the *client*.

External safeguarding reconciliations

15.12.35 R A *safeguarding institution* must conduct reconciliations between its internal records and accounts and those of:

(1) the banks with which the *safeguarding institution* holds a *relevant funds bank account*;

(2) the *persons* with which the *safeguarding institution* holds any other account in which relevant funds are held; and

(3) the *authorised custodians* with which the *safeguarding institution* holds a *relevant assets account*, and any third party that manages *relevant assets* on behalf of the *safeguarding institution*.

15.12.36 G The purpose of an *external safeguarding reconciliation* is to ensure the accuracy of a *safeguarding institution's* internal records and accounts against those of any third parties that hold *relevant funds* or hold or manage *relevant assets*.

Frequency of external safeguarding reconciliations

15.12.37 R *CASS* 15.12.38R to *CASS* 15.12.41R do not apply to a *safeguarding institution* following an *insolvency event*.

15.12.38 R A *safeguarding institution* must perform an *external safeguarding reconciliation*:

(1) as regularly as is necessary and at least every *business day*; and

(2) as soon as reasonably practicable after the date to which the *external safeguarding reconciliation* relates.

15.12.39 R When determining the frequency at which it will undertake *external safeguarding reconciliations,* a *safeguarding institution* must have regard to:

(1) the frequency, number and value of transactions which the *safeguarding institution* undertakes in respect of *relevant funds*; and

(2) the risks to which the *relevant funds* are exposed, such as the nature, volume and complexity of the *safeguarding institution's* activities and where and with whom *relevant funds* are held or invested.

15.12.40 R (1) A *safeguarding institution* must make and retain records sufficient to show and explain any decision it has taken under *CASS* 15.12.39R when determining the frequency of its *external safeguarding reconciliations*. Subject to (2), any such records must be retained indefinitely.

(2) If any decision under *CASS* 15.12.39R is superseded by a subsequent decision under that *rule*, the record of that earlier decision retained in accordance with (1) need only be retained for a further period of 5 years from the date of the subsequent decision.

15.12.41 R (1) A *safeguarding institution* must review the frequency with which it conducts its *external safeguarding reconciliations* at least annually to ensure that it continues to comply with *CASS* 15.12.38R and has given due consideration to the matters in *CASS* 15.12.39R.

(2) For each review a *safeguarding institution* undertakes under (1), it must record the date and the actions it took in reviewing the frequency of its *external safeguarding reconciliations*.

Frequency of external safeguarding reconciliations after an insolvency event

15.12.42 R *CASS* 15.12.43R to *CASS* 15.12.45R do not apply to a *safeguarding institution* that has entered special administration under the *PEMII Regulations*.

15.12.43 R Following an *insolvency event*, a *safeguarding institution* must perform an *external safeguarding reconciliation* that relates to the time of the *insolvency event* as soon as reasonably practicable after the *insolvency event*, based on the next available statements or other forms of confirmation after the *insolvency event* from:

(1) the banks with which the *safeguarding institution* holds a *relevant funds bank account*;

(2) the *persons* with which the *safeguarding institution* holds any other account in which *relevant funds* are held; and

(3) the *authorised custodians* with which the *safeguarding institution* holds a *relevant assets account*, and any third party that manages *relevant assets* on behalf of the *safeguarding institution*.

15.12.44 G The reference point for the *external safeguarding reconciliation* under *CASS* 15.12.43R should be the precise point in time at which the *insolvency event* occurred.

15.12.45 R When determining the frequency with which it will undertake *external safeguarding reconciliations* under *CASS* 15.12.43R after an *insolvency event,* a *safeguarding institution* must have regard to:

(1) the frequency, number and value of transactions which the *safeguarding institution* undertakes in respect of *relevant funds*;

(2) the risks to which the *relevant funds* are exposed, such as the nature, volume and complexity of the *safeguarding institution's* activities and where and with whom the *relevant funds* are held or invested; and

(3) the need to be able to verify that:

(a) *relevant funds* within an asset pool formed under regulation 24 of the *Electronic Money Regulations* or regulation 23 of the *Payment Services Regulations* have not been incorrectly distributed, transferred or dissipated; and

(b) the proceeds of any payments and transactions that settle after the *insolvency event* and which involve *relevant funds* have been received correctly.

External safeguarding reconciliations: method

15.12.46 R An *external safeguarding reconciliation* requires a *safeguarding institution* to:

(1) compare:

(a) the balance, currency by currency, recorded by the *safeguarding institution*, as set out in the most recent statement or other form of confirmation issued by the *person* with which those accounts are held, of:

(i) each *relevant funds bank account*; and

(ii) any other account in which *relevant funds* are held; and

(b) the balance of *relevant assets, investment* by *investment*, on each account held with an *authorised custodian*, set out in the most recent statement or other form of confirmation issued by the *authorised custodian*; and

(2) promptly identify and resolve any discrepancies between those balances under *CASS* 15.12.55R and *CASS* 15.12.56R.

15.12.47 G The reconciliation described in *CASS* 15.12.46R(1)(b) requires a *safeguarding institution* to reconcile the quantity of *relevant assets*, rather than the value of those assets. The *relevant assets* should be compared by asset type. For example, the *safeguarding institution* should compare its records of the number of units in a particular *UCITS* against the number of units as set out in the statements provided by the custodian of the units or issuer (as the case may be).

15.12.48 G Insurance policies and guarantees are not subject to the *external safeguarding reconciliation*. However, *safeguarding institutions* using the *insurance or guarantee method* are reminded of their obligations in *CASS* 15.7 and the need to ensure that any insurance policy or guarantee provides appropriate cover at all times.

Reconciliation differences and discrepancies

15.12.49 R When an *internal safeguarding reconciliation* reveals a difference between the *safeguarding resource* and the *safeguarding requirement*, a *safeguarding institution* must determine the reason for the discrepancy and, subject to *CASS* 15.12.51R, ensure that:

(1) any shortfall is paid into a *relevant funds bank account* as soon as possible and in any case by the end of the *business day* on which the reconciliation is performed; or

(2) any excess is withdrawn from an account holding *relevant funds* within the same period.

15.12.50 R (1) When an *internal safeguarding reconciliation* reveals a difference between the *relevant funds deposit requirement* and the *relevant funds deposit resource* a safeguarding institution must determine the reason for the discrepancy and, subject to *CASS* 15.12.51R, ensure that sufficient *relevant funds* are paid into a *relevant funds bank account* as soon as possible and in any case by the end of the *business day* on which the reconciliation is performed so that the balance on the *relevant funds bank account(s)* reflects the *relevant funds deposit requirement*.

(2) If it is not possible to pay *relevant funds* into the *relevant funds bank account,* the payment must be made from the *safeguarding institution's* own *funds,* even if this leads to a discrepancy between the *relevant funds requirement* and the *relevant funds resource.*

15.12.51 R Following an insolvency event, a *safeguarding institution* is not required to make a payment or withdrawal under *CASS* 15.12.49R or *CASS* 15.12.50R insofar as the legal procedure for the *insolvency event* restricts it from doing so.

15.12.52 G *CASS* 15.12.49R and *CASS* 15.12.50R set out some of the steps that a *safeguarding institution* must carry out to ensure that it is segregating the right amount of *relevant funds*, and that it is holding the right amount of *relevant funds* in *relevant funds bank accounts*. Where discrepancies are identified, *safeguarding institutions* are required to make payments to remedy those discrepancies.

15.12.53 G *CASS* 15.12.50R(2) makes provision for a *safeguarding institution* that has a deficiency in its *relevant funds bank account* but is unable to access *relevant funds* outside the *relevant funds bank account* in order to remedy it. Such lack of access could be, for example, because of a delay in the release of *relevant funds* by a third party. In such circumstances, the *safeguarding institution* must top-up the shortfall from its own *funds*, even where this leads to a surplus in the *relevant funds resource*. The discrepancy will be resolved by subsequent reconciliations.

15.12.54 G Where the discrepancy identified under *CASS* 15.12.49R or *CASS* 15.12.50R has arisen as a result of a breach of the requirements in this chapter, the *safeguarding institution* should ensure it takes sufficient steps to avoid a reoccurrence of that breach.

15.12.55 R If any discrepancy is identified by an *external safeguarding reconciliation,* the *safeguarding institution* must investigate the reason for the discrepancy and take all reasonable steps to resolve it without undue delay, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *safeguarding institution.*

15.12.56 R If a *safeguarding institution* is unable to immediately resolve a discrepancy identified by an *external safeguarding reconciliation,* and one record or set of records examined by the *safeguarding institution* during its *external*

safeguarding reconciliation indicates that there is a need to have a greater amount of *relevant funds* than is the case, the *safeguarding institution* must assume, until the matter is finally resolved, that that record or set of records is accurate and, subject to *CASS* 15.12.57R pay its own *funds* into a *relevant funds bank account*.

15.12.57 R Following an *insolvency* event, a *safeguarding institution* is not required to pay its own *funds* into a *relevant funds bank account* under *CASS* 15.12.56R insofar as the legal procedure for the *insolvency event* restricts it from doing so.

15.12.58 G (1) *CASS* 15.12.51R and *CASS* 15.12.57R recognise that following an *insolvency event* a *safeguarding institution* is required to investigate discrepancies, but the extent to which it is able to resolve discrepancies may be limited by insolvency law, for example.

(2) *CASS* 15.12.51R and *CASS* 15.12.57R would not prevent a *failed safeguarding institution* from making any transfers required under regulations 13 or 14 of the *PEMII Regulations*.

Notification requirements

15.12.59 R A *safeguarding institution* must inform the *FCA* in writing without delay if:

(1) its internal records and accounts of *relevant funds* are materially out of date, inaccurate or invalid so that the *safeguarding institution* is no longer able to comply with the requirements in *CASS* 15.12.3R, *CASS* 15.12.4R or *CASS* 15.12.6R(1);

(2) it will be unable to, or materially fails to, conduct an *internal safeguarding reconciliation* in compliance with *CASS* 15.12.8R and *CASS* 15.12.13R;

(3) it will be unable to, or materially fails to, pay any shortfall into a *relevant funds bank account* or withdraw any excess from an account holding *relevant funds* so that the *safeguarding institution* is unable to comply with *CASS* 15.12.49R or *CASS* 15.12.50R after having carried out an *internal safeguarding reconciliation*;

(4) it will be unable to, or materially fails to, conduct an *external safeguarding reconciliation* in compliance with *CASS* 15.12.35R and *CASS* 15.12.38R;

(5) it will be unable to, or materially fails to, identify and resolve any discrepancies under *CASS* 15.12.55R and *CASS* 15.12.56R after having carried out an *external safeguarding reconciliation*; or

(6) it becomes aware that, at any time in the preceding 12 months, the amount of *relevant funds* safeguarded was materially different from the total aggregate amount of *relevant funds* the *safeguarding*

institution was required to safeguard under the *Electronic Money Regulations* or the *Payment Services Regulations*.

15.12.60 G *Safeguarding institutions* are reminded that the auditor of the *safeguarding institution* must confirm in the report submitted to the *FCA* under *SUP* 3A.9 (Duties of auditors: notification and report on safeguarding) whether the *safeguarding institution* has maintained systems adequate to enable it to comply with the *relevant funds regime.*

15 Annex 1R Safeguarding account acknowledgement letter template

[Letterhead of *safeguarding institution*, including full name and address of *safeguarding institution*]

[name and address of *approved bank* or *authorised custodian*]

[date]

Safeguarding Account Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

We refer to the following [account[s]which [*name of safeguarding institution*], regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), ('us', 'we' or 'our') [has opened or will open] [and/or] [has deposited or will deposit] with [name of *approved bank* or *authorised custodian*] ("you" or "your"):

[*insert the account title[s], the account unique identifier[s] (eg, sort code and account number, deposit number or reference code) and (if applicable) any abbreviated name of the account[s] as reflected in the firm's systems*]

([collectively,] the 'Safeguarding Account[s]').

For [each of] the Safeguarding Account[s] identified above you acknowledge that we have notified you that:

1. we are under an obligation to keep [money/assets] we hold to meet the claims of our clients separate from other [money/assets];

2. we have opened, or will open, the Safeguarding Account for the purpose of depositing [money/assets] with you to meet the claims of our clients; and

3. we hold all [money/assets] standing to the credit of the Safeguarding Account to meet the claims of our clients.

For [each of] the Safeguarding Account[s] above you agree that:

4. you do not have any interest in, or recourse or right against [money/assets] in the Safeguarding Account in respect of any sum owed to you, or owed to any

third party, on any other account (including an account we use for our own [money/assets]) except as permitted by [regulation 24(1) of the Electronic Money Regulations 2011/regulation 23(14) of the Payment Services Regulations 2017]. This means, for example, that you do not have any right to combine the Safeguarding Account[s] with any other account and any right of set-off or counterclaim against [money/assets] in the Safeguarding Account, except following an insolvency event (as defined in [regulation 22 of the Electronic Money Regulations 2011/regulation 23 of the Payment Services Regulations], and:

(a) to the extent that the right of set-off or counterclaim relates to your fees and expenses in relation to the operation of the Safeguarding Account; or

(b) if all the claims of our clients have been paid;

5. you will title, or have titled, the Safeguarding Account as stated above and that this title is different to the title of any other account containing [money/assets] belonging to us or to any third party; and

6. you are required to release on demand all [money/assets] standing to the credit of the Safeguarding Account upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy (or similar procedure), in any relevant jurisdiction, except:

   (a) to the extent that you are exercising a right of set-off or security right as permitted by [regulation 24(1) of the Electronic Money Regulations 2011 / regulation 23(14) of the Payment Services Regulations 2017]; or

   (b) until the fixed term expires, any amounts held under a fixed term deposit arrangement which cannot be terminated before the expiry of the fixed term;

   provided that you have a contractual right to retain such [money/assets] under (a) or (b) and that this right is notwithstanding paragraphs (1) to (3) above and without breach of your agreement to paragraph (4) above.

We acknowledge that:

7. you are not responsible for ensuring compliance by us with our own obligations in respect of the Safeguarding Account[s].

You and we agree that:

8. the terms of this letter will remain binding upon the parties, their successors and assigns, and, for clarity, regardless of any change in any of the parties' names;

9. this letter supersedes and replaces any previous agreement between the parties in connection with the Safeguarding Account[s], to the extent that such previous agreement is inconsistent with this letter;

10. if there is any conflict between this letter and any other agreement between the parties over the Safeguarding Account[s], this letter will prevail;

11. no variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;

12. this letter is governed by the laws of [*insert appropriate jurisdiction*] [*safeguarding institutions may optionally use this space to insert additional wording to record an intention to exclude any rules of private international law that could lead to the application of the substantive law of another jurisdiction*]; and

13. the courts of [*insert same jurisdiction as previous*] have non-exclusive jurisdiction to settle any dispute or claim from or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible.

For and on behalf of [*name of safeguarding institution*]

x_____

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [name of bank]

x_____

Authorised Signatory

Print Name:

Title:

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

Date:

15 Annex 2G Guidance notes for acknowledgement letters

Introduction		
1	This annex contains guidance on the use of the template *acknowledgement letter* in *CASS* 15 Annex 1R.	
General		
2	Under *CASS* 15.10.3R and *CASS* 15.10.4R, *safeguarding institutions* are required to request duly signed and countersigned *acknowledgement letters* for their *relevant funds bank accounts* and *relevant assets accounts.*	
3	For each account a *safeguarding institution* is required to complete, sign and send to the *approved bank* or *authorised custodian* ('the counterparty') an *acknowledgement letter* identifying that account in the form set out in *CASS* 15 Annex 1R (acknowledgment letter template).	
4	When completing an *acknowledgement letter* using the appropriate template, a *safeguarding institution* is reminded that it must not amend any of the text which is not in square brackets (*acknowledgment letter fixed text*). A *safeguarding institution* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.	
Clear identification of relevant accounts		
5	A *safeguarding institution* is reminded that for each *relevant funds bank account* or *relevant assets account* it needs to request an *acknowledgement letter*. As a result, it is important that it is clear to which account or accounts each *acknowledgement letter* relates. As a result, the template in *CASS* 15 Annex 1R requires that the *acknowledgement letter* includes the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each account.	
6	The title and unique identifiers included in an *acknowledgement letter* for an account should be the same as those reflected in both the records of the *safeguarding institution* and the relevant counterparty, as appropriate, for that account. Where a counterparty's systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:	
	(a)	the account may continue to be appropriately identified in line with the requirements of *CASS* 15 (for example, 'account' may be shortened to 'acct' etc); and

	(b)	when completing an *acknowledgment letter*, such letter must include both the long and short versions of the account title
7	A *safeguarding institution* should ensure that all relevant account information is contained in the space provided in the body of the *acknowledgement letter*. Nothing should be appended to an *acknowledgement letter*.	
8	In the space provided in the template letter for setting out the account title and unique identifiers for each relevant account/deposit, a *safeguarding institution* may include the required information in the format of the following table:	

Full account title	Unique identifier	Title reflected in [*name of counterparty*] systems
[*Safeguarding Institution Relevant Funds Bank Account/Relevant Assets Account*]	[*00-00-00 12345678*]	[*SI Relevant Funds A/C*]

9	Where an *acknowledgement letter* is intended to cover a range of accounts, some of which may not exist as at the date the *acknowledgement letter* is countersigned by the counterparty, a *safeguarding institution* should set out in the space provided in the body of the *acknowledgement letter* that it is intended to apply to all present and future accounts which:	
	(a)	are titled in a specified way; and
	(b)	which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (eg, all accounts numbered between XXXX1111 and ZZZZ9999).
		For example, in the space provided in the template letter in *CASS* 15 Annex 1R which allows a *safeguarding institution* to include the account title and a unique identifier for each relevant account, a *safeguarding institution* should include a statement to the following effect:
		'Any account open at present or to be opened in the future which contains the term ['relevant funds'][insert appropriate abbreviation of the term 'relevant funds' as agreed and to be reflected in the Approved Bank's systems] in its title and which may be identified with [the following [insert common unique identifier]][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].'

	Signatures and countersignatures
10	A *safeguarding institution* should ensure that each *acknowledgement letter* is signed and countersigned by all relevant parties and *individuals* (including where more than one signatory is required).
11	An *acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in *CASS* 15.10. However, where electronic signatures are used, a *safeguarding institution* should consider whether, taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.
Completing a safeguarding account acknowledgment letter	
12	A *safeguarding institution* should use at least the same level of care and diligence when completing an *acknowledgement letter* as it would in managing its own commercial agreements.
13	A *safeguarding institution* should ensure that each *acknowledgement letter* is legible (eg, any handwritten details should be easy to read), produced on the *safeguarding institution's* own letter-headed paper, dated and addressed to the correct legal entity (eg, where the counterparty belongs to a group of companies).
14	A *safeguarding institution* should also ensure each *acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).
15	A *safeguarding institution* should similarly ensure that no square brackets remain in the text of each *acknowledgement letter* (eg, after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the template in *CASS* 15 Annex 1R) and that each page of the letter is numbered.
16	A *safeguarding institution* should complete an *acknowledgement letter* so that no part of the letter can be easily altered (eg, the letter should be signed in ink rather than pencil).
17	In respect of the *acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (12) and (13) of the template *acknowledgement letter*), a *safeguarding institution* should agree with the counterparty and reflect in the letter that the laws of a particular jurisdiction will govern the *acknowledgement letter* and that the courts of that same jurisdiction will have jurisdiction to settle any disputes arising out of, or in connection with, the *acknowledgement letter*, its subject matter or formation.

18	If a *safeguarding institution* does not, in any *acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:	
	(a)	the laws of the jurisdiction under which either the *safeguarding institution* or the counterparty are organised; or
	(b)	as is found in the underlying agreement/s (eg, banking services agreement) with the relevant counterparty;
	then the institution should consider whether it is at risk of breaching *CASS* 15.9.1R or *CASS* 15.9.3R.	
Authorised signatories		
19	A *safeguarding institution* is required under *CASS* 15.10.9R to use reasonable endeavours to ensure that any *individual* that has countersigned am *acknowledgement letter* returned to the *safeguarding institution* was authorised to countersign the letter on behalf of the relevant counterparty.	
20	If an *individual* that has countersigned an *acknowledgement letter* does not provide the *safeguarding institution* with sufficient evidence of their authority to do so then the *safeguarding institution* is expected to make appropriate enquiries to satisfy itself of that *individual's* authority.	
21	Evidence of an *individual's* authority to countersign an *acknowledgement letter* may include a copy of the counterparty's list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the *individual* countersigning the *acknowledgement letter*.	
22	A *safeguarding institution* should ensure it obtains at least the same level of assurance over the authority of an *individual* to countersign the *acknowledgement letter* as the *safeguarding institution* would seek when managing its own commercial arrangements.	
Third party administrators		
23	If a *safeguarding institution* uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing an acknowledgement letter, the text '[Signed by [Name of Third Party Administrator] on behalf of [*safeguarding institution*]]' should be inserted to confirm that the *acknowledgement letter* was signed by the TPA on behalf of the *safeguarding institution.*	
24	In these circumstances, the *safeguarding institution* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *acknowledgement letter* on the *safeguarding institution's* behalf. A *safeguarding institution* should also ensure that the	

	acknowledgement letter continues to be drafted on letter-headed paper belonging to the *safeguarding institution*.
Naming	
25	A *safeguarding institution* must ensure that each of its accounts follows the naming conventions prescribed in the *Glossary*. This includes ensuring that all accounts include the term 'relevant funds' or 'relevant assets' in their title or an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition.
26	All references to the term 'Relevant Funds Bank Account[s]"'or "Relevant Assets Account[s]"in an *acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.

