

# PS12/20

Financial Services Authority

## Client assets firm classification, oversight, reporting and the mandate rules

Feedback to CP12/15 and made rules



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This Policy Statement reports on the main issues arising from Consultation Paper 12/15 (*Client assets firm classification, oversight, reporting and the mandate rules*) and publishes final rules.

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# Abbreviations used in this paper

<b>AIFMD</b>	Directive 2011/61/EU on Alternative Investment Fund Managers
<b>CASS</b>	FSA's Client Assets sourcebook
<b>CBA</b>	Cost benefit analysis
<b>CF</b>	Controlled Function
<b>CF10a</b>	CASS operational oversight function
<b>CMAR</b>	Client Money and Assets Return
<b>COLL</b>	FSA's Collective Investment Schemes sourcebook
<b>CP</b>	Consultation Paper
<b>CP10/9</b>	Enhancing the Client Assets Sourcebook
<b>CP12/15</b>	Client Assets Firm Classification, Oversight, Reporting and the Mandate Rules
<b>CREST</b>	The central securities depository for the UK
<b>FRNs</b>	Firm reference numbers
<b>GABRIEL</b>	GATHERING Better Regulatory Information ELECTRONICALLY
<b>PS</b>	Policy Statement
<b>PS10/16</b>	Client Assets sourcebook (Enhancements) Instrument 2010
<b>PS11/6</b>	Client Money and Asset Return (CMAR): Operational Implementation
<b>SIF</b>	Significant Influence Function
<b>SYSC</b>	FSA's Senior Management Systems and Controls sourcebook



# 1

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## Overview

### Introduction

- 1.1 In Consultation Paper (CP) 12/15, *Client Assets Firm Classification, Oversight, Reporting and the Mandate Rules*, published in July 2012, we consulted on two different areas of client assets policy: Client Assets Firm Classification, oversight and reporting and the *Mandate Rules*.

### Background

#### CASS firm classification and operational oversight

- 1.2 The CASS firm classification and operational oversight requirements are located in Chapter 1A of the Client Assets sourcebook (CASS 1A).
- 1.3 In Policy Statement (PS) 10/16, *Client Assets Sourcebook (Enhancements) Instrument 2010*, published in October 2010, and PS11/6, *The Client Money and Asset Return (CMAR): Operational Implementation*, published May 2011, we introduced various oversight and reporting requirements for firms that hold client money and/or safe custody assets in accordance with Chapter 6 and 7 of the Client Assets Sourcebook (CASS 6 and CASS 7). This included:
- an annual stratification requirement for firms to categorise themselves as either CASS small, CASS medium or CASS large, depending on their safe custody assets holdings;
  - the requirement for directors or senior managers in these firms to be responsible for CASS oversight and report to the FSA on that oversight;
  - the introduction of a new controlled function for CASS operational oversight (CF10a) applicable to CASS medium and CASS large firms (implemented in October 2011);

- the introduction of the Client Money and Assets Return (CMAR) on GABRIEL (the FSA's online information gathering system) for CASS medium and CASS large firms to report their client money and assets positions for investment business to the FSA on a monthly basis; and
- the requirement for the CF10a-holder in a CASS medium or CASS large firm to be responsible for completing and submitting the CMAR to the FSA.

1.4 In CP12/15, to which this Policy Statement is a response:

- we proposed additional amendments to CASS 1A to address some shortcomings we had identified in the rules and to provide additional clarity to firms on the CASS firm classification and operational oversight requirements;
- we proposed minor changes based on feedback we received on the language and presentation of the CMAR and the CMAR guidance notes; and
- we confirmed that it was not our intention to consult on introducing CMAR requirements for CASS small firms, but to keep this under review.

### **The mandate rules**

- 1.5 In CP12/15, we also proposed to clarify further the scope of the mandate rules contained within Chapter 8 of the Client Assets Sourcebook (CASS 8), in order to prevent the risks and unnecessary costs associated with the current inconsistency of understanding of these rules among firms and their auditors. We did not, however, propose to change the internal controls required by the mandate rules or to change the purpose of the mandate rules.
- 1.6 The final instrument (handbook rules) published in this Policy Statement does not differ significantly from the consultative draft instrument contained in CP12/15.