Amend the following as shown.

TP1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
(16)	…	…	…	…	…
(17)	The changes to the *Glossary* in Annex A and to *CASS* in Annex B of the Payment Services and Electronic Money (Safeguarding) Instrument 2025	R	If an *insolvency event* happens before the *rules* in column 2 come into force, the changes listed in column 2 do not apply to the *safeguarding institution*.	Indefinitely	
(18)	*CASS* 15.6.14R(1) and *CASS* 15.9.1R(1)	R	(1) If a *safeguarding institution* has an appointment referred to in the *rules* in column (2) in place when those *rules* come into force, it must carry out a review of that	Indefinitely	

			appointment within 3 *months* of those *rules* coming into force.		
(19)	*CASS* 15.7.2R and *CASS* 15.7.3R	R	The *rules* listed in column 2 do not apply to an insurance policy or guarantee obtained in accordance with regulation 22 of the *Electronic Money Regulations* and/or regulation 23 of the *Payment Services Regulations*, as applicable, before those *rules* come into force. Those *rules* do apply to any renewal or extension of the policy or guarantee.	Indefinitely	

Sch 1 Record keeping requirements

…

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
CASS 10.1.3R	…	…	…	…
CASS 10A.1.3	A *safeguarding institution's CASS resolution pack*	The records set out in *CASS* 10A.2 and *CASS* 10A.3	When *CASS* 10A comes into force	Default

…				
CASS 13.11.13R	…	…	…	…
CASS 15.2.3R(2)	Unallocated *relevant funds*	Balance of unallocated *relevant funds*	Pending allocation of *relevant funds* to individual *clients*	Until *relevant funds* allocated to individual *clients*
CASS 15.2.7R(2)	Unidentified relevant funds	Balance of unidentified *relevant funds*	When *safeguarding institution* unable to identify whether *funds* are *relevant funds*	Until *funds* identified as either *relevant funds* or other *funds*
CASS 15.6.16R(1)	Use of third party to manage *relevant assets*	Grounds upon which the *safeguarding institution* chose the third party, and periodic reviews of appointment and selection	When selection made or review completed	Five years from later of selection or review, or when the *safeguarding institution* stops using the third party
CASS 15.9.7R(1)	Use of third parties for safeguarding purposes	Grounds upon which the *safeguarding institution* chose the third party, and periodic reviews of appointment and selection	When selection made or review completed	Five years from later of selection or review, or when the *safeguarding institution* stops using the third party
CASS 15.10.10R	*Acknowledgement letters*	Countersigned acknowledgement letters	When received	Five years from when the last account the letter relates to is closed

CASS 15.10.11R	Requirements relating to *acknowledgement letters*	Documentation or evidence to demonstrate compliance with requirements	When identified	Default
CASS 15.12.3R	*Relevant funds* and other *funds*	Such records and accounts as are necessary to enable a *safeguarding institution* to distinguish between *relevant funds* and other *funds*	Maintain up to date records	Default
CASS 15.12.6R	*Relevant funds*	Such records as are sufficient to allow a *safeguarding institution* to determine the total amount of *relevant funds* it should be holding for each of its *clients*	Maintain up to date records	Five years from date of creation or modification
CASS 15.12.7R	*Internal safeguarding reconciliation* and *external safeguarding reconciliation*	The time and date it carried out the relevant process, the actions it tool in carrying out the relevant process; and the outcome of its calculation of its *safeguarding requirement*, *safeguarding resource* and *relevant funds deposit resource*	When reconciliation carried out	Default
CASS 15.12.17R(2)	Daily calculation of *safeguarding requirement*	Date of calculation, actions that the *safeguarding*	Daily	Default

	for *safeguarding institution* that uses only the *insurance or guarantee method*	*institution* took and the outcome of the calculation		
CASS 15.12.40R	Frequency of *external safeguarding reconciliations*	Records sufficient to show and explain a decision under *CASS* 15.12.39R	When determining the frequency of *external safeguarding reconciliations*	Indefinitely, or 5 years after it is superseded
CASS 15.12.41R(2)	Review of frequency of *external safeguarding reconciliations*	Record of review under *CASS* 15.12.41R(1)	When review carried out	Default

Annex C

Amendments to the Supervision manual (SUP)

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

Insert the following new section, SUP 3A, after SUP 3 (Auditors). All the text is new and is not underlined.

3A Payment services and electronic money

3A.1 Application

3A.1.1 R (1) This chapter applies to:

(a) *relevant institutions*, which means:

(i) *authorised payment institutions*, other than those that are only authorised to carry out *payment initiation services* under the *Payment Services Regulations*; and

(ii) *electronic money institutions*; and

(b) the external auditors of *relevant institutions* appointed in accordance with *SUP* 3A.3.

(2) The *rules* in this chapter apply to *credit unions* that issue *electronic money* and *small payment institutions,* and their external auditors, as guidance.

3A.1.2 G This chapter applies to *relevant institutions* whether they:

(1) hold or receive *relevant funds* or not; and

(2) safeguard *relevant funds* through the *segregation method*, the *insurance or guarantee method* or both.

3A.1.3 G (1) The obligation in *CASS* 3A.3.2R to appoint an auditor does not apply to *small payment institutions* that voluntarily safeguard under regulation 23 of the *Payment Services Regulations* or *credit unions*. However, they are still required to have in place adequate arrangements to safeguard *relevant funds* under *CASS* 15.2.1R and minimise the risk of their loss or diminution under regulation 24(3) of the *Electronic Money Regulations* and regulation 23(17) of the *Payment Services Regulations*. Voluntarily arranging an audit in accordance with this chapter will help ensure they meet these obligations.

(2) *Small payment institutions* and *credit unions* that are required to have their annual accounts audited under the Companies Act 2006 or the

Co-operative and Community Benefit Societies Act 2014, or that voluntarily choose to arrange annual audits of their compliance with the *relevant funds regime*, should apply the relevant provisions of this chapter as guidance. Their auditors should also apply the relevant provisions of this chapter as guidance.

3A.2 Purpose

Purpose: general

3A.2.1 G This chapter sets out *rules* and *guidance* on the role that auditors play in the *FCA's* monitoring of *relevant institutions'* compliance with the requirements and standards in the *relevant funds regime*.

3A.2.2 G The *Payment Services Regulations* and the *Electronic Money Regulations*, together with other legislation, such as the Companies Acts 2006, provide the statutory framework for *relevant institutions'* and auditors' obligations.

Rights and duties of auditors

3A.2.3 G (1) The rights and duties of auditors are set out in *SUP* 3A.8 (Rights and duties of auditors) and *SUP* 3A.9 (Duties of auditors: notification and safeguarding report). *SUP* 3A.8.10G refers to statutory auditors' duty to report certain matters to the *FCA* under regulation 24 of the *Payment Services Regulations* and regulation 25 of the *Electronic Money Regulations*.

(2) An auditor should bear these rights and duties in mind when carrying out safeguarding report work, including whether anything should be notified to the *FCA* immediately.

3A.3 Appointment of auditors

Purpose

3A.3.1 G This section requires a *relevant institution* to appoint an auditor and supply the *FCA* with information about its auditor. The *FCA* requires such information to ensure that the *relevant institution* has an auditor.

Appointment by institutions

3A.3.2 R A *relevant institution* must:

(1) appoint an external auditor;

(2) notify the *FCA*, without delay, when it is aware that a vacancy in the office of auditor will arise or has arisen, giving the reason for the vacancy. This notification must be submitted by electronic means made available by the *FCA*;

(3) appoint an auditor to fill any vacancy in the office of auditor which has arisen;

(4) ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable after that; and

(5) notify the *FCA* of the appointment of an auditor, the name and business address of the auditor appointed and the date from which the appointment has effect. This notification must be submitted by electronic means made available by the *FCA*.

3A.3.3 G *SUP* 3A.3.2R applies to every *relevant institution*. That includes a *relevant institution* which is under an obligation to appoint an auditor under, for example, the Companies Act 2006. Such an institution is expected to wish to have a single auditor who is appointed to fulfil both obligations. *SUP* 3A.3.2R is made under section 137A of the *Act* (The *FCA*'s general rules), as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, in relation to such institutions. It is made under section 340(1) (Appointment), as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, in relation to other institutions.

Appointment by the FCA

3A.3.4 R (1) This *rule* does not apply to a *relevant institution* that is under an obligation to appoint an auditor imposed by an enactment other than the *Act*.

(2) If a *relevant institution* fails to appoint an auditor within 28 *days* of being required to do so, the *FCA* may appoint an auditor for it on the following terms:

(a) the auditor is to be remunerated by the institution on the basis agreed between the auditor and institution or, in the absence of agreement, on a reasonable basis; and

(b) the auditor is to hold office until they resign, or the institution appoints another auditor.

3A.3.5 G *SUP* 3A.3.4R allows, but does not require, the *FCA* to appoint an auditor if the *relevant institution* fails to do so within the 28-*day* period. When it considers whether to use this power, the *FCA* will take into account the likely delay until the institution can make an appointment and the urgency of any pending duties of the appointed auditor.

3A.3.6 R A *relevant institution* must comply with, and is bound by, the terms on which an auditor is appointed by the *FCA* under *SUP* 3A.3.4R.

3A.4 Auditors' qualifications

Purpose

3A.4.1 G The *FCA* is concerned to ensure that the auditor of a *relevant institution* has the necessary skill and experience to audit the business of the institution to

which they have been appointed. This section sets out the *FCA's rules* and *guidance* aimed at achieving this.

Qualifications

3A.4.2 R Before a *relevant institution* appoints an auditor, it must take reasonable steps to ensure that the auditor has the required skill, resources and experience to perform their functions under the *regulatory system* and that the auditor:

(1) is eligible for appointment as an auditor under Chapters 1, 2 and 6 of Part 42 of the Companies Act 2006;

(2) if appointed under an obligation in another enactment, is eligible for appointment as an auditor under that enactment; or

(3) in the case of an *overseas relevant institution*, is eligible for appointment as an auditor under any applicable equivalent laws of that country or territory.

3A.4.3 G An auditor which a *relevant institution* proposes to appoint should have skills, resources and experience commensurate with the nature, scale and complexity of the *relevant institution's* business and the requirements and standards under the *regulatory system* to which it is subject. A *relevant institution* should have regard to whether its proposed auditor has expertise in the relevant requirements and standards (which may involve access to *UK* expertise) and possesses or has access to appropriate specialist skill. The *relevant institution* should seek confirmation of this from the auditor concerned as appropriate.

Disqualified auditors

3A.4.4 R A *relevant institution* must not appoint as auditor a *person* who is disqualified under Part XXII of the *Act* (Auditors and Actuaries), including as applied by the *Payment Services Regulations* or *Electronic Money Regulations*, from acting as an auditor either for that institution or for a relevant class of institution or *firm*.

3A.4.5 G If it appears to the *FCA* that an auditor of a *relevant institution* has failed to comply with a duty imposed on them, it may take disciplinary measures, including disqualification of the auditor, under section 345 of the *Act* as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*. A list of persons who are disqualified may be found on the *FCA*'s website (www.fca.org.uk).

Requests for information by the FCA

3A.4.6 R A *relevant institution* must take reasonable steps to ensure that an auditor, which it is planning to appoint or has appointed, provides information to the *FCA* about the auditor's qualifications, skills, experience and independence in accordance with the reasonable requests of the *FCA*.

3A.4.7 G To enable it to assess the ability of an auditor to audit a *relevant institution*, the *FCA* may seek information about the auditor's relevant experience and skill. The *FCA* will normally seek information in writing from an auditor who has not previously audited a *relevant institution*. The *relevant institution* should instruct the auditor to provide a full reply (and should not appoint an auditor who does not reply to the *FCA*). The *FCA* may also seek further information on a continuing basis from the auditor of a *relevant institution* (see also the auditor's duty to cooperate under *SUP* 3A.8.2R).

3A.5 Auditors' independence

Purpose

3A.5.1 G To carry out their duties properly, an auditor needs to be independent of the institution they are auditing so they are not subject to conflicts of interest. Many *relevant institutions* are also subject to requirements under the Companies Act 2006 on auditor's independence.

Independence

3A.5.2 R A *relevant institution* must take reasonable steps to ensure that the auditor which it appoints is independent of the institution.

3A.5.3 R If a *relevant institution* becomes aware at any time that its auditor is not independent of the institution, it must take reasonable steps to ensure that it has an auditor independent of the institution. The *relevant institution* must notify the *FCA* if independence is not achieved within a reasonable time.

3A.5.4 G The *FCA* will regard an auditor as independent if their appointment or retention does not breach the ethical guidance in current issue from the auditor's recognised supervisory body on the appointment of an auditor in circumstances which could give rise to conflicts of interest.

3A.6 Relevant institutions' cooperation with their auditors

3A.6.1 R A *relevant institution* must cooperate with its auditor in the discharge of the auditor's duties under this chapter.

Auditor's access to accounting records

3A.6.2 G In complying with *SUP* 3A.6.1R, a *relevant institution* should give a right of access at all times to the institution's accounting and other records, in whatever form they are held, and documents relating to its business. A *relevant institution* should allow its auditor to copy documents or other material on the premises of the institution and to remove copies or hold them elsewhere, or give its auditor such copies on request.

3A.6.3 G Section 341 of the *Act* (Access to books etc.), as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, provides that an auditor of a *relevant institution* appointed under *SUP* 3A.3:

(1) has a right of access at all times to the *relevant institution's* books, accounts and vouchers; and

(2) is entitled to require from the *relevant institution's* officers such information and explanations as they reasonably consider necessary for the performance of their duties as auditor.

3A.6.4 G Sections 499 and 500 of the Companies Act 2006 give similar rights to auditors of companies.

3A.6.5 G Section 413 (Protected items) of the *Act*, as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, under which no person may be required to produce, disclose or permit the inspection of protected items, is relevant to *SUP* 3A.6.1R and *SUP* 3A.6.3G.

Access and cooperation: agents, distributors, operational outsourcing, employees

3A.6.6 G In complying with *SUP* 3A.6.1R, a *relevant institution* should take reasonable steps to ensure that each of its *agents* and *distributors* gives the institution's auditor the same rights of access to the books, accounts and vouchers of the *agent* or *distributor* and entitlement to information and explanations from the *agent'*s or *distributor*'s officers as are given in respect of the *relevant institution* by section 341 of the *Act*, as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*.

3A.6.7 G In complying with *SUP* 3A.6.1R, a *relevant institution* should take reasonable steps to ensure that each of its suppliers under a *material outsourcing* arrangement gives the institution's auditor the same rights of access to the books, accounts and vouchers of the institution held by the supplier, and entitlement to information and explanations from the supplier's officers as are given in respect of the *relevant institution* by section 341 of the *Act*, as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*.

3A.6.8 G In complying with *SUP* 3A.6.1R, a *relevant institution* should take reasonable steps to ensure that all its employees cooperate with its auditor in the discharge of its auditor's duties under this chapter.

Provision of false or misleading information to auditors

3A.6.9 G *Relevant institutions* and their officers, *managers* and *controllers* are reminded that, under section 346 of the *Act* (Provision of false or misleading information to auditor or actuary), as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, knowingly or recklessly giving false information to an auditor appointed under *SUP* 3A.3 constitutes an offence in certain circumstances, which could render them liable to prosecution. This applies even when an auditor is also appointed under an obligation in another enactment.

3A.7 Notification of matters raised by auditor

Notification

3A.7.1 G A *relevant institution* should consider whether it should notify the *FCA* under *Principle* 11 if it receives a written communication from its auditor commenting on *internal controls*.

3A.8 Rights and duties of auditors

Purpose

3A.8.1 G The auditor of a *relevant institution* has various rights and duties that enable or require them to obtain information from the institution and pass information to the *FCA* in specified circumstances. This section imposes or gives *guidance* on those rights and duties.

Cooperation with the FCA

3A.8.2 R An auditor of a *relevant institution* must cooperate with the *FCA* in the discharge of its functions under the *Payment Services Regulations* and the *Electronic Money Regulations*.

3A.8.3 G The *FCA* may ask the auditor to attend meetings and to supply it with information about the institution. In complying with *SUP* 3A.8.2R, the auditor should attend such meetings as the *FCA* requests and supply it with any information the *FCA* may reasonably request about the *relevant institution* to enable the *FCA* to discharge its functions under the *Payment Services Regulations* and the *Electronic Money Regulations*.

3A.8.4 R An auditor of a *relevant institution* must give any *skilled person* appointed by the institution or the *FCA* all assistance that person reasonably requires (see section 166(7) of the *Act* (Reports by skilled persons)), as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*.

Auditor's independence

3A.8.5 R An auditor of a *relevant institution* must be independent of the institution in performing their duties in respect of that institution.

3A.8.6 R An auditor of a *relevant institution* must take reasonable steps to satisfy themself that they are free from any conflict of interest in respect of that institution from which bias may reasonably be inferred. An auditor must take appropriate action where this is not the case.

3A.8.7 G *SUP* 3A.5.4G explains that an auditor whose appointment does not breach the ethical guidance in current issue from the auditor's recognised supervisory body will be regarded as independent by the *FCA*.

Auditors' rights to information

3A.8.8 G *SUP* 3A.6.1R requires a *relevant institution* to cooperate with its auditor. *SUP* 3A.6.3G refers to the rights to information which an auditor is granted

by the *Act*, as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*. *SUP* 3A.6.4G refers to similar rights granted by the Companies Act 2006.

Communication between the FCA, the *relevant institution* and the auditor

3A.8.9 G Within the legal constraints that apply, the *FCA* may pass on to an auditor any information which it considers relevant to the auditor's function. An auditor is bound by the confidentiality provisions set out in Part XXIII of the *Act* (Public record, disclosure of information and cooperation), as applied by the *Payment Services Regulations* and the *Electronic Money Regulations,* in respect of confidential information received from the *FCA*. An auditor may not pass on such confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188), as applied by the *Payment Services Regulations* and the *Electronic Money Regulations,* or with the consent of the person from whom that information was received and (if different) to whom that information relates.

Auditors' statutory duty to report

3A.8.10 G (1) Statutory auditors of *relevant institutions* are subject to regulation 24(3) of the *Payment Services Regulations* and regulation 25(3) of the *Electronic Money Regulations.* Those regulations require statutory auditors to communicate certain matters to the *FCA*.

(2) Sections 342(3) and 343(3) of the *Act*, as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, provide that an auditor does not contravene any duty by giving information or expressing an opinion to the *FCA*, if they are acting in good faith and reasonably believe that the information or opinion is relevant to any functions of the *FCA*. These provisions continue to have effect after the end of the auditor's term of appointment.

Termination of term of office

3A.8.11 R An auditor must notify the *FCA* without delay if they:

(1) are removed from office by a *relevant institution*;

(2) resign before their term of office expires; or

(3) are not re-appointed by a *relevant institution*.

3A.8.12 R If an auditor ceases to be, or is formally notified that they will cease to be, the auditor of a *relevant institution*, they must notify the *FCA* without delay:

(1) of any matter connected with the ceasing of their appointment which the auditor thinks ought to be drawn to the *FCA's* attention; or

(2) that there is no such matter.

3A.9 Duties of auditors: notification and safeguarding report

Auditor's safeguarding report: content

3A.9.1 R An external auditor of a *relevant institution* must prepare a safeguarding report addressed to the *FCA* which:

(1) (a) states the matters set out in *SUP* 3A.9.3R; and

(b) specifies the matters to which *SUP* 3A.9.12R and *SUP* 3A.9.13R refer; or

(2) if the *relevant institution* claims not to have been required to safeguard *relevant funds* in accordance with the *relevant funds regime* during the period covered by the report, states whether anything has come to the auditor's attention that causes them to believe that the institution should have done so.

3A.9.2 R (1) For the purpose of *SUP* 3A.9.1R(1), an auditor must ensure that the report is prepared in accordance with the terms of a *reasonable assurance engagement*.

(2) For the purpose of *SUP* 3A.9.1R(2), an auditor must ensure that the report is prepared in accordance with the terms of a *limited assurance engagement*.

Auditor's safeguarding report

3A.9.3 R The auditor's safeguarding report must state whether, in the auditor's opinion:

(1) the *relevant institution* has maintained systems adequate to enable it to comply with the *relevant funds regime* throughout the period; and

(2) the *relevant institution* was in compliance with the *relevant funds regime* at the end of the period covered by the report.

3A.9.4 R The auditor's safeguarding report must be:

(1) in the form prescribed by *SUP* 3A Annex 1R; and

(2) signed on behalf of the audit firm by the *individual* with primary responsibility for the *relevant institution's* safeguarding report and in that *individual's* own name.

3A.9.5 G *SUP* 3A.9.1R and *SUP* 3A.9.2R provide that an auditor must ensure that a safeguarding report is prepared in accordance with the terms of, as the case may be, a *reasonable assurance engagement* or a *limited assurance engagement*. However, the *FCA* also expects an auditor to have regard, where relevant, to material published by the Financial Reporting Council

that deals specifically with the safeguarding report which the auditor is required to submit to the *FCA*. In the *FCA*'s view, a safeguarding report that is prepared in accordance with that material is likely to comply with *SUP* 3A.9.1R to *SUP* 3A.9.3R where that report is prepared for a *relevant institution* within the scope of the material in question.

3A.9.6 R (1) An auditor must ensure that the information provided to it by a *relevant institution* in accordance with *SUP* 3A.10.1G is included in the safeguarding report.

(2) If by the date at which the report is due for submission in accordance with *SUP* 3A.9.8R an auditor has not received the information referred to in *SUP* 3A.10.1G it must submit the report without that information, together with an explanation for its absence.

Auditor's safeguarding report: period covered

3A.9.7 R The period covered by an auditor's safeguarding report must end not more than 53 weeks after the period covered by the previous report, or, if none, after the *relevant institution* becomes subject to this chapter.

Auditor's safeguarding report: timing of submission

3A.9.8 R The auditor of a *relevant institution* must deliver their safeguarding report to the *FCA* within 4 *months* of the end of the period covered.

3A.9.9 R (1) If an auditor expects that it will fail to comply with *SUP* 3A.9.8R, it must no later than the end of the 4-*month* period in question:

(a) notify the *FCA* that it expects that it will be unable to deliver a safeguarding report by the end of that period; and

(b) ensure that the notification in (a) is accompanied by a full account of the reasons for its expected failure to comply with *SUP* 3A.9.8R.

(2) If an auditor fails to comply with *SUP* 3A.9.8R, it must promptly:

(a) notify the *FCA* of that failure; and

(b) ensure that the notification in (a) is accompanied by a full account of the reasons for its failure to comply with *SUP* 3A.9.8R.

3A.9.10 G The rights and duties of auditors are set out in *SUP* 3A.8 (Rights and duties of auditors) and *SUP* 3A.9 (Duties of auditors: notification and safeguarding report). An auditor should bear these rights and duties in mind when carrying out safeguarding report work, including whether anything should be notified to the *FCA* immediately.

3A.9.11 R An auditor must:

(1) provide the *relevant institution* with a draft of its safeguarding report so it has an adequate period of time to consider the auditor's findings and provide the auditor with comments of the kind referred to in *SUP* 3A.10.1G; and

(2) deliver a copy of the final report to the *relevant institution* at the same time as it delivers that report to the *FCA* in accordance with *SUP* 3A.9.8R.

Auditor's safeguarding report: requirements not met or inability to form opinion

3A.9.12 R If the auditor's safeguarding report states that one or more of the requirements in *SUP* 3A.9.3R have not been met, the auditor must specify in the report each of those requirements and the respects in which they have not been met.

3A.9.13 R (1) Whether or not an auditor concludes that one or more of the requirements in *SUP* 3A.9.3R have been met, the auditor must ensure that the safeguarding report identifies each individual regulation or *rule* in respect of which a breach has been identified.

(2) If an auditor does not identify a breach of any individual regulation or *rule*, it must include a statement to that effect in the safeguarding report.

3A.9.14 R For the purpose of *SUP* 3A.9.12R and *SUP* 3A.9.13R, an auditor must ensure that the information prescribed under those *rules* is submitted using, respectively, Part 1 (Auditor's Opinion) and Part 2 (Breaches Schedule) of *SUP* 3A Annex 1R.

3A.9.15 G (1) The *FCA* expects that the list of breaches will include every breach of a regulation or *rule* in the *relevant funds regime* insofar as that regulation or *rule* is within the scope of the safeguarding report and is identified in the course of the auditor's review of the period covered by the report, whether identified by the auditor or disclosed to it by the *relevant institution*, or by any third party.

(2) For the purpose of determining whether to qualify its opinion or express an adverse opinion, the *FCA* would expect an auditor to exercise its professional judgment as to the significance of a breach of a regulation or *rule*, as well as to its context, duration and incidence of repetition. The *FCA* would expect an auditor to consider the aggregate effect of any breaches when judging whether a *relevant institution* had failed to comply with the requirements in *SUP* 3A.9.3R.

3A.9.16 R If an auditor is unable to form an opinion as to whether one or more of the applicable requirements in *SUP* 3A.9.3R have been met, the auditor must specify in the report under *SUP* 3A.9.1R those requirements and the reasons why the auditor has been unable to form an opinion.

Method of submission of reports

3A.9.17 R An auditor of a *relevant institution* must submit their safeguarding report by electronic means made available by the *FCA*.

3A.10 **Review of auditor's safeguarding report**

3A.10.1 G A *relevant institution* should ensure that:

(1) it considers the draft safeguarding report provided to the institution by its auditor in accordance with *SUP* 3A.9.11R(1) in order to provide an explanation of:

(a) the circumstances that gave rise to each of the breaches identified in the draft report; and

(b) any remedial actions that it has undertaken or plans to undertake to correct those breaches; and

(2) the explanation provided in accordance with (1):

(a) is submitted to its auditor in a timely fashion and in any event before the auditor is required to deliver a report to the *FCA* in accordance with *SUP* 3A.9.8R; and

(b) is recorded in the relevant field in the draft report submitted to it by its auditor.

3A.10.2 R A *relevant institution* must ensure that the final safeguarding report delivered to it in accordance with *SUP* 3A.9.11R(2) is reported to the institution's *governing body*.

3A.10.3 G The *FCA* expects a *relevant institution* to use the safeguarding report as a tool to evaluate the effectiveness of the systems it has in place for the purpose of complying with the requirements in *SUP* 3A.9.3R. Accordingly, a *relevant institution* should ensure that the report is integrated into its risk management framework and decision-making.

3A.10.4 G *SUP* 3A.4.2R provides that a *relevant institution* must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its functions. The *FCA* expects a *relevant institution* to keep under review the adequacy of the skill, resources and experience of its auditor and critically assess the content of the safeguarding report as part of that ongoing review.

3A Annex 1R **Auditor's safeguarding report**

Independent auditor's report on safeguarding to the Financial Conduct Authority in respect of [*institution name*], firm reference number [*number*], for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*]

Part 1: Auditor's Opinion on Safeguarding

We report in respect of [*institution name*] ('the institution') on the matters set out below for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*] ('the period').

Our report has been prepared as required by *SUP* 3A.9.1R and is addressed to the Financial Conduct Authority ('the FCA') in its capacity as regulator of *payment institutions* and *electronic money institutions* under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011.

Basis of opinion

We have carried out such procedure as we considered necessary for the purposes of this report in accordance with [*specify Standard/Guidance used*] issued by the [*specify organisation name*].

This opinion relates only to the period and should not be seen as providing assurance as to any future position, as changes to systems or control procedures may alter the validity of our opinion.

Opinion

In our opinion:

[The institution has maintained] [Except for….the institution has maintained] [Because of….the institution did not maintain] systems adequate to enable it to comply with the *relevant funds regime* throughout the period since [the last date at which a report was made] [the institution was authorised or registered] [the institution became subject to *SUP* 3A.10 and we, its auditor, became subject to *SUP* 3A.9].*

[The institution was] [Except for…the institution was] [Because of….the institution was not] in compliance with the *relevant funds regime* as at the period end date.*

~ / ~

[The directors (or equivalent corporate officers) of the institution have stated that the institution was not required to safeguard *relevant funds* during the period. Based on review procedures performed, [nothing has come to our attention that causes us to] [we] believe that the institution was required to safeguard *relevant funds* during the period.]

~ / ~

Other matters

The report should be read in conjunction with the Breaches Schedule that we have prepared and which is appended to it. [Our opinion expressed above does not extend to the Breaches Schedule.]

[*Signature of the partner/individual with primary responsibility within the audit firm*] [*Typed name of signing individual*]

For and on behalf of [*Name of the audit firm*]

[*registered office*]

[*Date of report*]

Instructions for Part 1

* If the auditor expresses an adverse opinion (ie, states the institution 'did not maintain…' or 'was not in compliance…') they must set out the reasons why. This can be done by reference to items in columns A to D in Part 2 of the auditor's safeguarding report.

If the auditor expresses a qualified opinion (ie, states that 'except for …., the institution has maintained' or that 'except for …., the institution was in compliance') they must do so by reference to items in columns A to D in Part 2 of the auditor's safeguarding report.

Part 2: Identified breaches of the *relevant funds regime* that occurred during the period

[*Institution name*], firm reference number [*number*], for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*]

In accordance with *SUP* 3A.9.13R, Columns A to D are to be completed by and are the responsibility of the auditor. In accordance with *SUP* 3A.10.1G, Column E should be completed by the institution. The auditor has no responsibility for the content of Column E.

Column A	Column B	Column C	Column D	Column E
Item No.	**Regulation or Rule Reference(s)**	**Identifying party**	**Breach Identified**	**Institution's Comment**
1				
…				

Instructions for Part 2:

In columns A to D of the above schedule, the auditor is to set out all the breaches of the *relevant funds regime* by the institution that occurred during the period subject to the auditor's report. These must include the breaches the auditor has identified through its work (such as in the sample testing of reconciliations) and breaches identified by the institution or any other party (such as those included in the institution's breaches register or identified by the *FCA*). In column B, the auditor must specify the provision(s) in the *Electronic Money Regulations* or *Payment Services Regulations*, and/or *rule(s)* in *CASS* 15 the breach relates to.

In relation to any breach identified, the auditor must provide in column D any information that it has as respects the severity and duration of the breach identified including, where relevant:

a) the number of times the breach occurred;

b) the longest duration of a single instance of the breach and the value of that instance;

c) the highest value of a single instance of the breach and the duration of that instance;

d) the average value of instances of the breach; and

e) the average duration of instances of the breach.

The value of a breach is the amount of any *shortfall* caused by the breach, or the amount of any *relevant funds* affected or put at risk by the breach.

The auditor must provide a 'nil' return for this part of the report where no breach of the *relevant funds regime* has been identified.

In column E, the *relevant institution* should set out any remedial actions taken (if any) associated with the breaches cited, together with an explanation of the circumstances that gave rise to the breach in question.

Amend the following as shown.

16 Reporting requirements

16.1 Application

…

16.1.1AA G …

16.1.1AB R *SUP* 16.14A applies to *safeguarding institutions.*

…

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.14A, SUP 16.15, SUP 16.22 and SUP 16.26)

…

16.2 Purpose

16.2.1 G …

(3) The *FCA* has supervisory functions under the *Payment Services Regulations* and the *Electronic Money Regulations*. In order to discharge these functions, the *FCA* requires the provision of information on a regular basis. *SUP* 16.13 sets out the information that the *FCA* requires from *payment service providers* to assist it in the discharge of its functions as well as directions and guidance on the periodic reports that are required under the *Payment Services Regulations*. *SUP* 16.14A sets out the requirement for *safeguarding institutions* to submit safeguarding returns under the *Electronic Money Regulations* and the *Payment Services Regulations*. *SUP* 16.15 sets out the information that the *FCA* requires from *electronic money issuers* to assist it in discharging its functions and responsibilities under the *Electronic Money Regulations.*

…

16.3 General provisions on reporting

…

Structure of this chapter

16.3.2 G This chapter has been split into the following sections, covering:

…

(11) …

(11A) safeguarding return: *safeguarding institutions* (*SUP* 16.14A);

…

…

Insert the following new section, SUP 16.14A, after SUP 16.14 (Client money asset return). All the text is new and is not underlined.

16.14A Safeguarding return: safeguarding institutions

Application

16.14A.1 R This section applies to *safeguarding institutions*.

Purpose

16.14A.2 G The purpose of the *rules* and *guidance* in this section is to ensure that the *FCA* receives regular and comprehensive information from a *safeguarding institution* about its safeguarding of *relevant funds*.

Report

16.14A.3 R (1) Subject to (3), a *safeguarding institution* must submit a *safeguarding return* to the *FCA* within 15 *business days* of the end of each month.

(2) In this *rule* month means a calendar month.

(3) A *safeguarding institution* is not required to submit a *safeguarding return* in respect of a month during which it becomes a *safeguarding institution.*

Method of submission

16.14A.4 R A *safeguarding return* must be submitted by electronic means made available by the *FCA*.

Application of SUP 16.3

16.14A.5 R The following provisions apply to the submission of *safeguarding returns* as if references to *firms* were references to *safeguarding institutions*:

(1) *SUP* 16.3.11R (Complete reporting);

(2) *SUP* 16.3.13R (Timely reporting), other than paragraph (4); and

(3) *SUP* 16.3.14R (Failure to submit reports).

…

Amend the following as shown.

16 Annex 27CD Authorised Payment Institution Capital Adequacy Return

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

…

FSA056 Authorised Payment Institution Capital Adequacy Return

…

Part Three: SUPPLEMENTARY INFORMATION

~~**Safeguarding of relevant funds**~~

~~Please indicate which method the firm uses to safeguard relevant funds (Select all that apply and add the appropriate information)~~		~~B~~	~~C~~	~~D~~
			~~Credit institution name~~	~~Country where the account is located~~
~~61~~	~~Placed in a separate account with an authorised credit institution~~			
			~~Custodian name~~	~~Country where the account is located~~
~~62~~	~~Invested in approved secure liquid assets held in a separate account with authorised custodian~~			
			~~Insurer name~~	

~~63~~	~~Covered by an insurance policy with an authorised insurer~~			
~~64~~	~~Covered by a guarantee from an authorised insurer~~		~~Insurer name~~	
~~65~~	~~Covered by a guarantee from an authorised credit institution~~		~~Credit institution name~~	

~~...~~

Insert the following new Annex, SUP 16 Annex 29BR, after SUP 16 Annex 29A (Guidance notes for the data item in SUP 16 Annex 29R). All the text is new and is not underlined.

[*Editor's note*: the below table is for illustrative purposes only. The online form in RegData would reflect design and user experience considerations.]

16 Annex 29BR	**Safeguarding return**
	This annex consists only of one or more forms. *Safeguarding institutions* are required to submit the returns using the electronic means made available by the *FCA*. [*Editor's note:* insert link to Safeguarding return form.]

Safeguarding return

Section 1 – Safeguarding institution Information

This section should be completed by every safeguarding institution

1. Name and category of *safeguarding institution*

Name	
Category[1]	

[1] Authorised payment institution (API), small payment institution that has opted into safeguarding (SPI opt-in), electronic money institution (EMI), small electronic money institution (SEMI), small electronic money institution that has opted into the safeguarding for payment services unrelated to the issuance of e-money (SEMI opt-in), credit union that issues e-money (credit union), credit union that issues e-money and has opted into safeguarding for payment services unrelated to the issuance of e-money (credit union opt-in).

2. Was the *safeguarding institution* required to appoint an auditor under *SUP* 3A.3.2R during the reporting period?

Yes / No

3. If the answer to question 2 was 'no', did the *safeguarding institution* appoint an auditor in accordance with *SUP* 3A.1.3G during the reporting period?

Yes / No

4. If the answer to question 2 or 3 was 'yes', please complete the following table:

Date of last auditor's safeguarding report[2]	Name of audit firm[3]

5. Was the *safeguarding institution* required to safeguard *relevant funds* in accordance with the *Electronic Money Regulations* or *Payment Services Regulations* during the reporting period?

Yes / No

6. If the answer to question 5 was 'yes', please fill out the following table:

[2] Put 'N/A' if no safeguarding report has been submitted yet, for example during the first year that a safeguarding institution becomes subject to *SUP* 3A.10.
[3] This should be the full legal name of the firm and not, for example, a trading name.

Method	Please indicate which method(s) were used during the reporting period (select as many as are relevant)	Please indicate which method was used at the time of the last *internal safeguarding reconciliation* carried out in the reporting period
The *segregation method* only		
The *insurance or guarantee method* only		
A combination of the *segregation method* and the *insurance or guarantee method* at the same time		

7. If the answer to question 5 was 'yes', how many *clients* was the *safeguarding institution* safeguarding *relevant funds* for at the end of the reporting period?

Section 2 – Balances

This section should only be completed if the answer to question 5 was 'yes'

Amount of *relevant funds* safeguarded

8. Highest *safeguarding requirement* during the reporting period

9. Lowest *safeguarding requirement* during the reporting period

Section 3 – Safeguarding relevant funds

This section should only be completed if the answer to question 5 was 'yes'

Segregated relevant funds

10. If any *relevant funds* were held in accounts in accordance with the *segregation method* during the reporting period, please fill out the following table:

Institution where *relevant funds* were held by the *safeguarding institution*[4]	Type of account (eg, *relevant funds bank account* or Bank of England settlement account[5])[6]	Number of accounts containing *relevant funds* held with the institution	Total amount of *relevant funds* held with the institution at the end of the reporting period[7]	Fixed term or notice period[8]	Country of incorporation of the institution

[4] When filling in the name of the institution use the full legal name and not, for example, a trading name.
[5] An account of a type described in regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations*.
[6] If *relevant funds* are held in a type of account that is not listed, please put 'other' in this column. Where *relevant funds* are held in more than one type of account at an institution, a different row should be used for each type of account. A different row should also be used for each fixed term account and each account with a notice period for making a withdrawal. All accounts categorised as 'other' should be treated as the same type of account.
[7] The figures in this column should reflect the figures used in the last *internal safeguarding reconciliation* carried out in the reporting period.
[8] Please use 'FT' to indicate a fixed term and 'NP' to indicate a notice period. Please put 'N/A' if the account is not a fixed term account and there is no notice period for making a withdrawal.

Total		

Secure liquid assets

11 If any *relevant assets* were held during the reporting period, please fill out the following table:

Asset[9]	If the asset is of a type referred to in *CASS* 15.6.2G, please indicate which paragraph(s) of Article 114 of the *UK CRR* the asset complies with				Please indicate in this column if the asset is not of a type referred to in *CASS* 15.6.2G
	2 (ECAI credit assessment corresponding to a risk weight of no more than 0%)	3 (exposure to the ECB)	4 (exposure to HMG or the Bank of England in sterling)	7 (exposure to a third country government or central bank assigned a risk weight of no more than 0% by equivalent competent authorities)	

12. Please fill out the following table in respect of the *relevant assets* listed in the table in question 11:

[9] This includes units in *UCITS*, in which case please indicate which assets the *UCITS* invests in.

Name of custodian[10]	Total value of *relevant assets* held with the custodian at the end of the reporting period[11]
Total	

Insurance policies and guarantees

13. If any *relevant funds* were protected through an insurance policy in accordance with the *insurance or guarantee method* during the reporting period, please fill out the following table:

Name of insurer(s)[12]	Maximum amount of cover provided by the policy	Date of expiry of the insurance policy	Total overdue premiums[13]

[10] When filling in the name of the custodian use the full legal name and not, for example, a trading name.
[11] The figures in this column should reflect the figures used in the last *internal safeguarding reconciliation* carried out in the reporting period.
[12] When filling in the name of the insurer use the full legal name and not, for example, a trading name. Where more than one policy is held with an insurer, list them separately.
[13] A premium is overdue if it, or part of it, has not been paid in full and the date it is to be paid by has passed. This column should show the total amount of overdue premiums owed to each insurer.

14. If any *relevant funds* were protected through a guarantee in accordance with the *insurance or guarantee method* during the reporting period, please fill out the following table:

Name of guarantor(s)[14]	Amount of cover provided by the guarantee	Date of expiry of the guarantee	Total overdue premiums[15]

Section 4 – Safeguarding resource and requirement

This section should only be completed if the answer to question 5 was 'yes'

15. *Safeguarding resource* from the last *internal safeguarding reconciliation* carried out in the reporting period

16. Please fill out the following table in respect of the components of the *safeguarding resource* referred to in question 15 (see *CASS* 15.12.18R):

Component	Total used in the last *internal safeguarding reconciliation* carried out in the reporting period
Aggregate balance of *funds* held in *relevant funds bank accounts* (less any funds that are not *relevant funds* in an account of a type described in	

[14] When filling in the name of the guarantor use the full legal name and not, for example, a trading name. Where more than one guarantee is held with a guarantor, list them separately.

[15] A premium is overdue if it, or part of it, has not been paid in full and the date it is to be paid by has passed. This column should show the total amount of overdue premiums owed to each guarantor.

regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations* (Bank of England settlement accounts))	
Aggregate balance of *relevant funds* received but not yet placed into a *relevant funds bank account*	
Aggregate value of *relevant assets*	
Aggregate value of *relevant funds* protected using the *insurance or guarantee method*	

17. *Safeguarding requirement* from the last *internal safeguarding reconciliation* carried out in the reporting period

18. Please fill out the following table in respect of the components of the *safeguarding requirement* referred to in question 17 (see *CASS* 15.12.23R):

Component	Total used in the last *internal safeguarding reconciliation* carried out in the reporting period
Individual safeguarding balances calculated in accordance with *CASS* 15.12.24R, ignoring any negative balances	
Amounts received but unallocated to an individual client under *CASS* 15.2.3R(2) (Allocation of relevant funds receipts)	

19. Excess (+)/shortfall (-) of *safeguarding resource* against *safeguarding requirement* identified at the end of the reporting period[16]

[16] This should reflect the outcome of the last *internal safeguarding reconciliation* carried out in the reporting period. It should show the amount by which the *safeguarding resource* was greater (an excess) or lower (a shortfall) than the *safeguarding requirement*, before any adjustment was made to correct any excess or shortfall. Where an excess or shortfall did not exist, this should be filled out with a '0'.