### **Structure of this Policy Statement**

- 1.7 Each chapter of this Policy Statement summarises the comments we received on questions asked in CP12/15. We provide our response and describe the key changes that we have made to the draft Handbook text that we published in CP12/15.
- 1.8 We have structured this Policy Statement as follows:
- Chapter 2 explains the changes we have made to the handbook rules to further clarify the CASS firm classification and operational oversight requirements;
  - Chapter 3 explains the minor changes we have made to the CMAR and the CMAR guidance notes; and



- Chapter 4 explains the changes we have made to further clarify the scope of the mandate rules.
- 1.9 Chapter 2 (Clarifying the CASS firm classification and operational oversight regime) and Chapter 3 (Changes to the Client Money and Assets Return (CMAR) and guidance) should be read together.
- 1.10 We have provided individual feedback in response to any comments received that were based on an incorrect understanding of rules or policy, and have not included this feedback in the Policy Statement.

### **Cost benefit analysis (CBA)**

- 1.11 We received some comments on the cost benefit analysis, to which we have responded in the relevant sections below. These comments do not, in our opinion, require a change to the CBA published in CP12/15.

### **Firm system updates**

- 1.12 We received some feedback from respondents on the proposed changes to CMAR and the CMAR guidance notes that related to potential costs associated with system updates. While we recognise that some firms may have to undergo some minor system changes, we consider these changes to be minimal and, although they could impose incremental costs on firms, we do not expect they will be significant. The costs associated with CMAR reporting to the FSA are covered in CP10/9 *Enhancing the Client Assets Sourcebook*.
- 1.13 To allow firms sufficient time to adopt any required system changes, we have delayed the application of the CMAR changes and CMAR guidance with the first return under the new rules and guidance due in March 2013, covering the February 2013 reporting period.

### **Minor changes to the instrument in CP12/15**

- 1.14 Based on the feedback received, we have made some minor changes to the handbook rules that were consulted on in CP12/15, by making additional modifications to some of the rules and adding further guidance. We consider these additional changes to be minimal and, although they could impose incremental costs on firms, we do not expect they will be significant.
- 1.15 These changes include:
- some amendments to CASS 8 rules and additional guidance to provide clarity on the application of the rules, the definition of a mandate and the records and internal control requirements; and

- additions to the CMAR guidance to provide clarity on the reporting of client money balances, unreconciled client money items and the reporting of safe custody assets.
- 1.16** The additional CASS 8 guidance on when mandate rules apply are only intended to reinforce the new rules and guidance proposed in CP12/15; these specified that some firms will be exempt from the application of CASS 8 (for example, operators of regulated collective investment schemes when acting as such). This is, in fact, deregulation, which is likely to reduce costs for these firms (or result in no change in costs if they do not apply the rules currently). However, we appreciate that the further clarification could mean some firms not currently applying the rules because of uncertainty over what constitutes a mandate may incur additional costs to begin applying the rules. We do not expect these costs to be significant as firms should already have similar systems and controls in order to comply with record-keeping requirements contained in the FSA's SYSC sourcebook (SYSC) for other regulated business.
- 1.17** We have also made one minor amendment to a rule contained in the records and internal controls section of CASS 8. We discuss this in more detail in Chapter 4 of this Policy Statement.

## Who should read this Policy Statement?

- 1.18** This paper will be of interest to:
- all firms that carry on investment business and/or insurance mediation activities;
  - all firms that have mandates by which they are able to control clients' assets or liabilities;
  - individuals who may have senior management responsibilities in relation to a CASS firm's client money and assets operations; and
  - consumers.

### CONSUMERS

While the policy changes are integral to consumer protection and market confidence, and aim to strengthen the protection provided to the clients of regulated firms, the proposals are most relevant to regulated firms who hold and/or control client money and safe custody assets.

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## Next steps

- 1.19** The made handbook rules in Annex A, Annex B, and Part 1 of Annex C within Appendix 1 will come into force on 1 January 2013. These rules will affect both regulated firms and their auditors.
- 1.20** The technical changes to the CMAR and changes to the CMAR guidance notes in Part 2 of Annex C within Appendix 1 will come into force on 28 February 2013, meaning that they will be visible on all monthly returns starting with the return for the February 2013 reporting period (due 21 March 2013). Firms will be able to preview the amended version of the return for future reporting periods on GABRIEL by late November 2012.

# 2

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## Clarifying the CASS firm classification and operational oversight regime

- 2.1 In Chapter 2 of CP12/15 we proposed a small number of amendments to the provisions set out in CASS 1A to address some shortcomings we had identified in the rules and to provide additional clarity to firms on the CASS firm classification and operational oversight requirements, based on valuable feedback from firms and industry associations.
- 2.2 These amendments will come into force on 1 January 2013.

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

- 2.3 In CP12/15, we asked:

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

- 2.4 The majority of respondents supported this proposal, with some describing it as both 'sensible' and 'appropriate'.
- 2.5 One respondent requested further clarity on how CASS 1A applies in relation to a firm that arranges safeguarding and administration of assets where it is already subject to the requirements as a result of client money or assets that it holds. They also suggested that we provide further guidance on whether the controlling of client money falls into scope of CASS 1A.

- 2.6 Other respondents requested further clarification on what constitutes arranging safeguarding and administration, suggesting that guidance in the Audit Practices Board (APB) Bulletin 2011/2 could be included in the rules to achieve this.

### Our response

Firms categorised as either CASS small, CASS medium or CASS large firms, because of their client money and safe custody assets holdings, will still be subject to the CASS oversight responsibilities of CASS 1A in relation to compliance with the whole of CASS. This includes compliance with CASS 6 in respect of assets for which they arrange safe custody, and compliance with CASS 8 in respect of money and assets they control by mandate.

A firm should seek appropriate advice if it is unsure which regulated activities it is carrying on.

We have therefore implemented this proposal as consulted on.

## CASS firm type effective date

- 2.7 In CP12/15, we asked:

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

- 2.8 The majority of respondents supported these proposals. One respondent commented that the proposals did not cover the situation where a firm during annual stratification would have become a higher CASS firm type based on its projected holdings for the year (perhaps due to an upcoming business acquisition). However, because of the operation of the rules, it must classify itself as a lower CASS firm type, and that lower CASS firm type could then apply for the remainder of the year.
- 2.9 The same respondent also highlighted the fact that the rules are silent as to the approach to be taken by a firm where it experiences a significant reduction in its client money or safe custody assets holdings (perhaps due to a change in business model).

### Our response

We do not intend at this time to introduce further requirements, because that could lead to increased costs for firms. Additionally, while we recognise that a sudden reduction in CASS holdings could lead to a firm needing to report very little CASS data to the FSA (while still needing to submit the CMAR), we consider that in such instances it would be more appropriate for a firm to contact the FSA for individual guidance.

We have therefore implemented this proposal as consulted on.

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## CASS firm type effective date

2.10 In CP12/15, we asked:

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

2.11 The majority of respondents supported this proposal, with some respondents suggesting that we should consider allowing firms to 'opt down' to the lower CASS firm category in exceptional circumstances.

### Our response

The purpose of this proposal was to provide more flexibility to a provision that already exists in the rules. We do, however, recognise that the ability to opt down to a lower firm category could be beneficial to some firms in certain scenarios and would therefore advise that they contact the FSA for individual guidance in these instances. We have therefore implemented this proposal as consulted on.

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## Procedures for becoming a CASS medium or a CASS large firm

2.12 In CP12/15, we asked:

*Q4: Do you agree that a firm which becomes a CASS medium or CASS large firm and is not in the position to allocate the CF10a controlled function immediately must take the necessary steps to meet that requirement as soon as practicable, and submit a CF10 application within 30 business days? If not, why not?*

2.13 The majority of respondents agreed with this proposal, except for one respondent who considered that the 30 business day period may not be sufficient for some firms where they need to recruit such an individual.