20. Adjustments made to withdraw an excess or rectify a shortfall identified in question 19[17]

Section 5 – Relevant funds deposit resource and requirement

This section should only be completed if the answer to question 5 was 'yes'

21. *Relevant funds deposit resource* from the last *internal safeguarding reconciliation* carried out in the reporting period

22. *Relevant funds deposit requirement* from the last *internal safeguarding reconciliation* carried out in the reporting period

23. Please fill out the following table in respect of the components of the *relevant funds deposit requirement* referred to in question 22 (see *CASS* 15.12.30R):

Component	Total used in the last *internal safeguarding reconciliation* carried out in the reporting period
Individual relevant funds deposit balances	

[17] This is the amount of *funds* added to correct a shortfall, or withdrawn to correct an excess, reported in question 19.

Amounts received but unallocated to an individual client under *CASS* 15.2.3R(2) (Allocation of relevant funds receipts) and paid into a *relevant funds bank account*	
Aggregate value of *relevant assets*	
Aggregate value of *relevant funds* protected using the *insurance or guarantee method*	

24. Excess (+)/shortfall (-) of *relevant funds deposit resource* against *relevant funds deposit requirement* identified at the end of the reporting period[18]

25. Adjustments made to withdraw an excess or rectify a shortfall identified in question 24[19]

Section 6 – Safeguarding reconciliations

This section should only be completed if the answer to question 5 was 'yes'

26. *Internal safeguarding reconciliations*

Number carried out each business day

[18] This should reflect the outcome of the last *internal safeguarding reconciliation* carried out in the reporting period. It should show the amount by which the *relevant funds deposit resource* was greater (an excess) or lower (a shortfall) than the *relevant funds deposit requirement*, before any adjustment was made to correct any excess or shortfall. Where an excess or shortfall did not exist, this should be filled out with a '0'.

[19] This is the amount of *funds* added to correct a shortfall, or withdrawn to correct an excess, reported in question 24.

27. *External safeguarding reconciliations*

Number carried out each business day

Section 7 – Record Keeping

28. Please fill out the following table if the table in question 10 and/or 11 was filled out:

	Number of accounts held at beginning of the reporting period	Number of new accounts opened during the reporting period	Number of accounts closed during the reporting period	Total number of accounts held at the end of the reporting period (A)	Total number of accounts held at the end of the reporting period covered by an *acknowledgement letter* (B)	Explanation of any difference between A and B
Relevant funds bank accounts other than accounts at the Bank of England referred to in regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment*						

Services Regulations						
Relevant assets accounts						

Section 8 – Notifiable CASS Breaches

This section should be completed by all safeguarding institutions

29. Did any of the circumstances referred to in *CASS* 15.12.59R (notification requirements) arise?

Yes / No

30. If yes, did the *safeguarding institution* comply with the notification requirements?

Yes / No

Amend the following as shown.

16 Annex 30HD **Authorised electronic money institution questionnaire**

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

...

FIN060a Authorised Electronic Money Institution Questionnaire

…

~~Section 6: Method of Safeguarding~~		A	B	C	D
		~~E-money~~	~~Unrelated Payment Services~~	~~Credit institution name~~	~~Country where the account is located~~
~~64~~	~~Placed in a separate account with an authorised credit institution~~				
~~65~~	~~invested in approved secure liquid assets held in a separate account with an authorised custodian~~			~~Custodian name~~	
~~66~~	~~Covered by an insurance policy with an authorised insurer~~			~~Insurer name~~	
~~67~~	~~Covered by a guarantee from an authorised insurer~~			~~Insurer name~~	
~~68~~	~~Covered by a guarantee from an authorised credit institution~~			~~Credit institution name~~	

…

…

16 Annex 30JD Small electronic money institution questionnaire

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

...

FIN060b Small E-money Institution Questionnaire

…

~~Section 6: Method of Safeguarding~~		A	B	C	D
		~~Electronic Money~~	~~Unrelated Payment Services~~	~~Credit institution name~~	~~Country where the account is located~~
~~38~~	~~Placed in a separate account with an authorised credit institution~~				
				~~Custodian name~~	
~~39~~	~~invested in approved secure liquid assets held in a separate account with an authorised custodian~~				
				~~Insurer name~~	

~~40~~	~~Covered by an insurance policy with an authorised insurer~~			
~~41~~	~~Covered by a guarantee from an authorised insurer~~			~~Insurer name~~
~~42~~	~~Covered by a guarantee from an authorised credit institution~~			~~Credit institution name~~

…

PAYMENTS AND ELECTRONIC MONEY (SAFEGUARDING) (AMENDMENT) INSTRUMENT 20XX

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"), including as applied by Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) and Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752):

(a) section 137A (The FCA's general rules);
(b) section 137B (FCA general rules: clients' money, right to rescind etc.);
(c) section 137T (General supplementary powers);
(d) section 138C (Evidential provisions);
(e) section 139A (Power of the FCA to give guidance); and
(f) section 340 (Appointment);

(2) regulation 120 (Guidance) of the Payment Services Regulations 2017; and

(3) the rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act, including that provision as applied by the Electronic Money Regulations 2011 and the Payment Services Regulations 2017.

Commencement

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

Amendments to the Handbook

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

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

Citation

E. This instrument may be cited as the Payments and Electronic Money (Safeguarding) (Amendment) Instrument 20XX.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

Amend the following definitions as shown.

[*Editor's note*: the amendments in this Annex take into account the changes made by the draft Payments and Electronic Money (Safeguarding) Instrument 2025 included in CP24/20.]

approved bank …

(3) (in *CASS* 15) ~~(in accordance with regulation 21(7) and (8) of the *Electronic Money Regulations* and regulation 23(18) and (19) of the *Payment Services Regulations*)~~:

…

asset pool …

(2) ~~(in *CASS* 15) (in accordance with regulation 24(4) of the *Electronic Money Regulations* and regulation 23(18) of the *Payment Services Regulations*):~~

~~(a) any *relevant funds* segregated in accordance with the *segregation method*;~~

~~(b) any *relevant funds* held in a *relevant funds bank account*;~~

~~(c) any *funds* that are received into a *relevant funds bank account* held at the Bank of England upon settlement in respect of transfer orders that have been entered into the designated system on behalf of *payment service users*, whether settlement occurs before or after the *insolvency event*;~~

~~(d) any *relevant assets* held in a *relevant assets account*; and~~

~~(e) the proceeds of an insurance policy or guarantee held for the purpose of the *insurance or guarantee method*.~~ [deleted]

insurance or guarantee method the method of safeguarding *relevant funds* described in ~~regulation 22 of the *Electronic Money Regulations* or regulation 23(12) and (13) of the *Payment Services Regulations*~~ *CASS* 15.7.

prudent segregation (1) a *firm*'s segregation of an amount of *money* as *client money* under *CASS* 7.13.41R.

	(2)	a *safeguarding institution's* segregation of an amount of *funds* as *relevant funds* under *CASS* 15.5.27R.
prudent segregation record	(1)	the records created and maintained by a *firm* under *CASS* 7.13.50R to *CASS* 7.13.53R.
	(2)	the records created and maintained by a *safeguarding institution* under *CASS* 15.5.36R to *CASS* 15.5.40R.
relevant assets		assets held by a *safeguarding institution* for the purposes of ~~regulation 21(2)(b) of the *Electronic Money Regulations* or regulation 23(6)(b) of the *Payment Services Regulations*~~ *CASS* 15.6.2R. [*Editor's note*: this definition is subject to further change following an upcoming consultation on the rules relating to secure, liquid assets.]
relevant assets account		an account held at ~~an *authorised custodian*~~ a *firm* with *permission* to carry out the *regulated activity* of *safeguarding and administering investments* which ~~holds *relevant assets* for the purposes of regulation 21(2)(b) of the *Electronic Money Regulations* or regulation 23(6)(b) of the *Payment Services Regulations*.~~:
	(1)	holds *relevant assets*;
	(2)	is expressly held in the name of the *safeguarding institution*; and
	(3)	is designated in such a way as to show that it is an account which is held for the purpose of holding *relevant assets* in accordance with *CASS* 15.
relevant funds		~~(in accordance with regulation 20(1) of the *Electronic Money Regulations* and regulation 23(1) of *the Payment Services Regulations*:~~
	(1)	~~sums~~ *funds* received ~~in exchange~~ for the purchase of *electronic money* ~~that has been issued.~~;
	(2)	~~sums~~ *funds* received from, or for the benefit of, a *payment service user* for the execution of a *payment transaction*; ~~and~~
	(3)	~~sums~~ *funds* received from a *payment service provider* for the execution of a *payment transaction* on behalf of a *payment service user*;
	(4)	*funds* that a *safeguarding institution* treats as *relevant funds* in accordance with *CASS* 15; and
	(5)	the proceeds of an insurance policy or comparable guarantee entered into for the purposes of protecting *relevant funds*.

relevant funds bank account an account held at an *approved bank* or the Bank of England which:

(1) (a) holds *relevant funds* ~~for the purposes of regulation 21(2)(a) of the *Electronic Money Regulations* or regulation 23(6)(a) of the *Payment Services Regulations*~~;

(b) is expressly held in the name of the *safeguarding institution*;

(c) is designated in such a way as to show that it is an account which is held for the purpose of holding *relevant funds* in accordance with *CASS* 15; and

(d) is a current or deposit account; or

(2) is an account of the type described in ~~regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations* (Bank of England settlement accounts)~~ *CASS* 15.8.12R.

relevant funds deposit requirement the total amount of *funds* a *safeguarding institution* is required to segregate in a *relevant funds bank account* under the ~~*Electronic Money Regulations* or the *Payment Services Regulations*~~ *relevant funds rules* (see *CASS* 15.12.29G and *CASS* 15.12.30R).

safeguarding institution *persons* ~~that are obliged to safeguard relevant funds under regulation 21 of the *Electronic Money Regulations* or regulation 23 of the *Payment Services Regulations* (including persons that opt in to those requirements)~~ to whom the obligation in *CASS* 15.4 (Methods of safeguarding) applies.

segregation method the method of safeguarding *relevant funds* described in ~~regulation 21 of the *Electronic Money Regulations* or regulation 23(5) to (11) of the *Payment Services Regulations*~~ *CASS* 15.5 and *CASS* 15.6.

Delete the following definitions. The text is not shown as struck through.

authorised custodian (in accordance with regulation 21(7) of the *Electronic Money Regulations* and regulation 23(18) of the *Payment Services Regulations*) a *person* authorised for the purposes of the *Act* to safeguard and administer *investments*.

insolvency event (in accordance with regulation 22(3) of the *Electronic Money Regulations* and regulation 23(18) of the *Payment Services Regulations*) any of the following procedures in relation to a *safeguarding institution*:

(a) the making of a winding-up order;

(b) the passing of a resolution for voluntary winding-up;

(c) the entry of the institution into administration;

(d) the appointment of a receiver or manager of the institution's property;

(e) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);

(f) the making of a bankruptcy order;

(g) in Scotland, the award of sequestration;

(h) the making of any deed of arrangement for the benefit of creditors or, in Scotland, the execution of a trust deed for creditors;

(i) the conclusion of any composition contract with creditors;

(j) the making of an insolvency administration order or, in Scotland, sequestration, in respect of the estate of a deceased person;

(k) the entry of the institution into special administration under the *PEMII Regulations*; or

(l) the entry of the institution into special administration under the *IBSA* Regulations.

relevant funds regime the *relevant funds rules*, regulations 20 to 22 of the *Electronic Money Regulations* and regulation 23 of the *Payment Services Regulations*.

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

[*Editor's note*: the amendments in this Annex take into account the changes made by the draft Payments and Electronic Money (Safeguarding) Instrument 2025 included in CP24/20.]

10A Payment services and electronic money: resolution pack

…

10A.2 Core content requirements

10A.2.1 R A *safeguarding institution* must include within its *CASS resolution pack*:

…

(2) a document which identifies the institutions the *safeguarding institution* has appointed ~~(including through an *agent* or *distributor*)~~:

(a) for the receipt or holding of *relevant funds* in accordance with *CASS* 15.5.1R or *CASS* 15.5.5R; and

(b) for the holding of *relevant assets* in accordance with *CASS* 15.6.12R;

…

(4) a document which identifies the institutions the *safeguarding institution* has appointed to provide insurance or a guarantee in accordance with ~~regulation 22 of the *Electronic Money Regulations* or regulation 23(12) of the *Payment Services Regulations*~~ *CASS* 15.7.2R or *CASS* 15.7.3R;

…

(7) a document which:

(a) identifies each member of the *safeguarding institution's group* involved in operational functions related to the safeguarding obligations imposed on the institution under ~~the *Electronic Money Regulations*, the *Payment Services Regulations* or~~ *CASS* 15; and

…

(8) a document which:

(a) identifies each third party which the *safeguarding institution* uses for the performance of operational functions related to any of the safeguarding obligations imposed on the institution by ~~the *Electronic Money Regulations*, the *Payment Services Regulations* or~~ *CASS* 15;

…

…

(10) a document which identifies:

(a) each *senior manager* and *director* and any other *individual* and the nature of their responsibility within the *safeguarding institution* who is critical or important to the performance of operational functions related to any of the safeguarding obligations imposed on the institution by ~~the *Electronic Money Regulations*, the *Payment Services Regulations* or~~ *CASS* 15; and

…

…

15 Payment services and electronic money: relevant funds

15.1 Purpose and application

General purpose

15.1.1 G ~~Regulation 20 of the *Electronic Money Regulations* and regulation 23 of the *Payment Services Regulations* require *safeguarding institutions* to safeguard *relevant funds*. The *rules* and *guidance* in this chapter supplement those requirements.~~ *Principle* 10 (Clients' assets) requires *safeguarding institutions* to arrange adequate protection for *clients*' assets when they are responsible for them. An essential part of that protection is the proper accounting and treatment of *relevant funds*. The *rules* in this chapter set out these requirements.

Who?

15.1.2 R (1) This chapter applies to the following *persons* that receive or hold *relevant funds*:

…

(b) *small payment institutions* that ~~voluntarily safeguard under regulation 23 of the *Payment Services Regulations*~~ opt in to this chapter;

…

…

Opt-in to the relevant funds rules

15.1.6 R (1) Subject to (2) and (3), *small payment institutions* are not required to comply with the *rules* in this chapter.

(2) *Small payment institutions* may elect to comply with this chapter.

(3) If a *small payment institution* makes an election pursuant to ~~regulation 23(16) of the *Payment Services Regulations* to voluntarily safeguard~~ (2), the *rules* and *guidance* in this chapter will apply to the *small payment institution* as if it were an *authorised payment institution*.

15.1.7 R (1) Subject to (2) and (3), *small electronic money institutions* and *credit unions* are not required to comply with the *rules* in this chapter in relation to *funds* received for the provision of *payment services* that are not connected to the issuance of *electronic money*.

(2) *Small electronic money institutions* and *credit unions* that issue *electronic money* may elect to comply with this chapter in relation to *funds* received for the provision of *payment services* that are not connected to the issuance of *electronic money*.

(3) If a *small electronic money institution* or a *credit union* makes an election pursuant to ~~regulation 23(16) of the *Payment Services Regulations*, as applied by regulation 20(6) of the *Electronic Money Regulations*, to voluntarily safeguard~~ (2), the *rules* and *guidance* in this chapter will apply to the *small electronic money institution* or *credit union* as if it were an *authorised electronic money institution*.

15.1.8 R An election made under *CASS* 15.1.6R or *CASS* 15.1.7R must:

(1) relate to all *relevant funds* received or held by the institution making the election that are not otherwise required to be protected under this chapter;

(2) be notified to *clients* as soon as practicable together with an explanation that *funds* are being held pursuant to the *rules* in this chapter; and

(3) be notified to the *FCA* at least 1 *month* before the election is to take effect.

15.1.9 G In addition to the notification in *CASS* 15.1.8R(2), a *safeguarding institution* should consider whether the decision to opt in will require a change to its *framework contracts*, and if so, any obligations it may have under Part 6 of the *Payment Services Regulations*.

15.1.10 R (1) A *safeguarding institution* must make and retain a written record of an election under *CASS* 15.1.6R or *CASS* 15.1.7R.

(2) The written record must:

(a) be made on the *day* the election is made;

(b) specify the time and date on which the election takes effect;

(c) be provided to the *FCA* as soon as practicable after the election is made; and

(d) be kept for 5 years from the date the *safeguarding institution* cancels its election in accordance with *CASS* 15.1.11R, or from the date the *safeguarding institution* ceases to hold *relevant funds* in accordance with this chapter, whichever is later.

15.1.11 R A *safeguarding institution* that has made an election under *CASS* 15.1.6R or *CASS* 15.1.7R may cancel its election. The cancellation will only be effective where the following conditions are met:

(1) the *FCA* has been notified at least 3 *months* in advance of the decision to cancel taking effect;

(2) the *safeguarding institution* has made a written record of a decision to cancel, including the date and time on which the decision takes effect; and

(3) the decision to cancel has been notified to *clients* at least 2 *months* before the decision takes effect.

15.1.12 G In addition to the notification in *CASS* 15.1.11R(3), a *safeguarding institution* should consider whether the decision to cancel its opt-in will require a change to its *framework contracts*, and if so, any obligations it may have under Part 6 of the *Payment Services Regulations*.

15.1.13 R This chapter continues to apply to a *safeguarding institution* that has cancelled its election under *CASS* 15.1.11R in respect of all *relevant funds* received before the cancellation takes effect.

15.2 Organisational requirements: relevant funds

…

Requirement to have adequate oversight

15.2.2 R A *safeguarding institution* must allocate to a single *director* or *senior manager* of sufficient skill and authority responsibility for:

(a) oversight of the institution's operational compliance with ~~the safeguarding provisions of the *Electronic Money Regulations*, the *Payment Services Regulations* and~~ *CASS* 15; and

…

Allocation of relevant funds receipts

…

15.2.4 G *CASS* 15.2.1R requires a *safeguarding institution* to~~:~~

~~(1) consider how to clearly identify *relevant funds* that are not held in *relevant funds bank accounts*. The word 'safeguarding' should be included in the account name wherever possible; and~~

~~(2)~~ promptly identify the *client* to whom a *relevant funds* receipt relates. Once identified, the receipt of *relevant funds* must be recorded and allocated to the *client* in the *safeguarding institution's* accounts. Where the crediting of these accounts amounts to the crediting of a *payment account*, it must be carried out within the time periods required by the *Payment Services Regulations*.

…

Unidentified receipts of funds

15.2.7 R If a *safeguarding institution* receives *funds* (whether in a *relevant funds bank account* or another account) which it is unable to immediately identify as *relevant funds* or other *funds*, it must:

(1) take all necessary steps to identify the *funds* as either *relevant funds* or other *funds*; ~~and~~

(2) record the *funds* in its books and records as 'unidentified relevant funds' while it performs the necessary steps under (1); and

(3) if it considers it reasonably prudent to do so, given the risk that *relevant funds* may not be adequately protected if it is not treated as such, treat the entire balance of *funds* as *relevant funds* while it performs the necessary steps under (1).

…

15.2.10 G A *safeguarding institution* should have regard to its obligations under the *Electronic Money Regulations* and *Payment Services Regulations*, and to its fiduciary duties, when considering whether to return funds under *CASS* 15.2.9R.

15.2.11 G …

Organisational arrangements

15.2.12 R A *safeguarding institution* must have in place adequate organisational arrangements to minimise the risk of the loss or diminution of *relevant funds,* or of rights in connection with *relevant funds*, as a result of misuse of *relevant funds,* fraud, poor administration, inadequate record-keeping or negligence.

15.2.13 G (1) One situation where such risks can arise is where there is the possibility that *relevant funds* held by the *safeguarding institution* may be paid for the account of a *client* whose *funds* are yet to be credited to an account in the name of the *safeguarding institution.* A *safeguarding institution* should ensure its organisational arrangements are adequate to minimise such a risk.

(2) This may include, for example, allowing for sufficient periods of time for payments of *relevant funds* to the *safeguarding institution* to become available for use, and setting up safeguards to ensure that payments out of *relevant funds bank accounts* do not take effect before the relevant amount of *relevant funds* has become available for use by the *safeguarding institution*.

(3) Some *safeguarding institutions* may issue *electronic money* or allow *clients* to make payments on authorisation of a funding payment card or notification of a funding transaction before *relevant funds* are credited to an account in the name of the *safeguarding institution* or otherwise made available to the *safeguarding institution*. A *safeguarding institution* should have organisational arrangements that are sufficient to ensure that *relevant funds* that are required to be protected in accordance with this chapter are not used to meet the *safeguarding institution's* commitments to a card scheme or another third party to settle these payment transactions.