2.14 Other respondents raised concerns over the time it would take in some cases for an application to be processed and for CF10a interviews to be conducted, acknowledging that a firm may be acting without a CF10a for a considerable time.

### Our response

We consider the 30 business day period to be appropriate. To comply with this requirement, a firm may choose to appoint the most appropriate individual already present at the firm if it is still recruiting. In most cases, a firm that becomes subject to this requirement for the first time will be a CASS small firm that has become a CASS medium firm. The firm will therefore already have an individual that is responsible for CASS oversight who we would consider to be a likely candidate.

We acknowledge there is the risk that a firm may not have an approved CF10a for a certain period of time while the application is being processed. This risk is mitigated appropriately by our proposal for requiring a director or senior manager SIF-holder (which could include the CF10a candidate) to assume CASS operational compliance responsibilities in the interim.

We have therefore implemented this proposal as consulted on.

2.15 In CP12/15, we asked:

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

- 2.16** In paragraph 2.12 of CP12/15, we proposed that the director or senior manager temporarily allocated this role would be responsible for:
- oversight of the firm's operational compliance with CASS;
  - reporting to the firm's governing body about that oversight; and
  - completing and submitting a CMAR to the FSA.
- 2.17** The majority of respondents agreed with this proposal.
- 2.18** Some respondents expressed the opinion that the individual previously responsible for the CASS oversight of a CASS small firm (in many cases the CF10 compliance oversight) could be the most appropriate delegate.

### **Our response**

We will implement this proposal as consulted on.

- 2.19** The final rules are attached in Appendix 1 and come into force on 1 January 2013.



# 3

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

### Introduction

- 3.1 In Chapter 3 of CP12/15 we proposed to make a small number of minor changes to CMAR and the associated guidance notes, based on valuable feedback we received from firms and industry associations.

### Minor changes to the CMAR

- 3.2 The changes we proposed to CMAR were reasonably minimal and were intended either to amend the text and presentation of some data fields to address any misunderstandings or enable more straightforward reporting, reducing the need for technical workarounds.
- 3.3 In CP12/15, we asked:

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

- 3.4 The majority of respondents supported the proposed changes, with some agreeing that the changes would make it easier for firms to complete the return.

## CMAR section 6 – Segregation of Safe Custody Assets

- 3.5 A large majority of the comments we received related to our proposals to update section 6 of the return, which contains a table concerning safe custody assets.
- 3.6 The reason for the proposed change was to remove the need for some firms to rely on an interim workaround, which currently exists. We put the interim workaround in place to address a technical issue following the introduction of CMAR.
- 3.7 Some respondents had reservations on the proposed changes because of the costs associated with system updates. Some respondents also requested additional time in order to accommodate these changes.
- 3.8 We noticed that many of these particular respondents do not appear to be following the current CMAR guidance in its entirety when completing this data field. For example, where a firm held a particular group of assets in more than one manner (e.g. registered in the name of a firm nominee and deposited with a third party custodian), they only reported one of these methods in this section. Our guidance provided that both methods of holding should be reported, using the interim workaround to ensure that the total value of assets reported for data field 8D is equal to the total reported for data field 25D, therefore complying with the appropriate GABRIEL technical validation rule for these two data fields.

### Our response

Firms that currently follow all of the steps contained in CMAR guidance for section 6 (including the interim workaround) will benefit the most from this change. The change will not necessarily lead to any further information being required now, although a firm will have the ability to provide further detail if it chooses to. The way in which this information is presented in the return will, however, undergo some change.

While we recognise that some firms may have to undergo some minor system changes, we consider these changes will not impose significant incremental costs on firms. The costs associated with CMAR reporting to the FSA are covered in CP10/09.

We also do not consider that such system changes should take a material amount of time to implement. We will therefore implement these changes as consulted on. However, in light of feedback, we have delayed the application the new rules so that the first return to incorporate these changes will be for the February 2013 reporting period (due 21 March 2013).