15.2.14 R A *safeguarding institution* that provides services that are not *payment services* or issuance of *electronic money* must ensure it has adequate policies and procedures in place to identify and determine when it is holding *relevant funds* and when it is holding or in receipt of *funds* relating to its other activities.

15.2.15 R A *safeguarding institution* that is also a *firm* subject to other chapters of *CASS* must ensure it has adequate policies and procedures in place to identify and determine under which activity it is holding *funds*.

15.2.16 G (1) *Funds* received for the purpose of a foreign exchange transaction that is independent to the provision of a *payment service* are not *relevant funds* because in making a payment of currency in settlement of a foreign exchange transaction, the FX provider will be acting as principal in purchasing the other currency from its *client* (see Q12 in *PERG* 15.2).

(2) A *safeguarding institution* that is carrying out a foreign exchange transaction independently from its *payment services* is therefore not required to safeguard those *funds* and its policies and procedures should be sufficient to ensure that the foreign exchange transaction *funds* can be identified and kept separate from *relevant funds*. This includes dealing with mixed remittances in accordance with *CASS* 15.5.2R to *CASS* 15.5.4R.

(3) The currency purchased in a foreign exchange transaction may become *relevant funds* if retained on the instructions of the *client* to be used for the provision of a subsequent *payment service* or for issuance of *electronic money*. In such a case the proceeds become *relevant funds* as soon as they are received following the exchange.

(4) Paragraphs (1) to (3) only apply where 2 independent services are provided. They will not apply where:

(a) the service that is provided to the *client* is a *currency transfer service*; or

(b) *funds* are received for the issuance of *electronic money* denominated in a different currency from that of the *funds*.

In these cases, the *funds* are *relevant funds* as soon as they are received by the *safeguarding institution* and must be safeguarded accordingly.

(5) *Safeguarding institutions* are reminded of the obligations on them under *Principle* 12 (Consumer duty). These include the cross-cutting obligations in *PRIN* 2A.2 to act in good faith towards *retail customers* and enable and support them to pursue their financial objectives. It is unlikely that providing a *product* that has been designed in a way calculated to avoid the requirements of this chapter, or where it is unclear what protections will apply, would meet these obligations.

15.3 ~~[to follow]~~ Statutory trust

15.3.1 G (1) Section 137B(1) of the *Act* (FCA general rules: clients' money, right to rescind etc.) as applied with modifications by the *Payment Services Regulations* and the *Electronic Money Regulations* provides that *rules* may make provisions which result in *relevant funds* being held by a *safeguarding institution* on trust.

(2) A trust creates a fiduciary relationship between the *safeguarding institution* and its *client* under which *relevant funds* are in the legal ownership of the *safeguarding institution* but remain in the beneficial ownership of the *client*.

(3) In the event of *failure* of the *safeguarding institution,* costs relating to the distribution of *relevant funds* may have to be borne by the trust.

Requirement

15.3.2 R A *safeguarding institution* receives and holds as trustee the following on the terms set out in *CASS* 15.3.3R:

(1) *relevant funds*;

(2) *relevant assets*;

(3) the rights under and proceeds of an insurance policy taken out pursuant to the *insurance or guarantee method*;

(4) the rights under and proceeds of a guarantee taken out pursuant to the *insurance or guarantee method*; and

(5) cheques and other payable orders received from or for the benefit of *clients* for the execution of a *payment transaction* or for the purchase of *electronic money*.

15.3.3 R A *safeguarding institution* receives and holds the assets specified in *CASS* 15.3.2R on the following terms:

(1) for the purposes of, and on the terms of, the *relevant funds rules*;

[*Editor's note*: the text in (1) is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

(2) for the purposes of the *PEMII Regulations*;

(3) subject to (4), for the *clients* for whom those assets are held, according to their respective interests in them;

(4) on *failure* of the *safeguarding institution,* for the payment of the costs properly attributable to the distribution of the *relevant funds* in accordance with (3); and

(5) after all valid claims and costs under (3) and (4) have been met, for the *safeguarding institution* itself.

15.3.4 G The trust does not permit a *safeguarding institution,* in its capacity as trustee, to use *relevant funds* to advance credit to the *safeguarding institution's clients*, itself, or any other *person*.

15.4 ~~[to follow]~~ Methods of safeguarding

Purpose

15.4.1 G The segregation of *relevant funds*, or their protection by way of insurance or guarantee, is an important safeguard.

15.4.2 G The obligation to safeguard *relevant funds* starts as soon as the *funds* are received by the *safeguarding institution*. It will receive *funds* as soon as it has an entitlement to them (for example, when credited to an account in the *safeguarding institution's* name at a *bank* or other institution).

Approaches to protecting relevant funds

15.4.3 R A *safeguarding institution* must protect the *relevant funds* it receives by:

(1) the *segregation method* (see *CASS* 15.5 and *CASS* 15.6); or

(2) the *insurance or guarantee method* (see CASS 15.7).

15.4.4 R A *safeguarding institution* may protect certain *relevant funds* in accordance with the *segregation method* and the remaining *relevant funds* in accordance with the *insurance or guarantee method*.

Relationship between methods

15.4.5 R A *safeguarding institution* does not need to treat *funds* as *relevant funds* if they are protected by an insurance policy or guarantee in accordance with the *insurance or guarantee method*.

15.4.6 R The proceeds of the insurance policy or guarantee are *relevant funds*.

15.4.7 G *Relevant funds* received by the *safeguarding institution* are subject to the statutory trust under *CASS* 15.3. Where those *relevant funds* are covered by an insurance policy or guarantee in accordance with this chapter, they will cease to be subject to the statutory trust in *CASS* 15.3. The rights under the insurance policy or guarantee will fall within the statutory trust. The proceeds of the insurance policy or guarantee are *relevant funds* and will be subject to the statutory trust.

15.4.8 G *CASS* 15.4.5R permits a s*afeguarding institution* that protects *relevant funds* with an insurance policy or guarantee in accordance with the *rules* in *CASS* 15.7 to use those *funds* for its own account.

15.5 The segregation method

Electronic receipt of relevant funds

15.5.1 R ~~[to follow]~~ Unless otherwise permitted by any other *rule* in *CASS* 15, a *safeguarding institution* must ensure that all *relevant funds* are received directly into a *relevant funds bank account*, rather than being first received into the *safeguarding institution's* own account and then segregated.

Mixed remittance

15.5.2 R [~~to follow~~] Where a *safeguarding institution* receives a *mixed remittance,* it should promptly, and in any event by the end of the *day* on which the *mixed remittance* was received, pay the *funds* that are not *relevant funds* out of the *relevant funds bank account*.

15.5.3 R [~~to follow~~] For the purposes of complying with *CASS* 15.5.2R, where a *safeguarding institution* receives a *mixed remittance* and the precise portion of *relevant funds* is variable or unknown in advance, the *safeguarding institution* must make a reasonable estimate of the amount of *relevant funds,* on the basis of historical data, to be representative of the portion of *funds* that are *relevant funds.*

15.5.4 R A *safeguarding institution* that receives *mixed remittances* must maintain a written policy for the purposes of demonstrating their approach to complying with ~~regulation 20(3) of the *Electronic Money Regulations* and regulation 23(2) of the *Payment Services Regulations*~~ *CASS* 15.5.2R and *CASS* 15.5.3R.

Receipt of relevant funds through an acquirer or into a payment system settlement account

15.5.5 R [~~to follow~~] *CASS* 15.5.1R does not apply where *relevant funds* are:

(1) received on behalf of a *safeguarding institution* by an *acquirer* and credited to an account with that *acquirer*; or

(2) received into an account held for the sole purpose of enabling the *safeguarding institution* to participate in or receive *funds* through a *payment system*.

15.5.6 R [~~to follow~~] Where *funds* are received in the circumstances described in *CASS* 15.5.5R, the *safeguarding institution* must promptly, and in any event by the end of the *business day* following the *day* the *funds* were credited to such an account, pay the *relevant funds* into a *relevant funds bank account*.

15.5.7 R [~~to follow~~] Where *funds* received in the circumstances described in *CASS* 15.5.5R include funds that are not *relevant funds,* the *safeguarding institution* may pay these into a *relevant funds bank account* provided that they promptly, and in any event by the end of the *day* on which the *funds* were credited to a *relevant funds bank account,* ensure that any *funds* that are not *relevant funds* are paid out of the *relevant funds bank account*.

15.5.8 R [~~to follow~~] *CASS* 15.5.3R and *CASS* 15.5.4R (Mixed remittance) apply for the purpose of *CASS* 15.5.7R.

15.5.9 G [~~to follow~~] *CASS* 15.5.5R enables a *safeguarding institution* to receive *relevant funds* into an account with an *acquirer* or another *person* for the purposes of participating in a *payment system*. *CASS* 15.5.7R recognises that *relevant funds* received in this way might be part of a *mixed remittance,*

for example, because the *funds* include *relevant funds* and *funds* due to the *safeguarding institution,* such as fees and charges.

15.5.10 G [to follow] Where a *safeguarding institution* receives *mixed remittances* into an account operated by an *acquirer* or otherwise held for the sole purposes of participating in a *payment system*, the *relevant funds* must be promptly paid into a *relevant funds bank account*. The *relevant funds* should be segregated promptly from the remainder of the *mixed remittance*. If it is not possible to segregate *relevant funds* before the obligation to pay them into a *relevant funds bank account* arises, the *mixed remittance* may be paid into a *relevant funds bank account* and any *funds* that are not *relevant funds* must be paid out of the *relevant funds bank account* promptly, and in any event by the end of the *day* on which they were credited to the *relevant funds bank account.*

Purchase of electronic money by payment instrument

15.5.11 R [to follow] An *electronic money institution* must pay its own *funds* into a *relevant funds bank account* if;

(1) a *person* purchases *electronic money* with a *payment instrument*;

(2) the *electronic money institution* issues *electronic money* before the *relevant funds* are credited to a *payment account* in the name of the *electronic money institution* or otherwise made available to it; and

(3) the *relevant funds* have not been credited to such an account or made available by the end of 5 *business days* following the *day* on which the *electronic money* was issued.

15.5.12 R [to follow] The amount of *funds* to be placed in a *relevant funds bank account* in accordance with *CASS* 15.5.11R is the amount of *electronic money* issued to the *person* less any of that *electronic money* that has been spent or otherwise redeemed.

15.5.13 R (1) [to follow] *Funds* paid into a *relevant bank funds account* in accordance with *CASS* 15.5.11R are *relevant funds*.

(2) Where an *electronic money institution* has paid *funds* into a *relevant funds bank account* in accordance with *CASS* 15.5.11R, any *funds* subsequently received in exchange for the *electronic money* that was issued are not *relevant funds*.

15.5.14 G [to follow] The purpose of *CASS* 15.5.11R to *CASS* 15.5.13R is to make provision for *electronic money* that is issued on the basis of payment by *payment instrument* and where, for example, there is a delay in the movement of *funds* through a payment system. In such circumstances, the *electronic money institution* must use its own *funds* to top up the *relevant funds bank account.*

Physical receipts of relevant funds

15.5.15 R (1) ~~[to follow]~~ Where a *safeguarding institution* receives *relevant funds* in the form of banknotes and coins, it must ensure that the banknotes and coins:

(a) are immediately segregated from any other *funds*;

(b) are held in a secure location in line with *Principle* 10; and

(c) are paid into a *relevant funds bank account* promptly, and in any event by the end of the *business day* following the *day* they are received.

(2) A *safeguarding institution* must record the receipt of the banknotes and coins in its books and records in line with *CASS* 15.12 (Records, accounts and reconciliations).

15.5.16 R ~~[to follow]~~ A *safeguarding institution* may not receive banknotes and coins via an *agent* or *electronic money distributor* unless it protects those funds in accordance with *CASS* 15.5.18R.

Receipt of cheques and other payable orders

15.5.17 R ~~[to follow]~~ Where a *safeguarding institution* receives a cheque or other payable order for the purchase of *electronic money* or for the provision of a *payment service,* it must ensure:

(1) the cheque or order is paid into a *relevant funds bank account* promptly and no later than the end of the *business day* following the *day* it was received, or if future dated, the *business day* after the date on the cheque;

(2) in the meantime, the cheque or order is held in a secure location in line with *Principle* 10; and

(3) the receipt of the cheque or order is recorded in the *safeguarding institution's* books and records in accordance with *CASS* 15.12 (Records, accounts and reconciliations).

Agent and distributor segregation

15.5.18 R (1) ~~[to follow]~~ A *safeguarding institution* must protect any *relevant funds* received by an *agent* or *electronic money distributor* by:

(a) estimating, based on historical transaction data, the maximum amount of *relevant funds* that its *agents* and *electronic money distributors* would hold during the next *business day* in connection with the services they provide on behalf of the *safeguarding institution*; and

(b) paying an equivalent amount of its own *funds* into a *relevant funds bank account* before the start of the next *business day* and retain the *funds* in the account during that day.

(2) *Funds* that the *safeguarding institution* retains in a *relevant funds bank account* under this *rule* are *relevant funds* for the purposes of the *relevant funds rules*.

[*Editor's note*: the text in (2) is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.5.19 G (1) ~~[to follow]~~ The receipt of *relevant funds* by an *agent* or *electronic money distributor* on behalf of a *safeguarding institution* amounts to receipt of those funds by the institution and so in the absence of *CASS* 15.5.18R an *agent* or *electronic money distributor* could not receive funds into an account held in the name of the *agent* or *electronic money distributor*.

(2) *CASS* 15.5.16R prevents *agents* or *electronic money distributors* receiving notes and coins on behalf of a *safeguarding institution* unless the *safeguarding institution* complies with *CASS* 15.5.18R.

(3) *CASS* 15.5.18R enables an *agent* or *electronic money distributor* to receive *funds* from a *client*. However, the *safeguarding institution* must estimate the maximum amount of *funds* that the *agent* or *electronic money distributor* is likely to hold (and that would otherwise have to be segregated by the *safeguarding institution*) and place a corresponding amount of its own *funds* in a *relevant funds bank account*.

(4) The *relevant funds bank account* should at all times contain an amount equal to the claims of *clients* in respect of *funds* held by *agents* and *electronic money distributors* (as well as containing any other sums that the *safeguarding institution* is required to hold in a *relevant funds bank account* in accordance with this chapter).

(5) *Funds* placed in a *relevant funds bank account* in accordance with *CASS* 15.5.18R(1)(b) are *relevant funds* for the purposes of the *relevant funds rules*.

[*Editor's note*: the text in (5) is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

(6) A *safeguarding institution* that does not want to follow the approach in *CASS* 15.5.18R must make arrangements such that *relevant funds* received in connection with services provided through an *agent* or in exchange for *electronic money* distributed by a *distributor* are

received directly by the *safeguarding institution* in accordance with *CASS* 15.5.1R to *CASS* 15.5.17R.

15.5.20 R (1) ~~[to follow]~~ To the extent that the *safeguarding institution* no longer considers it prudent to retain money in its *relevant funds bank account* pursuant to *CASS* 15.5.18R in order to ensure that *relevant funds* are protected, the *safeguarding institution* may cease to treat that money as *relevant funds*.

(2) Any money that the *safeguarding institution* ceases to treat as *relevant funds* pursuant to (1) must be withdrawn from its *relevant funds bank account* as an excess under *CASS* 15.12.49R as part of its next reconciliation.

15.5.21 R (1) ~~[to follow]~~ A *safeguarding institution* must make and retain an up-to-date record of all payments, and withdrawals, made under *CASS* 15.5.18R and *CASS* 15.5.20R.

(2) The record must include:

(a) details of the *safeguarding institution's* calculation of the amount to be held for the purpose of *CASS* 15.5.18R;

(b) amounts paid into or withdrawn from a *relevant funds bank account* pursuant to *CASS* 15.5.18R or *CASS* 15.5.20R;

(c) confirmation that these amounts were paid or withdrawn in accordance with *CASS* 15.5.18R or *CASS* 15.5.20R; and

(d) an up-to-date total of the amounts held pursuant to *CASS* 15.5.18R.

15.5.22 R ~~[to follow]~~ If a *safeguarding institution* intends to pay its own *funds* into a *relevant funds bank account* under *CASS* 15.5.18R it must establish a written policy:

(1) detailing the method that the *safeguarding institution* will use to calculate the amount required; and

(2) setting out why the method chosen is a reasonable one.

15.5.23 R ~~[to follow]~~ The *safeguarding institution* may amend its written policy to reflect changes in the arrangements made under *CASS* 15.5.18R.

15.5.24 R ~~[to follow]~~ The policy required by *CASS* 15.5.22R must be:

(1) reviewed as often as necessary and at least once a year; and

(2) retained for a period of at least 5 years after the date it ceases to retain such *funds* in a *relevant funds bank account* under *CASS* 15.5.18R.

Segregation in a different currency

15.5.25 R (1) ~~[to follow]~~ A *safeguarding institution* may segregate *relevant funds* in a different currency from that in which they were received or in which the *safeguarding institution* is liable to the relevant *client*.

(2) ~~A *safeguarding institution* that segregates *relevant funds* in a different currency from that in which they were received or in which the *safeguarding institution* is liable to the relevant *client*~~ The *safeguarding institution* must ensure that the amount held is adjusted each *day* to an amount at least equal to the original currency amount (or currency in which the *safeguarding institution* has its liability to its *clients*, if different), calculated at the previous *day's* closing spot exchange rate.

Prudent segregation

15.5.26 R [*Editor's note*: this rule will be added following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.5.27 R (1) If it is prudent to do so to prevent a *shortfall* in *relevant funds* on the occurrence of a *primary pooling event*, a *safeguarding institution* may pay *funds* of its own into a *relevant funds bank account* and subsequently retain those *funds* in the *relevant funds bank account* (*prudent segregation*).

(2) *Funds* that the *safeguarding institution* retains in a *relevant bank account* under this *rule* are *relevant funds* for the purposes of the *relevant funds rules*.

[*Editor's note*: the text in this rule is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes. The term 'primary pooling event' will be defined in those rules.]

15.5.28 G A *safeguarding institution* must make and retain an up-to-date record of all payments made under *CASS* 15.5.27R. (See *CASS* 15.5.36R to *CASS* 15.5.40R (Prudent segregation record).)

15.5.29 R If a *safeguarding institution* intends to pay its own *funds* into a *relevant funds bank account* under *CASS* 15.5.27R, it must establish a written policy that is approved by its *governing body* (and retain such policy for a period of at least 5 years after the date it ceases to retain such *funds* in a *relevant bank account* under *CASS* 15.5.27R) detailing:

(1) the specific anticipated risks in relation to which it would be prudent for the *safeguarding institution* to make such payments into a *relevant funds bank account*;

(2) why the *safeguarding institution* considers that the use of such a payment is a reasonable means of protecting *relevant funds* against each of the risks set out in the policy; and

(3) the method that the *safeguarding institution* will use to calculate the amount required to address each risk set out in the policy.

15.5.30 R The *safeguarding institution* may amend its written policy to reflect changes in the specific anticipated risks in relation to which it would be prudent for the business to make payments into a *relevant funds bank account* under *CASS* 15.5.27R.

15.5.31 R The *safeguarding institution's* written policy must not conflict with the *relevant funds rules*. If there is a conflict, the *relevant funds rules* will prevail.

[*Editor's note*: this rule is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.5.32 G In the event the *safeguarding institution* faces a risk not contemplated under its current policy, it will not be prevented from prudently segregating *funds* as *relevant funds* in accordance with these *rules* but the policy must be created or amended, as applicable, as soon as reasonably practicable.

15.5.33 G Examples of the types of risks that a *safeguarding institution* may wish to provide protection for under *CASS* 15.5.27R include systems failures and exchange rate movements between the currency of the *relevant funds bank account* and the currency in which the *safeguarding institution* has liability to its *clients*, which could lead to a *shortfall* in *relevant funds*.

15.5.34 R To the extent that the *safeguarding institution* no longer considers it prudent to retain *funds* in its *relevant funds bank account* pursuant to *CASS* 15.5.27R in order to ensure that *relevant funds* are protected, the *safeguarding institution* may cease to treat those *funds* as *relevant funds*.

15.5.35 R Any *funds* that the *safeguarding institution* ceases to treat as *relevant funds* pursuant to *CASS* 15.5.27R must be withdrawn from its *relevant funds bank account* as an excess under *CASS* 15.12.49R as part of its next reconciliation.

Prudent segregation record

15.5.36 R [*Editor's note*: this rule will be added following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.5.37 R A *safeguarding institution* must create and keep up-to-date records so that the amount of *funds* paid into *relevant funds bank accounts* and retained as *relevant funds* pursuant to *CASS* 15.5.27R or withdrawn pursuant to *CASS*

15.5.35R, and the reasons for such payment, retention and withdrawal can be easily ascertained (the *prudent segregation record*).

15.5.38 R The *prudent segregation record* must record:

(1) the outcome of the *safeguarding institution's* calculation of its *prudent segregation*;

(2) the amounts paid into or withdrawn from a *relevant funds bank account* pursuant to *CASS* 15.5.27R or *CASS* 15.5.35R;

(3) why each payment or withdrawal is made;

(4) in respect of the *safeguarding institution's* written policy required by *CASS* 15.5.29R the institution must record, as applicable, either:

(a) that the payment or withdrawal is made in accordance with that policy; or

(b) that the policy will be created or amended to include the reasons for this payment or withdrawal;

(5) that the *funds* were paid by the *safeguarding institution* in accordance with *CASS* 15.5.27R or withdrawn in accordance with *CASS* 15.5.35R; and

(6) the up-to-date total amount of *relevant funds* held pursuant to *CASS* 15.5.27R.

15.5.39 G *Safeguarding institutions* are reminded that payments and records made in accordance with *CASS* 15.5.27R and *CASS* 15.5.37R should not be used as a substitute for keeping accurate and timely records in accordance with *CASS* 15.12 (Records, accounts and reconciliations) and requirements under regulation 27 of the *Electronic Money Regulations*, regulation 31 of the *Payment Services Regulations*, and *SYSC* 4.1.1R (General requirements) and *SYSC* 6.1.1 R (Compliance), as the case may be.

15.5.40 R The *prudent segregation record* must be retained for 5 years after the *safeguarding institution* ceases to retain *funds* as *relevant funds* pursuant to *CASS* 15.5.27R.

15.6 Segregation: secure, liquid assets

15.6.1 G …

15.6.2 G …

15.6.3 G …

15.6.4 R …

[*Editor's note*: *CASS* 15.6.1G to *CASS* 15.6.4R are subject to amendment following an upcoming consultation on the rules relating to secure, liquid assets.]

15.6.5 R ~~[to follow]~~ *Relevant assets* must be segregated from:

(1) the *safeguarding institution's* own assets; and

(2) any other assets it holds on behalf of another *person*.

…

Custody and management of relevant assets

15.6.9 G ~~[to follow]~~ Where a *safeguarding institution* invests *relevant funds* in *relevant assets*, the *safeguarding institution's* holding of those *relevant assets* will be subject to any applicable requirements of the *custody rules*.

15.6.10 G ~~[to follow]~~ A *safeguarding institution* that safeguards *relevant funds* by investing them in *relevant assets* should ensure that it has the *permissions* required to invest in and hold *relevant assets* and must comply with the *rules* that are relevant for those activities. In particular, the *safeguarding institution* should consider whether it will be carrying out the *regulated activity* of *managing investments* or *safeguarding and administering investments*.

15.6.11 G (1) ~~[to follow]~~ A *safeguarding institution* is likely to need a *permission* to manage investments if it manages with discretion the investment of *relevant funds*.

(2) A *safeguarding institution* is not likely to need a permission to manage investments if the investing of *relevant funds* is only managed with discretion by another *person* (which has the necessary *permission),* even if the *safeguarding institution* is responsible for setting an appropriate strategy.

15.6.12 R ~~[to follow]~~ If a *safeguarding institution* does not have permission to carry out the *regulated activity* of *safeguarding and administering investments* it must:

(1) deposit the *relevant assets* with a *firm* with *permission* to carry out the *regulated activity* of *safeguarding and administering investments*; and

(2) hold the *relevant assets* in a *relevant assets account* with that *firm* that is separate from any account holding its own assets or assets belonging to another *person*.

Appointment of a third party to manage relevant assets

…

15.6.14 R A *safeguarding institution* that appoints a third party to manage *relevant assets* must:

…

(2) ensure that the mandate given to the third party prevents the third party from making investment decisions that are inconsistent with the ~~*Electronic Money Regulations*, the *Payment Services Regulations*, or the~~ requirements in this chapter; and

…

…

15.6.17 R A *safeguarding institution* that appoints a third party pursuant to *CASS* 15.6.13R remains responsible for ensuring that the *relevant funds* are only invested in accordance with the ~~*relevant funds regime*~~ *relevant funds rules*.

15.6.18 G ~~A *safeguarding institution* is not required to appoint a third party to manage *relevant assets*, but if it does it must comply with *CASS* 15.6.13R.~~ [deleted]

Interest, dividends and other income

15.6.19 R (1) Any interest, dividends or other income paid on *relevant assets* must be paid to the *safeguarding institution* for its own account.

(2) For the purposes of (1), income does not include any capital gains realised from the sale or transfer of *relevant assets*.

15.6.20 G (1) The effect of *CASS* 15.6.19R is that any *funds* paid to a *safeguarding institution* by way of interest, dividends or other income from *relevant assets* are not *relevant funds*.

(2) The proceeds from the sale of *relevant assets* are *relevant funds* and should be protected in accordance with this chapter. Any increase or decrease in the value of the *relevant assets* could create a discrepancy in the *internal safeguarding reconciliation* which in turn could require a withdrawal from or payment into an account holding *relevant funds* or *relevant assets*.

15.7 The insurance or guarantee method

…

Using an insurance policy

15.7.2 R A *safeguarding institution* can protect *relevant funds* through an insurance policy if the policy:

(1) is obtained from an *insurer* that is not in the same *group* as the *safeguarding institution*; and

(2) complies with the conditions in *CASS* 15.7.4R.

Using a guarantee

15.7.3 R A *safeguarding institution* can protect *relevant funds* through a guarantee if the guarantee:

(1) is obtained from an *approved bank* or an *insurer* that is not in the same *group* as the *safeguarding institution*;

(2) provides for the guarantor to assume the primary liability to pay the amount covered by the guarantee upon the *failure* of the *safeguarding institution*;

(3) provides *clients* with a comparable level of protection to an insurance policy; and

(4) complies with the conditions in *CASS* 15.7.4R.

General conditions: insurance policy and guarantee

15.7.4 R The conditions are:

(1) the proceeds of the insurance policy or guarantee must be payable upon ~~an *insolvency event*~~ the *failure* of the *safeguarding institution*;

(2) there must not be any condition or restriction on the prompt paying out of the insurance or guarantee, other than the certification of the ~~*insolvency event*~~ *failure*;

…

(4) the terms of the insurance policy or guarantee must provide for the proceeds of the insurance policy or guarantee to be promptly paid into a *relevant funds bank account* of the *safeguarding institution*; ~~and~~

(5) the terms of the insurance policy or guarantee must not permit or enable the provider to cancel the policy or guarantee prior to its expiry, unless such cancellation is:

…

(b) the provider has given the *safeguarding institution* and the *FCA* at least 90 *days'* notice of its decision to cancel the policy or guarantee~~.~~; and

(6) the insurance policy or guarantee must be written in trust for the benefit of *clients*.

15.7.5 G (1) The effect of *CASS* 15.7.4R is that the insurance policy or guarantee must pay out the full amount of any claim regardless of why the

~~*insolvency event*~~ *failure* occurs. This includes, but is not limited to, where the ~~*insolvency event*~~ *failure* is caused by:

…

…

…

Using only the insurance or guarantee method

15.7.7 R ~~[to follow]~~ *CASS* 15.7.8R to *CASS* 15.7.10R apply to a *safeguarding institution* that opts to use only the *insurance or guarantee method* to protect *relevant funds*.

15.7.8 R ~~[to follow]~~ A *safeguarding institution* must ensure that *relevant funds* are protected by the insurance policy or guarantee immediately on the receipt of the *relevant funds*.

15.7.9 R ~~[to follow]~~ If the *safeguarding institution* carries out *internal safeguarding reconciliations*, the amount of cover provided by the insurance policy or guarantee must at all times exceed the total of the aggregate value referred to in *CASS* 15.12.18R(4) and any foreseeable variation in that aggregate value.

15.7.10 R (1) ~~[to follow]~~ A *safeguarding institution* must maintain a written record of its method for calculating:

(a) the foreseeable variation referred to in *CASS* 15.7.9R; and

(b) the amount by the which the insurance policy or guarantee should exceed the total referred to in *CASS* 15.7.9R.

(2) The method in (1) must be regularly reviewed and the written record updated accordingly.

(3) The written record in (1), and any changes made to it, must be retained for a period of 5 years from when the *safeguarding institution* ceases to only use the *insurance or guarantee method* to protect *relevant funds*.

…

Expiration of the insurance policy or guarantee

…

15.7.19 G If the *safeguarding institution* is a *small payment institution*, *small electronic money institution* or a *credit union* that voluntarily safeguards under ~~regulation 23 of the *Payment Services Regulations* (including as applied by regulation 20(6) of the *Electronic Money Regulations*)~~ *CASS*

15.1.6(2) or *CASS* 15.1.7(2) it may, alternatively, cancel its election to safeguard.

…

15.8 ~~[to follow]~~ Safeguarding accounts

15.8.1 R A *safeguarding institution* must ensure that:

(1) a *relevant funds bank account* or *relevant assets account* is used only for holding *relevant funds* or *relevant assets*; and

(2) except as provided for in *CASS* 15, no *person* other than the *safeguarding institution* has any interest in or right over the *funds* or assets placed in the account unless that interest or right relates to the fees and expenses in relation to the operation of the *relevant funds bank account* or *relevant assets account*.

15.8.2 R A *safeguarding institution* must ensure that any funds other than *relevant funds* that are deposited in a *relevant funds bank account* are promptly paid out of that account unless it is a minimum sum required to open the account, or to keep the account open.

Use of fixed term or notice accounts

15.8.3 R (1) Subject to (2), a *safeguarding institution* must be able to make withdrawals of *relevant funds* from a *relevant funds bank account* promptly and, in any event, within 1 *business day* of a request for withdrawal.

(2) A *safeguarding institution* may use a *relevant funds bank account* from which it will be unable to make a withdrawal of *relevant funds* until the expiry of a period lasting:

(a) up to 30 *days*; or

(b) provided the *safeguarding institution* complies with *CASS* 15.8.5R, from 31 to 95 *days*.

15.8.4 R *CASS* 15.8.3R does not prevent a *safeguarding institution* from depositing *relevant funds* on terms under which a withdrawal may be made before the expiry of a fixed term or a notice period (whatever the duration), including where such withdrawal would incur a penalty charge to the *safeguarding institution*.

15.8.5 R A *safeguarding institution* may only use one or more *relevant funds bank accounts* under *CASS* 15.8.3R(2)(b) if:

(1) prior to using any such *relevant funds bank accounts*, it produces a written policy that sets out:

(a) the maximum proportion of the *relevant funds* held by the *safeguarding institution* that the *safeguarding institution* considers would be appropriate to hold in such *relevant funds bank accounts*, having regard to the need to manage the risk of the *safeguarding institution* being unable to access *relevant funds* when required;

(b) the *safeguarding institution's* rationale for reaching its conclusion(s) under (a); and

(c) the measures that it will put into place to comply with (2)(a), having regard to *CASS* 15.8.7E; and

(2) while the *safeguarding institution* uses any such *relevant funds bank accounts*, it:

(a) takes appropriate measures to manage the risk of the *safeguarding institution* being unable to access *relevant funds* when required; and

(b) keeps its written policy under (1)(a) under review, amending it where necessary.

15.8.6 R (1) A *safeguarding institution* must make and retain a written record of:

(a) the written policy it produces under *CASS* 15.8.5R(1)(a); and

(b) each subsequent version of the policy that it produces as a result of *CASS* 15.8.5R(2)(b).

(2) The *safeguarding institution* must make the record:

(a) under (1)(a) on the date it produces the written policy; and

(b) under (1)(b) on the date it produces the new version of the written policy.

(3) The *safeguarding institution* must keep the record under this *rule* for a period of 5 years after the earlier of:

(a) the date on which the version of the policy to which the record relates was superseded; or

(b) the date on which the *safeguarding institution* ceases to use bank accounts under *CASS* 15.8.3R(2)(b).

15.8.7 E (1) Appropriate measures under *CASS* 15.8.5R(2)(a) include the *safeguarding institution* considering the need to make, and making where appropriate, quarterly or more frequent adjustments to the amount of *relevant funds* held in bank accounts under *CASS* 15.8.3R(2)(b), taking into consideration the following factors:

(a) historic and expected future *relevant funds* receipts and payments;

(b) the *safeguarding institution's* own analysis of its exposure to the risk of being unable to meet instructions from its *clients* in relation to *relevant funds* that it holds, applying an appropriate set of time horizons and stress scenarios; and

(c) the content of the *safeguarding institution's* written policy under *CASS* 15.8.5R(1)(a).

(2) Compliance with (1) may be relied on as tending to establish compliance with *CASS* 15.8.5R(2)(a).

(3) Contravention of (1) may be relied on as tending to establish contravention of *CASS* 15.8.5R(2)(a).

15.8.8 G (1) Under *CASS* 15.8.5R(2)(b), a *safeguarding institution* should consider whether amendments to its written policy under *CASS* 15.8.5R(1)(a) are needed for any reason, including in light of the *safeguarding institution's* analysis in the course of its measures under *CASS* 15.8.5R(2)(a).

(2) Each time a *safeguarding institution* amends its written policy under *CASS* 15.8.5R(1)(a), it should also update the rationale for the amended policy under *CASS* 15.8.5R(1)(b).

(3) The stress scenarios under *CASS* 15.8.7E(1)(b) should include a variety of severe yet plausible institution-specific and market-wide liquidity shocks.

15.8.9 G (1) If a fixed term or notice period for a withdrawal from a *relevant funds bank account* is scheduled to expire on a day on which a *safeguarding institution* would expect to be unable to make the withdrawal, and the result is that the total period for which the withdrawal is prevented is longer than that permitted under *CASS* 15.8.3R(2)(a) or (b), then the institution would be in breach of that *rule*.

(2) Such a situation could arise because the fixed term or notice period expires on a *day* which is not a *business day* for the relevant bank.

(3) *Safeguarding institutions* should therefore schedule their withdrawals from *relevant funds bank accounts* under *CASS* 15.8.3R(2)(a) or (b) to avoid such breaches.

15.8.10 G *CASS* 15.8.3R does not prevent a *safeguarding institution* from depositing *relevant funds* in overnight money market deposits which are clearly identified as being *relevant funds* (for example, in the *relevant funds bank account acknowledgment letter*).

15.8.11 G *Safeguarding institutions* are reminded of their obligations under *CASS* 15.10 (Acknowledgment letters) for *relevant funds bank accounts*. *Safeguarding institutions* should also ensure that *relevant funds bank accounts* meet the requirements in the *Glossary* definition of that term, including regarding their designation.

Relevant funds bank accounts used for participation in a designated payment system

15.8.12 R Where a *safeguarding institution* is a participant in a *designated system* and the *safeguarding institution* holds an account at the Bank of England for the purposes of completing the settlement of transfer orders that have been entered into the *designated system* on behalf of payment service users, that account may be treated as a *relevant funds bank account* for the purposes of this chapter.

15.8.13 R (1) A *relevant funds bank account* of the type described in *CASS* 15.8.12R, or a specified amount of *funds* in that account, may be subject to an interest or right in favour of the Bank of England in order to ensure the availability of funds to complete the settlement of transfer orders in accordance with the rules or default arrangements of the *designated system*.

(2) *Funds* held in the account pending settlement in accordance with the rules or default arrangements of the *designated system*, in respect of transfer orders that have been entered into the *designated system* on behalf of *payment service users* may continue to be held in the account with *relevant funds*.

(3) Any *funds* that are received into the account in respect of transfer orders that have been entered into the *designated system* on behalf of *payment service users* are *relevant funds*, whether settlement occurs before or after the failure of the *safeguarding institution*.

15.8.14 R *Funds* received into a *relevant funds bank account* of the type described in *CASS* 15.8.12R by the *safeguarding institution* upon settlement are to be considered as having been appropriately protected in accordance with *CASS* 15 from the time of receipt in the designated system until the time of receipt into the *relevant funds bank account*.

15.8.15 G *CASS* 15.8.12R to *CASS* 15.8.14R contain provisions that are relevant to the protection of *relevant funds* by a *safeguarding institution* that is a participant in a system designated for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999. In accordance with these provisions, it is possible for such participants to protect *relevant funds* in an account with the Bank of England that the *safeguarding institution* holds for the purposes of completing settlement in the *designated system*.

15.9 Selection and appointment of third parties

15.9.1 R (1) ~~A~~ In accordance with *Principle* 10 and *CASS* 15.2 (Organisational requirements: relevant funds), a *safeguarding institution* must exercise all due skill, care and diligence:

…

…

…

15.9.4 G In complying with *CASS* 15.9.3R, a *safeguarding institution* should consider, as appropriate, together with any other relevant matters:

…

(4) the creditworthiness of the third party; and

(5) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the third party and *affiliated companies*~~; and~~.

(6) ~~the arrangements referred to in *CASS* 15.2.1R (Protection of *relevant funds*).~~ [deleted]

15.9.5 R ~~A~~ In accordance with *Principle* 10 and *CASS* 15.2 (Organisational requirements), a *safeguarding institution* must:

…

15.9.6 G In complying with the requirement in *CASS* 15.9.5R to periodically review whether diversification (or further diversification) is appropriate, a *safeguarding institution* should have regard to:

…

(4) the market conditions at the time of the assessment; and

(5) the outcome of any due diligence carried out in accordance with *CASS* 15.9.1R~~; and~~.

(6) ~~the arrangements referred to in *CASS* 15.2.1R (Protection of *relevant funds*).~~ [deleted]

…

15.10 Acknowledgement letters

15.10.1 G The main purposes of an *acknowledgment letter* are:

…

(2) to ensure that a *relevant funds bank account* or *relevant assets account* has been opened in accordance and in compliance with ~~the *Electronic Money Regulations*, the *Payment Services Regulations* and~~ *CASS* 15*,* and is distinguished from any account containing *funds* or assets that are not *relevant funds* or *relevant assets*; and

…

Requirement for, and content of, safeguarding account acknowledgement letters

15.10.2 R *CASS* 15.10.3R does not apply to the type of *relevant funds bank account* specified in ~~regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations* (Bank of England settlement accounts)~~ *CASS* 15.8.12R (Relevant funds bank accounts used for participation in a designated payment system).

…

Countersignature of safeguarding account acknowledgement letters

15.10.8 R (1) If, on countersigning and returning the *acknowledgment letter* to a *safeguarding institution,* the relevant *person* has also made amendments to:

…

the *acknowledgment letter* will have been inappropriately redrafted ~~and no longer comply with *CASS* 15.10.6R~~ for the purposes of *CASS* 15.10.12R.

…

15.10.11 R …

15.10.12 R ~~[to follow]~~ A *safeguarding institution* must not hold any *relevant funds* or *relevant assets* in, or receive any *relevant funds* or *relevant assets* into, a *relevant funds bank account* or *a relevant assets account*, unless it has received a duly countersigned *acknowledgement letter* from the counterparty *approved bank* or *firm* that has not been inappropriately redrafted and clearly identifies the account.

…

15.11 ~~[to follow]~~ Discharge of fiduciary duty

15.11.1 R [*Editor's note*: this rule will be added following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.11.2 R *Funds* cease to be *relevant funds* (having regard to *CASS* 15.11.3R where applicable) if they are:

(1) paid to a *client* or a *payment service provider* acting on behalf of the *client* pursuant to a duly authorised *payment transaction*;

(2) paid to a *payee* or a *payment service provider* acting on behalf of the *payee* pursuant to a duly authorised *payment transaction*;

(3) paid to a *client* or a *payment service provider* acting on behalf of the *client* pursuant to a request for redemption of *electronic money*;

(4) paid to a third party further to an obligation on the *safeguarding institution* under any applicable law;

(5) invested in *relevant assets* in accordance with *CASS* 15.6;

(6) covered by an insurance policy or guarantee in accordance with *CASS* 15.7;

(7) due and payable to the *safeguarding institution* for its own account (see *CASS* 15.11.6R);

(8) paid to charity under *CASS* 15.11.14R or *CASS* 15.11.21R;

(9) paid to the *safeguarding institution* as an excess in the *relevant bank account* (see *CASS* 15.12.49R);

(10) with respect to *relevant funds* received in exchange for *electronic money,* where the right of redemption has expired in accordance with regulation 43 of the *Electronic Money Regulations*; or

(11) transferred in accordance with the *PEMII Regulations*.

[*Editor's note*: the text in (11) is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.11.3 R When a *safeguarding institution* draws a cheque or other payable order to discharge its fiduciary duty to the *client,* it must continue to treat the sum concerned as *relevant funds* until the cheque or order is presented and paid.

15.11.4 G Where a chain of *payment service providers* is involved, the *funds* remain *relevant funds* until the *funds* are paid out to the *payee* or a *payment service provider* acting on behalf of the *payee*.

15.11.5 G Where transactions are executed via a *payment system*, the *funds* will be paid out when the *safeguarding institution's* account with the *payment system* is debited.

Funds due and payable to the safeguarding institution

15.11.6 R *Funds* are not *relevant funds* when they are, or become, properly due and payable to the *safeguarding institution* for its own account.

15.11.7 G The circumstances in which *funds* are due and payable will depend on the contractual arrangement between the *safeguarding institution* and the *client.* This could include when fees have become due and payable to the *safeguarding institution*.