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## Amendments to the CMAR guidance

3.9 The changes we proposed to the CMAR guidance were aimed at clarifying our expectations of how firms should complete certain data fields. Some parts of the previous CMAR guidance were less explicit and potentially open to misinterpretation. The proposed changes were intended to improve the guidance provided across all data fields and to drive consistency in reporting.

3.10 In CP12/15, we asked:

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

3.11 The majority of respondents supported the proposed changes.

3.12 The key points raised are set out below.

### Standardisation for data fields that require client money balances

3.13 To standardise the approach taken by firms to reporting client money balances, we proposed that the balances reported in the CMAR should (unless otherwise stated) be based on a firm's client money resource taken from the internal reconciliation carried out on the first business day of the next reporting period.

3.14 Many respondents did not agree that this approach was appropriate for all of the data fields within the return. Some respondents referred in particular to the completion of data field 8C, which relates to client money held in relation to a particular business line. The respondents stated that the information used to report these particular client money balances are easier to obtain from a firm's client money requirement than its client money resource.

3.15 Other respondents requested clarification as to whether the balance to be reported for data field 21 (adjustments made to withdraw and excess/rectify a deficit) should be the same as the balance reported for data field 20 (surplus/deficit of client money resource against requirement). The current guidance specifies that the balance for data field 20 should be taken from the internal reconciliation carried out on the reporting period end-date, whereas the guidance for data field 21 specifies the penultimate internal reconciliation of the reporting period.

### Our response

Based on this feedback we have now modified the CMAR guidance to specify that client money balances should be taken from internal records (i.e. internal reconciliations). This therefore means that (other than where specified), a firm is free to report client money balances on the basis of either its client money resource or requirement.

We can also confirm that both of the balances to be reported for data fields 20 and 21 should be taken from the same reconciliation, which will now be the internal reconciliation carried out on the first business day of the next reporting period. If a discrepancy is identified between data field 14 and data field 19, this discrepancy should be included in the balance reported in data field 20 in order for the return to validate. Data field 21 relates to any adjustments made to rectify a discrepancy, and the purpose of the balance reported in data field 21 is to confirm that the discrepancy was appropriately rectified.

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## Section 1 – Business lines

- 3.16** A number of respondents had reservations about the proposed guidance for data field 8A (type of business activity). Many of these respondents considered the guidance to infer that we were requiring a higher level of detail than previously.
- 3.17** Some respondents commented that in order to provide this additional information, firms would have to undergo significant system changes.

### Our response

It is not our intention to require further detail from firms on their business activities if they already consider the level of detail they provide to be appropriate.

We have therefore implemented the changes to guidance for CMAR section 1 as consulted on but with some modifications to the guidance provided for data field 8A, in response to feedback we received.

The final guidance is less prescriptive than that which we consulted on, and gives suggestions as to what a firm might consider to be a reasonably appropriate way of distinguishing between business activities.

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## Section 4 – Internal reconciliation

- 3.18** Some respondents requested further clarity on the guidance provided for these items.
- 3.19** A few respondents raised comments about the guidance proposed for data field 14 (client money requirement). The guidance provides that the balance reported for data field 14 consists of those balances that are also reported for data fields 15 to 18 (unallocated and unidentified client money, uncleared payments and excess cash). The respondents requested further clarity as to why this would be the case. They considered that such balances would

be identified as part of an external reconciliation and not included in the client money requirement calculation (i.e. included in a firm's internal accounting records).

### **Our response**

We do not agree that the balances contained within data fields 15 to 18 would not be included in a firm's internal accounting records. If this were the case then a firm conducting an internal reconciliation will find that it will consistently identify surplus balances that need to be withdrawn from its client bank accounts.

We have implemented the changes to guidance for CMAR section 4 as consulted on, with some minor technical improvements to the guidance in response to feedback we received.