15.11.8 G *Safeguarding institutions* are reminded that, when entering into or varying contractual arrangements with *clients* regarding circumstances in which *funds* become due and payable to the *safeguarding institution* for its own account, they should comply with any relevant obligations to *clients*, including the requirements in the *Electronic Money Regulations*, the *Payment Services Regulations,* the *Unfair Terms Regulations* and the *CRA*.

15.11.9 G (1) Where a *safeguarding institution* uses its own *funds* to settle payment transactions that have been initiated by its *clients*, no equivalent sum of *relevant funds* will become due and payable to the institution until the *funds* that have been used to settle the payment transactions have been paid out to the *payee* or the *payee's payment service provider*.

(2) *Safeguarding institutions* should have appropriate controls in place to monitor when *funds* are paid out to the *payee* or the *payee's payment service provider*.

Unclaimed relevant funds

15.11.10 R [*Editor's note*: this rule will be added following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.11.11 R [*Editor's note*: this rule will be added following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.11.12 G The purpose of *CASS* 15.11.14R is to set out the requirements *safeguarding institutions* must comply with in order to cease to treat as *relevant funds* any unclaimed balance which is allocated to an individual *client*.

15.11.13 G Before acting in accordance with *CASS* 15.11.14R, a *safeguarding institution* should consider whether its actions are permitted by law and consistent with the arrangements under which the *relevant funds* are held.

15.11.14 R A *safeguarding institution* may pay away, to a registered charity of its choice, a *relevant funds* balance which is allocated to a *client* and if it does so the released balance will cease to be *relevant funds* under *CASS* 15.11.2R(8) provided:

(1) this is permitted by law and consistent with the arrangements under which the *relevant funds* are held;

(2) the *safeguarding institution* has held the balance concerned for at least 6 years following the later of:

(a) the last movement on the *client's payment account* (disregarding any payment or receipt of interest, charges or similar items); or

(b) where the *funds* are not held on a *payment account,* the date on which the *funds* were received;

(3) it can demonstrate that it has taken reasonable steps to trace the *client* concerned and to return the balance; and

(4) the *safeguarding institution* complies with *CASS* 15.11.18R.

15.11.15 G Where the *relevant funds* balance held by a *safeguarding institution* is, in aggregate:

(1) £25 or less for a *client* that is a *customer*; or

(2) £100 or less for any other *clients*,

the *safeguarding institution* may comply with *CASS* 15.11.21R instead of *CASS* 15.11.14R.

15.11.16 E (1) Taking reasonable steps in *CASS* 15.11.14R(3) includes:

(a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;

(b) writing to the *client* at the last known address, either by post or by electronic mail, to inform it of the *safeguarding institution's* intention to no longer treat the *relevant funds* balance as *relevant funds* and to pay the sums concerned to charity if the *safeguarding institution* does not receive instructions from the *client* within 28 *days*;

(c) where the *client* has not responded after the 28 *days* referred to in (b), attempting to communicate the information set out in (b) to the *client* on at least 1 further occasion by any means other than that used in (b), including by post, electronic mail, telephone or media advertisement;

(d) subject to (e) and (f), where the *client* has not responded within 28 *days* following the most recent communication, writing again to the *client* at the last known address either by post or by electronic mail to inform them that:

(i) as the *safeguarding institution* did not receive a claim for the *relevant funds* balance, it will in 28 *days* pay the balance to a registered charity; and

(ii) an undertaking will be provided by the *safeguarding institution* or a member of its *group* to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future;

(e) if the *safeguarding institution* has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the *client* is no longer at a particular address, the *safeguarding institution* should not use that address for the purposes of (d);

(f) if, after carrying out the steps in (a), (b) and (c), the *safeguarding institution* has obtained positive confirmation that none of the contact details it holds for the *client* are accurate or, if utilised, the communication is unlikely to reach the *client*, the *safeguarding institution* does not have to comply with (d); and

(g) waiting a further 28 *day*s following the most recent communication under this *rule* before paying the balance to a registered charity.

(2) Compliance with (1) may be relied on as tending to establish compliance with *CASS* 15.11.14R(3).

(3) Contravention of (1) may be relied on as tending to establish contravention of *CASS* 15.11.14R(3).

15.11.17 G For the purpose of *CASS* 15.11.16E, a *safeguarding institution* may use any available means to determine the correct contact details for the relevant *client*, including telephoning the *client*, searching internal records, media advertising, searching public records, mortality screening and using credit reference agencies or tracing agents.

15.11.18 R (1) Where a *safeguarding institution* wishes to release a balance allocated to an individual *client* under *CASS* 15.11.14R it must comply with either (a) or (b) and, in either case, (2):

(a) the *safeguarding institution* must unconditionally undertake to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future; or

(b) the *safeguarding institution* must ensure that an unconditional undertaking in the terms set out in (a) is made by a member of its *group* and there is suitable information available for relevant *clients* to identify the member of the *group* granting the undertaking.

(2) The undertakings in this *rule* must be:

(a) authorised by the *safeguarding institution's governing body* where (1)(a) applies, or by the *governing body* of the *group* member where (1)(b) applies;

(b) legally enforceable by any *person* who had a legally enforceable claim to the balance in question at the time it was released by the *safeguarding institution*, or by an assignee or successor in title to such claim; and

(c) retained by the *safeguarding institution* and, where (1)(b) applies, by the *group* member indefinitely.

15.11.19 R (1) If a *safeguarding institution* pays away *relevant funds* under *CASS* 15.11.14R it must make and retain or, where the *safeguarding institution* already has such records, retain:

(a) records of all balances released from *relevant funds bank accounts* under *CASS* 15.11.14R (including details of the amounts and the identity of the *client* to whom the *funds* were allocated);

(b) all relevant documentation (including charity receipts); and

(c) details of the communications the *safeguarding institution* had or attempted to make with the *client* concerned pursuant to *CASS* 15.11.14R(3).

(2) The records in (1) must be retained indefinitely.

(3) If a member of the *safeguarding institution's group* has provided an undertaking under *CASS* 15.11.18R(1)(b), the records in (1) must be readily accessible to that *group* member.

De minimis amounts of unclaimed relevant funds

15.11.20 G The purpose of *CASS* 15.11.21R is to allow a *safeguarding institution* to pay away to charity *relevant funds* balances of:

(1) £25 or less for *clients* that are *customers*; or

(2) £100 or less for other *clients*,

when those balances remain unclaimed. If a *safeguarding institution* follows this process, the *funds* will cease to be *relevant funds* (see *CASS* 15.11.2R(8)).

15.11.21 R A *safeguarding institution* may pay away, to a registered charity of its choice, a *relevant funds* balance which is allocated to a *client* and if it does so the released balance will cease to be *relevant funds* under *CASS* 15.11.2R(8) provided:

(1) the balance in question is:

(a) for a *customer*, in aggregate, £25 or less; or

(b) for any other *client*, in aggregate, £100 or less;

(2) the *safeguarding institution* held the balance concerned for at least 6 years following the later of:

(a) the last movement on the *client's payment account* (disregarding any payment or receipt of interest, charges or similar items); or

(b) where the *funds* are not held on a *payment account*, the date the *funds* were received;

(3) the *safeguarding institution* has made at least 1 attempt to contact the *client* to return the balance using the most up-to-date contact details the *safeguarding institution* has for the *client* and the *client* has not responded to such communication within 28 *days* of the communication having been made; and

(4) the *safeguarding institution* makes and retains records, or retains existing records, of all balances released from *relevant funds bank accounts* in accordance with this *rule*. Such records must include the information in *CASS* 15.11.19R

Costs associated with paying away allocated but unclaimed relevant funds

15.11.22 R Any costs associated with the *safeguarding institution* ceasing to treat unclaimed *relevant funds* balances as *relevant funds* pursuant to *CASS* 15.11.14R to *CASS* 15.11.21R must be paid for from the *safeguarding institution's* own funds, including:

(1) any costs associated with the *safeguarding institution* carrying out the steps in *CASS* 15.11.14R(3) and *CASS* 15.11.21R(3); and

(2) the cost of any insurance purchased by a *safeguarding institution*, or the relevant member of its *group*, to cover any legally enforceable claim in respect of the *relevant funds* paid away.

15.12 Records, accounts and reconciliations

Policies and procedures

15.12.1 R A *safeguarding institution* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *safeguarding institution* (including in relation to any services provided through an *agent* or *electronic money distributor*) with the ~~safeguarding provisions of the *Electronic Money Regulations* and the *Payment Services Regulations* and with the~~ *rules* under this chapter.

…

Records and accounts

15.12.3 R ~~(1)~~ A *safeguarding institution* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish between *relevant funds* and other *funds*.

~~(2)~~ ~~Where an *electronic money institution* provides payment services that are unrelated to the issuance of *electronic money*, the provisions of *CASS* 15.12 shall be read as if they apply separately to the institution's *payment services* asset pool and to its *electronic money* asset pool.~~

…

15.12.5 G …

(2) A *safeguarding institution's* records must cover all *relevant funds* held by an institution, including those ~~not~~ held ~~in *relevant funds bank accounts*~~ by an *acquirer* or in an account held for the purpose of enabling the *safeguarding institution* to participate in, or receive funds through, a *payment system* in accordance with *CASS* 15.5.5R.

…

Internal safeguarding reconciliations

…

15.12.11 G An *internal safeguarding reconciliation* should:

(1) be one of the steps a *safeguarding institution* takes to arrange adequate protection for ~~*relevant funds*~~ *clients'* assets when the *safeguarding institution* is responsible for them (see *Principle* 10 (Clients' assets) as it relates to *relevant funds*);

...

(3) check whether the amount of *relevant funds* recorded in the *safeguarding institution's* records as being safeguarded meets the *safeguarding institution's* obligations to its *clients* under ~~the *Electronic Money Regulations*, the *Payment Services Regulations*, and~~ the *relevant funds rules*.

Frequency of internal safeguarding reconciliations

…

15.12.14 R …

[*Editor's note*: *CASS* 15.12.14R is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.12.15 G …

[*Editor's note*: *CASS* 15.12.15G is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

…

Internal safeguarding reconciliation: safeguarding resource

15.12.18 R The *safeguarding resource* is the sum of:

(1) the aggregate balance of *funds* held in the *safeguarding institution's relevant bank accounts* (less any *funds* that are not *relevant funds* held in an account of the type described in ~~regulation 21(4A) of the *Electronic Money Regulations* or regulation 23(9) of the *Payment Services Regulations* (Bank of England settlement accounts)~~ *CASS* 15.8.12R (Relevant funds bank accounts used for participation in a designated payment system)) ('item A');

…

15.12.19 G ~~[to follow]~~ Item B should include:

(1) *funds* held in an account with an *acquirer* in accordance with *CASS* 15.5.5R(1);

(2) *funds* held in an account for the sole purpose of enabling the *safeguarding institution* to participate in or receive *funds* through a *payment system* in accordance with *CASS* 15.5.5R(2); and

(3) cash held in accordance with *CASS* 15.5.15R(1).

…

Internal safeguarding reconciliation: safeguarding requirement

…

15.12.23 R The *safeguarding requirement* is the sum of:

…

(2) any amounts received but unallocated to an individual *client* under *CASS* 15.2.3R (Allocation of relevant funds receipts)~~.~~ and any amounts treated as *relevant funds* under *CASS* 15.2.7R(3) (Unidentified receipts of funds); and

(3) any amounts that according to the *safeguarding institution's* records it has opted to hold as *relevant funds* under *CASS* 15.5.18R (Agent and distributor segregation) and *CASS* 15.5.27R (Prudent segregation).

Internal safeguarding reconciliation: individual safeguarding balance

…

15.12.26 R When calculating an *individual safeguarding balance* for each *client,* a *safeguarding institution* must:

(1) include:

(a) all *relevant funds* received by the *safeguarding institution* for the *client*; ~~and~~

(b) any amounts credited to the *client*'s account by the *safeguarding institution* (for example, interest due and payable on a *payment account*); and

(c) any amounts placed in the *relevant funds bank account* in accordance with *CASS* 15.5.11R (Purchase of electronic money by payment instrument); and

…

…

15.12.28 G ~~[to follow]~~ A *safeguarding institution* that is also a *firm* is reminded of the obligation in *CASS* 15.2.15R to put in place adequate policies and procedures to identify and determine when it is holding *relevant funds* and when it is holding *client money*. A *safeguarding institution* should ensure it takes into account those policies and procedures when calculating *individual safeguarding balances* and, as the case may be, *individual relevant funds deposit balances*.

Internal safeguarding reconciliation: relevant funds deposit requirement

…

15.12.30 R The *relevant funds deposit requirement* is the sum of:

(1) *individual relevant funds deposit balances* calculated in accordance with *CASS* 15.12.31R; ~~and~~

(2) any amounts received but unallocated to an individual *client* under *CASS* 15.2.3R (Allocation of relevant funds receipts) or amounts treated as *relevant funds* under *CASS* 15.2.7R(3) (Unidentified receipts of funds) and paid into a *relevant funds bank account*~~.~~; and

(3) ~~[to follow]~~ any amounts that, according to the *safeguarding institution's* records, it has opted to hold as *relevant funds* under *CASS* 15.5.18R (Agent and distributor segregation) or *CASS* 15.5.27R (Prudent segregation) and has paid into a *relevant funds bank account*,

…

Internal safeguarding reconciliation: individual relevant funds deposit balance

…

15.12.33 R When calculating an *individual relevant funds deposit balance* for each *client*, a *safeguarding institution* must:

(1) include:

(a) any *relevant funds* received by the *safeguarding institution* for the *client* into a *relevant funds bank account* in accordance with *CASS* 15.5.1R;

(b) any *relevant funds* that were received into an ~~account that is not a relevant funds bank accoun~~t acquiring or payment system account in accordance with *CASS* 15.5.5R before the end of the *day* 2 *days* before the *day* on which the reconciliation takes place;

…

…

…

Frequency of external safeguarding reconciliations

15.12.37 R ...

[*Editor's note*: this rule is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

…

Frequency of external safeguarding reconciliations after an insolvency event

…

15.12.43 R Following an *insolvency event*, a *safeguarding institution* must perform an *external safeguarding reconciliation* that relates to the time of the *insolvency event* as soon as reasonably practicable after the *insolvency*

event, based on the next available statements or other forms of confirmation after the *insolvency event* from:

…

(2) the *persons* with which the *safeguarding institution* holds ~~any other account~~ an account of the type described in *CASS* 15.5.5R in which relevant funds are held;

(3) ~~the *authorised custodians*~~ any third party with which the *safeguarding institution* holds a *relevant assets account,* and any third party that manages *relevant assets* on behalf of the *safeguarding institution*.

[*Editor's note*: this rule is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.12.44 G …

[*Editor's note*: this guidance is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.12.45 R …

[*Editor's note*: this rule is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

External safeguarding reconciliations: method

15.12.46 R An *external safeguarding reconciliation* requires a *safeguarding institution* to:

(1) compare:

…

(b) the balance of *relevant assets, investment* by *investment*, on each account held with ~~an *authorised custodian*~~ a third party appointed by the *safeguarding institution* to hold or manage the assets, or with the issuer of the *relevant assets*, set out in the most recent statement or other form of confirmation issued by the ~~*authorised custodian*~~ *person* with which the account is held; and

…

…

Reconciliation differences and discrepancies

…

15.12.51 R …

[*Editor's note*: this rule is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

…

15.12.57 R …

[*Editor's note*: this rule is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

15.12.58 G …

[*Editor's note*: this guidance is subject to amendment following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

Notification requirements

15.12.59 R A *safeguarding institution* must inform the *FCA* in writing without delay if:

…

(6) it becomes aware that, at any time in the preceding 12 months, the amount of *relevant funds* safeguarded was materially different from the total aggregate amount of *relevant funds* the *safeguarding institution* was required to safeguard under ~~the *Electronic Money Regulations* or the *Payment Services Regulations*~~ *CASS* 15.

15.12.60 G *Safeguarding institutions* are reminded that the auditor of the *safeguarding institution* must confirm in the report submitted to the *FCA* under *SUP* 3A.9 (Duties of auditors: notification and report on safeguarding) whether the *safeguarding institution* has maintained systems adequate to enable it to comply with the ~~*relevant funds regime*~~ *relevant funds rules*.

15 Annex 1R Safeguarding account acknowledgement letter template

…

For [each of] the Safeguarding Account[s] identified above you acknowledge that we have notified you that:

1. we are under an obligation to keep [money/assets] we hold ~~to meet the claims of~~ belonging to our clients separate from other [money/assets];

2. we have opened, or will open, the Safeguarding Account for the purpose of depositing [money/assets] with you ~~to meet the claims~~ on behalf of our clients; and

3. we hold all [money/assets] standing to the credit of the Safeguarding Account ~~to meet the claims of our clients~~ in our capacity as trustee under the laws applicable to us.

For [each of] the Safeguarding Account[s] above you agree that:

4. you do not have any interest in, or recourse or right against [money/assets] in the Safeguarding Account in respect of any sum owed to you, or owed to any third party, on any other account (including an account we use for our own [money/assets]) except as permitted by ~~[regulation 24(1) of the Electronic Money Regulations / regulation 23(14) of the Payment Services Regulations 2017]~~ the rules of the Financial Conduct Authority. This means, for example, that you do not have any right to combine the Safeguarding Account[s] with any other account and any right of set-off or counterclaim against [money/assets] in the Safeguarding Account, except ~~following an insolvency event (as defined in [regulation 22 of the Electronic Money Regulations 2011 / regulation 23 of the Payment Services Regulations], and~~:

   …

…

6. you are required to release on demand all [money/assets] standing to the credit of the Safeguarding Account upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy (or similar procedure), in any relevant jurisdiction, except:

   (a) to the extent that you are exercising a right of set-off or security right ~~as permitted by [regulation 24(1) of the Electronic Money Regulations 2011 / regulation 23(14) of the Payment Services Regulations 2017]~~ relating to properly incurred fees and expenses in relation to the operation of the Safeguarding Account; or

   …

We acknowledge that:

7. you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Safeguarding Account[s].

…

13. …

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

…

15 Annex 2G Guidance notes for acknowledgement letters

…	
General	
2	Under *CASS* 15.10.3R and *CASS* 15.10.4R, *safeguarding institutions* are required to ~~request~~ have in place duly signed and countersigned *acknowledgement letters* for their *relevant funds bank accounts* and *relevant assets accounts.*
…	
Clear identification of relevant accounts	
5	A *safeguarding institution* is reminded that for each *relevant funds bank account* or *relevant assets account* it needs to ~~request~~ have in place an *acknowledgement letter*. As a result, it is important that it is clear to which account or accounts each *acknowledgement letter* relates. As a result, the template in *CASS* 15 Annex 1R requires that the *acknowledgement letter* includes the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each account.
…	

TP1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
(19)	…	…	…	…	
(20)	The changes to the *Glossary* in Annex A	R	If a *primary pooling event*	Indefinitely	

	and to *CASS* in Annex B of the Payment Services and Electronic Money (Safeguarding) (Amendment) Instrument 20XX		happens before the *rules* in column 2 come into force, the changes listed in column 2 do not apply to the *safeguarding institution*		
(21)	*CASS* 15	R	Applies in relation to *funds* held by a *safeguarding institution* on the date the *rules* in column 2 come into force to the extent that such *funds* would, if received after that date, be *relevant funds*.	Indefinitely	
(22)	*CASS* 15	R	Applies to any assets, insurance policy or guarantee, or the proceeds of such a policy or guarantee, acquired or entered into before the *rules* in column 2 come into force for the purposes of regulation 23 of the *Payment Services Regulations* or regulation 20 of the *Electronic Money Regulations*.	Indefinitely	

Sch 1 Record keeping requirements

…

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
CASS 13.11.13R	…	…	…	…
CASS 15.1.10R	Election under *CASS* 15.1.6R or *CASS* 15.1.7R	Record of election to opt-in to safeguarding	Day election is made	Five years from the date the *safeguarding institution* cancels its election or ceases to *hold relevant funds*, whichever is later
CASS 15.1.11R	Cancellation of election under *CASS* 15.1.6R or *CASS* 15.1.7R	Record of decision to cancel	Day decision made	Default
…				
CASS 15.2.7R(2)	…	…	…	…
CASS 15.5.15R(2)	Receipt of bank notes and coins	Record of receipt of bank notes and coins	Maintain up to date	Default
CASS 15.5.17R(3)	Receipt of cheques and other payable orders	Record of receipt of cheques and other payable orders	Maintain up to date	Default
CASS 15.5.21R	Payments made under CASS 15.5.18R and	Details of payments and withdrawals made for purpose of agent	Maintain up to date	Default

	CASS 15.5.20R	and distributor segregation		
CASS 15.5.24R	Policy for purposes of CASS 15.5.18R (Agent and distributor segregation)	Method of calculating amount to be segregated and why method chosen is a reasonable one	Before making a payment pursuant to *CASS* 15.5.18R and reviewed at least once a year	Five years from the date the *safeguarding institution* ceases to retain such funds in a *relevant funds bank account*
CASS 15.5.29R	Prudent segregation policy	The risks in relation to which it would be prudent to make payments into a *relevant funds bank account* pursuant to *CASS* 15.5.27R, why the use of such a payment is a reasonable means of protecting *relevant funds* and the method that will be used for calculating the amount required	Before making a payment pursuant to *CASS* 15.5.27R	Five years from the date the *safeguarding institution* ceases to retain such funds in a *relevant funds bank account*
CASS 15.5.37R	Prudent segregation record	Details of payments and withdrawals made for purpose of *prudent segregation*	Maintain up to date	Five years from the date the safeguarding institution ceases to retain such funds in a *relevant funds bank account*
CASS 15.6.16R(1)	…	…	…	…

CASS 15.7.10R	Amount of cover needed when only the *insurance or guarantee method* used	Method of calculation for the purposes of *CASS* 15.7.9R	When method adopted or reviewed	Five years from when the *safeguarding institution* ceases to use only the *insurance or guarantee method*
CASS 15.8.6R	Policy for use of fixed term or notice accounts	Policy for use of accounts of the type specified in *CASS* 15.8.3R(2)	Before using such an account	Five years from date on which version of policy was superseded or when *safeguarding institution* ceases to use such accounts
CASS 15.9.7R(1)	…	…	…	…
CASS 15.11.19R	Payments under *CASS* 15.11.14R (Unclaimed relevant funds)	Record of payments made to charity in relation to unclaimed *relevant funds* and details of relevant communications	On making such payments	Indefinitely
CASS 15.11.21R(4)	Payments under *CASS* 15.11.21R (Unclaimed relevant funds)	Record of payments made to charity in relation to unclaimed *relevant funds* and details of relevant communications	On making such payments	Indefinitely
…				

Annex C

Amendments to the Supervision manual (SUP)

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

[*Editor's note*: the amendments in this Annex take into account the changes made by the draft Payments and Electronic Money (Safeguarding) Instrument 2025 included in CP24/20.]