## **Section 5 – Unreconciled client money items**

- 3.20 A number of respondents requested further clarity as to what we consider to be unreconciled client money items identified as part of an internal reconciliation. Many of these respondents took the view that it is more appropriate to report unreconciled items identified as part of an external reconciliation or confirmed that they already follow this approach.

### **Our response**

We have implemented the changes to guidance for CMAR section 5 as consulted on, with some minor amendments to further clarify what the FSA considers to be unreconciled client money items for the purposes of CMAR reporting.

## **Other points**

- 3.21 The other most frequently raised comments fell under the following areas:
- segregation of safe custody assets – further clarity was requested on the reporting of non-dematerialised assets (e.g. bearer notes) physically held by a firm and assets held with numerous third party fund managers;
  - allocated but unclaimed client money and safe custody assets – we were asked what this should include;

- notifiable breaches – we were asked why the guidance appears to be requesting that a firm reports all breaches and not just those that a firm considers to be material;
- firm reference numbers (FRN) – some respondents considered the reporting of FRNs for other third parties to be an additional burden;
- validation rules – we received comments questioning the need for validation rules between data fields 8C and 13C;
- additional system costs – some respondents commented that, to provide some of the additional information referred to by the new guidance, a firm will incur additional system costs; and
- valuation of assets – further clarity was requested in relation to the removal of guidance on asset valuation.

## **Our response**

In light of the respondents' comments on the proposed changes to the CMAR guidance notes, we have amended the guidance notes, which are published in this Policy Statement.

### ***Segregation of safe custody assets***

We have provided further clarity in the CMAR guidance on the appropriate way to report on how non-dematerialised assets (e.g. bearer notes) are held by a firm and also on how assets are deposited with third party fund managers.

### ***Allocated but unclaimed client money and safe custody assets***

We have amended the CMAR guidance to confirm that we do not expect firms to split this information out into separate business lines.

### ***Firm reference numbers***

The guidance requests the FRN, where applicable. Therefore we have not made any changes to guidance in response to this feedback. This information can be easily obtained from the FSA Register where required.

### ***Valuation of assets***

It is not our intention to use the CMAR guidance to prescribe a particular methodology or frequency of valuation for a firm to adopt for assets it holds for its clients. We have therefore implemented the change to CMAR guidance on valuation as consulted on.

However, we do not expect firms to change their current valuation practices if they are satisfied with them, despite the removal of the current CMAR guidance. The previous guidance specified that a firm should use the mark-to-market

value or a consistent mark-to-market methodology when valuing assets. Firms that have found this guidance useful may still continue to rely on it for future valuation practices; particularly as CASS 1A.2.3R (3) requires firms to use a similar methodology to calculate their total value of assets for the purposes of the annual stratification exercise.

In any case, a firm should ensure that its valuation practices allow it to maintain accurate records in accordance with CASS 6.5 (records accounts and reconciliations) and to report the values of the safe custody assets accurately on CMAR.

#### ***Notifiable breaches***

We consider that a firm should report all CASS breaches that have occurred during the relevant reporting period via CMAR. This includes any breaches of the rules requiring notification at CASS 6.5.13R and CASS 7.6.16R.

#### ***Additional system costs***

In making these changes to the guidance notes we have aimed to provide clearer and more helpful guidance to firms while avoiding the imposition of any material additional costs. We believe the changes made to the draft guidance notes clarify what we expect firms to provide in relation to the data fields in CMAR.

Overall, we have implemented the changes to the CMAR guidance as consulted on. However, we have made some minor amendments in response to some of the feedback that we have received.

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- 3.22** The final changes to CMAR and CMAR guidance are attached in Appendix 1 and come into force on 28 February 2013.