3A Payment services and electronic money

3A.1 Application

…

3A.1.3 G (1) The obligation in *CASS* 3A.3.2R to appoint an auditor does not apply to *small payment institutions* that ~~voluntarily safeguard under regulation 23 of the *Payment Services* Regulations~~ elect to comply with the *relevant funds rules* under *CASS* 15.1.6R or *credit unions*. However, they are still required to have in place adequate arrangements to safeguard *relevant funds* under *CASS* 15.2.1R and minimise the risk of their loss or diminution under ~~regulation 24(3) of the *Electronic Money Regulations* and regulation 23(17) of the *Payment Services Regulations*~~ *CASS* 15.2.12R. Voluntarily arranging an audit in accordance with this chapter will help ensure they meet these obligations.

(2) *Small payment institutions* and *credit unions* that are required to have their annual accounts audited under the Companies Act 2006 or the Co-operative and Community Benefit Societies Act 2014, or that voluntarily choose to arrange annual audits of their compliance with the ~~*relevant funds regime*~~ *relevant funds rules*, should apply the relevant provisions of this chapter as guidance. Their auditors should also apply the relevant provisions of this chapter as guidance.

3A.2 Purpose

Purpose: general

3A.2.1 G This chapter sets out *rules* and *guidance* on the role that auditors play in the *FCA's* monitoring of *relevant institutions'* compliance with the requirements and standards in the ~~*relevant funds regime*~~ *relevant funds rules*.

…

3A.9 Duties of auditors: notification and safeguarding report

Auditor's safeguarding report: content

3A.9.1 R An external auditor of a *relevant institution* must prepare a safeguarding report addressed to the *FCA* which:

…

(2) if the *relevant institution* claims not to have been required to safeguard *relevant funds* in accordance with the ~~*relevant funds regime*~~ *relevant funds rules* during the period covered by the report, states whether anything has come to the auditor's attention that causes them to believe that the institution should have done so.

…

Auditor's safeguarding report

3A.9.3 R The auditor's safeguarding report must state whether, in the auditor's opinion:

(1) the *relevant institution* has maintained systems adequate to enable it to comply with the ~~*relevant funds regime*~~ *relevant funds rules* throughout the period; and

(2) the *relevant institution* was in compliance with the ~~*relevant funds regime*~~ *relevant funds rules* at the end of the period covered by the report.~~.~~

[*Editor's note*: this rule is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

…

Auditor's safeguarding report: requirements not met or inability to form opinion

…

3A.9.13 R (1) Whether or not an auditor concludes that one or more of the requirements in *SUP* 3A.9.3R have been met, the auditor must ensure that the safeguarding report identifies each individual ~~regulation or~~ *rule* in respect of which a breach has been identified.

(2) If an auditor does not identify a breach of any individual ~~regulation or~~ *rule*, it must include a statement to that effect in the safeguarding report.

…

3A.9.15 G (1) The *FCA* expects that the list of breaches will include every breach of a ~~regulation or~~ *rule* in the ~~*relevant funds regime*~~ *relevant funds rules* insofar as that ~~regulation or~~ *rule* is within the scope of the safeguarding report and is identified in the course of the auditor's

review of the period covered by the report, whether identified by the auditor or disclosed to it by the *relevant institution*, or by any third party.

(2) For the purpose of determining whether to qualify its opinion or express an adverse opinion, the *FCA* would expect an auditor to exercise its professional judgment as to the significance of a breach of a ~~regulation or~~ *rule*, as well as to its context, duration and incidence of repetition. The *FCA* would expect an auditor to consider the aggregate effect of any breaches when judging whether a *relevant institution* had failed to comply with the requirements in *SUP* 3A.9.3R.

…

3A Annex 1R **Auditor's safeguarding report**

Independent auditor's report on safeguarding to the Financial Conduct Authority in respect of [*institution name*], firm reference number [*number*], for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*]

Part 1: Auditor's Opinion on Safeguarding

…

Opinion

In our opinion:

[The institution has maintained] [Except for….the institution has maintained] [Because of….the institution did not maintain] systems adequate to enable it to comply with the ~~*relevant funds regime*~~ *relevant funds rules* throughout the period since [the last date at which a report was made] [the institution was authorised or registered] [the institution became subject to *SUP* 3A.10 and we, its auditor, became subject to *SUP* 3A.9].*

[The institution was] [Except for…the institution was] [Because of…the institution was not] in compliance with the ~~*relevant funds regime*~~ *relevant funds rules* as at the period end date.*

[*Editor's note*: this opinion is subject to further change following an upcoming consultation on the rules relating to failure of a safeguarding institution or a third party used for safeguarding purposes.]

…

Part 2: Identified breaches of the ~~*relevant funds regime*~~ *relevant funds rules* that occurred during the period

[*Institution name*], firm reference number [*number*], for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*]

In accordance with *SUP* 3A.9.13R, Columns A to D are to be completed by and are the responsibility of the auditor. In accordance with *SUP* 3A.10.1G, Column E should be completed by the institution. The auditor has no responsibility for the content of Column E.

Column A	**Column B**	**Column C**	**Column D**	**Column E**
Item No.	**~~Regulation or~~ Rule Reference(s)**	**Identifying party**	**Breach Identified**	**Institution's Comment**
1				
…				

Instructions for Part 2:

In columns A to D of the above schedule, the auditor is to set out all the breaches of the ~~*relevant funds regime*~~ *relevant funds rules* by the institution that occurred during the period subject to the auditor's report. These must include the breaches the auditor has identified through its work (such as in the sample testing of reconciliations) and breaches identified by the institution or any other party (such as those included in the institution's breaches register or identified by the *FCA*). In column B, the auditor must specify the ~~provision(s) in the *Electronic Money Regulations* or *Payment Services Regulations*, and/or~~ *rule(s)* in *CASS* 15 the breach relates to.

In relation to any breach identified, the auditor must provide in column D any information that it has as respects the severity and duration of the breach identified including, where relevant:

a) the number of times the breach occurred;

b) the longest duration of a single instance of the breach and the value of that instance;

c) the highest value of a single instance of the breach and the duration of that instance;

d) the average value of instances of the breach; and

e) the average duration of instances of the breach.

The value of a breach is the amount of any *shortfall* caused by the breach, or the amount of any *relevant funds* affected or put at risk by the breach.

The auditor must provide a 'nil' return for this part of the report where no breach of the ~~*relevant funds regime*~~ *relevant funds rules* has been identified.

In column E, the *relevant institution* should set out any remedial actions taken (if any) associated with the breaches cited, together with an explanation of the circumstances that gave rise to the breach in question.

…

The form at SUP 16 Annex 29BR (Safeguarding return) is replaced with the following. All the text is new and is not underlined.

16 Annex 29BR	**Safeguarding return**
	This annex consists only of one or more forms. *Safeguarding institutions* are required to submit the returns using the electronic means made available by the FCA.
	[*Editor's note:* insert link to Safeguarding return form.]

Safeguarding return

Section 1 – Safeguarding institution Information

This section should be completed by every safeguarding institution

1. Name and category of *safeguarding institution*

Name	
Category[1]	

2. Was the *safeguarding institution* required to appoint an auditor under *SUP* 3A.3.2R during the reporting period?

Yes / No

[1] Authorised payment institution (API), small payment institution that has opted into safeguarding (SPI opt-in), electronic money institution (EMI), small electronic money institution (SEMI), small electronic money institution that has opted into the safeguarding for payment services unrelated to the issuance of e-money (SEMI opt-in), credit union that issues e-money (credit union), credit union that issues e-money and has opted into safeguarding for payment services unrelated to the issuance of e-money (credit union opt-in).

3. If the answer to question 2 was 'no', did the *safeguarding institution* appoint an auditor in accordance with *SUP* 3A.1.3G during the reporting period?

Yes / No

4. If the answer to question 2 or 3 was 'yes', please complete the following table:

Date of last auditor's safeguarding report[2]	Name of audit firm[3]

5. Was the *safeguarding institution* required to safeguard *relevant funds* in accordance with the *relevant funds rules* during the reporting period?

Yes / No

6. If the answer to question 5 was 'yes', please fill out the following table:

Method	Please indicate which method(s) were used during the reporting period (select as many as are relevant)	Please indicate which method was used at the time of the last *internal safeguarding reconciliation* carried out in the reporting period

[2] Put 'N/A' if no safeguarding report has been submitted yet, for example during the first year that a safeguarding institution becomes subject to *SUP* 3A.10.
[3] This should be the full legal name of the firm and not, for example, a trading name.

The *segregation method* only		
The *insurance or guarantee method* only		
A combination of the *segregation method* and the *insurance or guarantee method* at the same time		

7. If the answer to question 5 was 'yes', how many *clients* was the *safeguarding institution* safeguarding *relevant funds* for at the end of the reporting period?

Section 2 – Balances

This section should only be completed if the answer to question 5 was 'yes'

Amount of *relevant funds* safeguarded

8. Highest *safeguarding requirement* during the reporting period

9. Lowest *safeguarding requirement* during the reporting period

10. Did the *safeguarding institution* segregate *funds* in accordance with *CASS* 15.5.18R (agent and distributor segregation) during the reporting period?

If the answer to question 10 was 'yes', please answer questions 11 and 12

11. Highest amount of funds segregated in accordance with *CASS* 15.5.18R (agent and distributor segregation) during the reporting period

12. Lowest amount of funds segregated in accordance with *CASS* 15.5.18R (agent and distributor segregation) during the reporting period

Section 3 – Safeguarding relevant funds

This section should only be completed if the answer to question 5 was 'yes'

Segregated relevant funds

13. If any *relevant funds* were held in accounts in accordance with the *segregation method* during the reporting period, please fill out the following table:

Institution where *relevant funds* were	Type of account (eg, *relevant funds bank account*, acquirer	Number of accounts containing *relevant*	Total amount of *relevant funds* held with the institution at	Fixed term or notice period[10]	Country of incorporation of the institution

[10] Please use 'FT' to indicate a fixed term and 'NP' to indicate a notice period. Please put 'N/A' if the account is not a fixed term account and there is no notice period for making a withdrawal.

held by the *safeguarding institution*[4]	account[5], *payment system* account[6] or Bank of England settlement account[7])[8]	*funds* held with the institution	the end of the reporting period[9]		
Total					

Secure liquid assets

14. If any *relevant assets* were held during the reporting period, please fill out the following table:

Asset[11]	If the asset is of a type referred to in *CASS* 15.6.2G, please indicate which paragraph(s) of Article 114 of the *UK CRR* the asset complies with				Please indicate in this column if the asset is not of a type referred to in *CASS* 15.6.2G
	2 (ECAI credit assessment corresponding to a risk	3 (exposure to the ECB)	4 (exposure to HMG or the Bank of England in sterling)	7 (exposure to a third country government or central bank assigned a risk weight of no	

[4] When filling in the name of the institution use the full legal name and not, for example, a trading name.
[5] Accounts with *acquirers* (see *CASS* 15.5.5R(1)).
[6] Accounts held to participate in or receive funds through a *payment system* (see *CASS* 15.5.5R(2)).
[7] Accounts held at the Bank of England to complete the settlement of transfer orders in a *designated system* (see *CASS* 15.8.12R).
[8] Where *relevant funds* are held in more than one type of account at an institution, a different row should be used for each type of account. A different row should also be used for each fixed term account and each account with a notice period for making a withdrawal.
[9] The figures in this column should reflect the figures used in the last *internal safeguarding reconciliation* carried out in the reporting period.
[11] This includes units in *UCITS*, in which case please indicate which assets the *UCITS* invests in.

	weight of no more than 0%)			more than 0% by equivalent competent authorities)	

15. Please fill out the following table in respect of the *relevant assets* listed in the table in question 14:

Name of custodian[12]	Total value of *relevant assets* held with the custodian at the end of the reporting period[13]
Total	

[*Editor's note*: questions 14 and 15 are subject to amendment following an upcoming consultation on the rules relating to secure, liquid assets.]

Insurance policies and guarantees

[12] When filling in the name of the custodian use the full legal name and not, for example, a trading name.
[13] The figures in this column should reflect the figures used in the last *internal safeguarding reconciliation* carried out in the reporting period.

16. If any *relevant funds* were protected through an insurance policy in accordance with the *insurance or guarantee method* during the reporting period, please fill out the following table:

Name of insurer(s)[14]	Maximum amount of cover provided by the policy	Date of expiry of the insurance policy	Total overdue premiums[15]

17. If any *relevant funds* were protected through a guarantee in accordance with the *insurance or guarantee method* during the reporting period, please fill out the following table:

Name of guarantor(s)[16]	Amount of cover provided by the guarantee	Date of expiry of the guarantee	Total overdue premiums[17]

Section 4 – Safeguarding resource and requirement

[14] When filling in the name of the insurer use the full legal name and not, for example, a trading name. Where more than one policy is held with an insurer, list them separately.
[15] A premium is overdue if it, or part of it, has not been paid in full and the date it is to be paid by has passed. This column should show the total amount of overdue premiums owed to each insurer.
[16] When filling in the name of the guarantor use the full legal name and not, for example, a trading name. Where more than one guarantee is held with a guarantor, list them separately.
[17] A premium is overdue if it, or part of it, has not been paid in full and the date it is to be paid by has passed. This column should show the total amount of overdue premiums owed to each guarantor.

This section should only be completed if the answer to question 5 was 'yes'

18. *Safeguarding resource* from the last *internal safeguarding reconciliation* carried out in the reporting period

19. Please fill out the following table in respect of the components of the *safeguarding resource* referred to in question 18 (see *CASS* 15.12.18R):

Component	Total used in the last *internal safeguarding reconciliation* carried out in the reporting period
Aggregate balance of *funds* held in *relevant funds bank accounts* (less any funds that are not *relevant funds* in an account of a type described in *CASS* 15.8.12R (Relevant funds bank accounts used for participation in a designated payment system))	
Aggregate balance of *relevant funds* received but not yet placed into a *relevant funds bank account*[18]	
Aggregate value of *relevant assets*	
Aggregate value of *relevant funds* protected using the *insurance or guarantee method*	

20. If any client funds were recorded as received but not yet placed into a *relevant funds bank account* in question 19, please fill out the following table:

[18] This should include (see *CASS* 15.12.19G):

- *Funds* held in an account with an *acquirer* in accordance with *CASS* 15.5.5R(1);
- *Funds* held in an account for the sole purpose of enabling the *safeguarding institution* to participate in or receive *funds* through a *payment system* in accordance with *CASS* 15.5.5R(2);
- Cash held in accordance with *CASS* 15.5.15R(1).

Description	Amount held at the end of the reporting period[19]
Funds held in an account with an *acquirer* in accordance with *CASS* 15.5.5R(1)	
Funds held in an account for the sole purpose of enabling the *safeguarding institution* to participate in or receive *funds* through a *payment system* in accordance with *CASS* 15.5.5R(2)	
Cash held in accordance with *CASS* 15.5.15R(1)	

21. *Safeguarding requirement* from the last *internal safeguarding reconciliation* carried out in the reporting period

22. Please fill out the following table in respect of the components of the *safeguarding requirement* referred to in question 21 (see *CASS* 15.12.23R):

Component	Total used in the last *internal safeguarding reconciliation* carried out in the reporting period
Individual safeguarding balances calculated in accordance with *CASS* 15.12.24R, ignoring any negative balances	
Amounts received but unallocated to an individual client under *CASS* 15.2.3R(2) (Allocation of relevant funds receipts)	

[19] The figures in this column should be those used in the last *internal safeguarding reconciliation* carried out in the reporting period

Amounts treated as *relevant funds* under *CASS* 15.2.7R(3) (Unidentified receipts of relevant funds)	
Amounts held as *relevant funds* under *CASS* 15.5.18R (Agent and distributor segregation) or *CASS* 15.5.27R (Prudent segregation)	

23. Excess (+)/shortfall (-) of *safeguarding resource* against *safeguarding requirement* identified at the end of the reporting period[20]

24. Adjustments made to withdraw an excess or rectify a shortfall identified in question 23[21]

Section 5 – Relevant funds deposit resource and requirement

This section should only be completed if the answer to question 5 was 'yes'

25. *Relevant funds deposit resource* from the last *internal safeguarding reconciliation* carried out in the reporting period

26. *Relevant funds deposit requirement* from the last *internal safeguarding reconciliation* carried out in the reporting period

[20] This should reflect the outcome of the last *internal safeguarding reconciliation* carried out in the reporting period. It should show the amount by which the *safeguarding resource* was greater (an excess) or lower (a shortfall) than the *safeguarding requirement*, before any adjustment was made to correct any excess or shortfall. Where an excess or shortfall did not exist, this should be filled out with a '0'.
[21] This is the amount of *funds* added to correct a shortfall, or withdrawn to correct an excess, reported in question 23.

27. Please fill out the following table in respect of the components of the *relevant funds deposit requirement* referred to in question 26 (see *CASS* 15.12.30R):

Component	Total used in the last *internal safeguarding reconciliation* carried out in the reporting period
Individual relevant funds deposit balances	
Amounts received but unallocated to an individual client under *CASS* 15.2.3R(2) (Allocation of relevant funds receipts) and paid into a *relevant funds bank account*	
Amounts treated as *relevant funds* under *CASS* 15.2.7R(3) (Unidentified receipts of relevant funds) and paid into a *relevant funds bank account*	
Amounts held as *relevant funds* under *CASS* 15.5.18R (Agent and distributor segregation) or *CASS* 15.5.27R (Prudent segregation) and paid into a *relevant funds bank account*	
Aggregate value of *relevant assets*	
Aggregate value of *relevant funds* protected using the *insurance or guarantee method*	

28. Excess (+)/shortfall (-) of *relevant funds deposit resource* against *relevant funds deposit requirement* identified at the end of the reporting period[22]

[22] This should reflect the outcome of the last *internal safeguarding reconciliation* carried out in the reporting period. It should show the amount by which the *relevant funds deposit resource* was greater (an excess) or lower (a shortfall) than the *relevant funds deposit requirement*, before any adjustment was made to correct any excess or shortfall. Where an excess or shortfall did not exist, this should be filled out with a '0'.

29. Adjustments made to withdraw an excess or rectify a shortfall identified in question 28[23]

Section 6 – Safeguarding reconciliations

This section should only be completed if the answer to question 5 was 'yes'

30. *Internal safeguarding reconciliations*

Number carried out each business day

31. *External safeguarding reconciliations*

Number carried out each business day

Section 7 – Record Keeping

32. If the table in question 13 and/or 14 was filled out, please fill out the following table:

[23] This is the amount of *funds* added to correct a shortfall, or withdrawn to correct an excess, reported in question 28.

	Number of accounts held at beginning of the reporting period	Number of new accounts opened during the reporting period	Number of accounts closed during the reporting period	Total number of accounts held at the end of the reporting period (A)	Total number of accounts held at the end of the reporting period covered by an *acknowledgement letter* (B)	Explanation of any difference between A and B
Relevant funds bank accounts other than accounts at the Bank of England referred to in *CASS* 15.8.12R						
Relevant assets accounts						

Section 8 – Notifiable CASS Breaches

This section should be completed by all safeguarding institutions

33. Did any of the circumstances referred to in *CASS* 15.12.59R (notification requirements) arise?

Yes / No

34. If yes, did the *safeguarding institution* comply with the notification requirements?

Yes / No

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