# 4

## Clarifying the scope of the mandate rules (CASS 8)

### Introduction

- 4.1 In Chapter 4 of CP12/15, we proposed to clarify further the scope of the mandate rules to bring the Handbook text into line with the FSA's long-held policy intentions, and to prevent the risks and unnecessary costs associated with the current inconsistent understanding among firms and their auditors on the scope of the mandate rules. We did not, however, propose to change the internal controls required by the mandate rules or to change the purpose of the mandate rules.
- 4.2 The purpose of the mandate rules is to reduce the risk of consumer detriment from the misuse of a mandate by a firm carrying on investment business or insurance intermediation.
- 4.3 The clarifications we proposed were aimed at preventing firms from applying the mandate rules in circumstances that are not intended to be in scope (which can give rise to unnecessary costs for firms) or from not applying the mandate rules in all circumstances that are intended to be in scope (which can create risk of consumer detriment).

### Scope

- 4.4 In CP12/15, we asked:

*Q8: Do you agree that the scope of the CASS mandate rules, as expressed in the Handbook at present, should be clarified?*



4.5 The majority of respondents agreed that further clarification should be provided to ensure that the rules can be applied consistently by firms and by auditors of firms that are required to have a CASS audit. Some respondents made some additional observations which we have set out further below.

4.6 In CP12/15, we asked:

*Q9: Do you agree that the draft Instrument appended to this CP will ensure that the scope of the mandate rules is in line with the FSA's policy intentions, as set out above?*

4.7 The majority of respondents agreed that the draft instrument was in line with the FSA's policy intentions; however, several respondents requested further clarification on some areas. We have set out these comments below.

## Application and definition of a mandate

### *Client money/safe custody assets held by a firm*

4.8 One of our proposals was to clarify that the mandate rules do not apply to a firm for client money held by that firm in accordance with CASS 5 or CASS 7, or safe custody assets held by that firm in accordance with CASS 6.

4.9 Respondents requested further clarity on how the rules apply to mandates a firm has for client money it holds in accordance with CASS 5 or CASS 7, for example when using direct debits to receive these monies.

4.10 Many respondents raised further questions on how the mandate rules apply to clients' money or clients' assets a firm holds other than in accordance with CASS 5, CASS 6 or CASS 7 (for example, because of an exemption). Examples provided by respondents included money held under risk transfer, money held under Title Transfer Collateral Arrangements or money held as deposits.

4.11 One respondent requested further clarification on the application of the mandate rules to firms that offer their clients CREST<sup>1</sup> sponsored member accounts.

### Our response

We are clarifying in the guidance that the mandate rules still apply to a firm for a mandate it has (such as a direct debit instruction over a client's bank account) under which it can receive a client's money or assets that it goes on to hold in accordance with CASS 5, CASS 6 or CASS 7.

<sup>1</sup> CREST is the Central Securities Depository of the UK.

We are also clarifying that the definition of ‘mandate’ does not include means by which a firm can control a client’s money or assets held by the firm itself, including where it holds the money or assets other than in accordance with CASS 5, CASS 6 or CASS 7 (for example, because of an exemption in those rules).

If a CREST member firm is acting as a custodian under CASS 6 for a CREST-sponsored member for assets registered with CREST on the sponsored member’s behalf, then the mandate rules would not apply to the CREST member firm in relation to those assets (because CASS 6 applies).

We have implemented the proposal as consulted on. We have also provided some additional guidance in the final Handbook text in response to the feedback we have received, relating to the above points.

### *Definition of a mandate: client consent and further involvement*

- 4.12** We proposed that ‘mandate’ should be defined as any means that give a firm the ability to control a client’s assets or liabilities, which meet certain conditions. One of these conditions is that those means are obtained by the firm from the client, and with the client’s consent. Another condition is that a client’s further involvement is not required for certain types of instructions to be given effect.
- 4.13** Respondents requested further clarity on what would be considered proper client consent. One respondent asked whether the mandate has to be received directly from a client or whether it could also be received through an agent or custodian of a client.
- 4.14** Respondents also requested further clarity on circumstances where a client’s further involvement would be required.

### **Our response**

There are no requirements in the mandate rules concerning the processes by which a firm obtains a mandate. The purpose of including the concept of consent in the definition of mandate is to avoid a situation where the mandate rules apply even though the client has not consented to the firm obtaining the means to controlling his assets or liabilities (and we would not expect a firm to obtain such means in those circumstances). But there is no specific requirement for the firm to be the recipient of the consent directly from the client. For example, if a client has instructed an agent to enable the firm to operate an account, then the condition regarding consent would be fulfilled.

The purpose of including the concept of the client’s further involvement in the definition of ‘mandate’ is to exclude from scope arrangements where the risk of the firm misusing its position is already appropriately mitigated. An example

of this would be where the client's bank requires any instructions for payments issued by the firm to be countersigned or otherwise approved by the client.

We are proceeding with the proposal to clarify the definition of 'mandate' as consulted on, however, with some minor amendments to the Handbook text following feedback received.

### *Operators and depositaries of regulated collective investment schemes*

- 4.15** In CP12/15 we proposed to clarify that the mandate rules do not apply to an operator of a regulated collective investment scheme in relation to activities carried on for the purpose of, or in connection with the scheme. This is because the rules contained within the FSA's Collective Investment Schemes sourcebook (COLL) cover the responsibilities of operators in relation to the regulated collective investment schemes, and also provide for depositaries to keep the actions of operators under review.
- 4.16** Some respondents requested further clarification on the exemption for operators of regulated collective investment schemes, while some other respondents were also of the view that an exemption should also be provided in CASS 8 for depositaries of regulated collective investment schemes.

### **Our response**

Our final rules clarify the exemption for operators of regulated collective investment schemes so that it only applies in relation to property held for or within the scheme. As explained in CP12/15, we consider that the risks in relation to scheme property are adequately addressed by the rules in COLL. However, we are also clarifying in guidance that this is not an absolute exemption. For example, the mandate rules will apply if the operator has a mandate under which it can receive a client's money to be invested in the scheme (such as a direct debit instruction over a client's bank account).

The mandate rules do not apply to a firm in relation to safe custody assets it is holding, or for which the firm is carrying on safeguarding and administration of assets (without arranging) in accordance with CASS 6. A depositary of a regulated collective investment scheme will therefore be outside of scope of the mandate rules to the extent that it is safeguarding and administering scheme property in accordance with CASS 6.

We will therefore implement the proposal which clarifies that the mandate rules do not apply to an operator of a regulated collective investment scheme in relation to property held for or within a scheme. We have made some minor changes to the final Handbook text and have provided some additional guidance in response to feedback we have received.

We intend to give further consideration to the application of the mandate rules to operators and depositaries as part of a planned wider review of the application of CASS for regulated collective investment schemes and the implementation of the Alternative Investment Fund Management Directive (AIFMD).

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### *Arrangements not currently covered by CASS 8*

4.17 We also received suggestions that the following could be included in the definition of a mandate:

- non-written means that give the firm the ability to control a client's assets or liabilities (e.g. where those means are received orally); and
- instructions to open a bank account in the name of a client.

### **Our response**

While we agree that the widening of the definition of a mandate to include these arrangements could have benefits, we only intend at this stage to define the current scope in line with existing policy. We will, however, consider widening the scope of the definition in the future.

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## **Records and internal controls**

- 4.18 One respondent stated that, because the requirements have not previously been expressed with this degree of clarity, some firms may need to amend their processes in order to be fully compliant. Another respondent was under the impression that they would need to undertake documentation reviews to ensure that their current contracts meet all of the conditions in the new definition of mandate.
- 4.19 Some respondents requested further clarity on the scope of the mandate rules for conditions placed by clients in relation to non-discretionary investment decisions.
- 4.20 Respondents expressed concern that the current rules on records and internal controls seem to imply that firms should delete records of mandates that they no longer use in order to maintain 'up-to-date records of mandates a firm has'. Respondents were concerned that such an activity could put a firm in breach of the record-keeping requirements provided by rules in SYSC.
- 4.21 One respondent actually provided the following examples of records that they held that are not prescribed by the rules:

- a list of personnel who are authorised to submit instructions under each client's mandate;
- a copy of the firm's monitoring procedures covering the use of mandates; and
- results of the firm's monitoring processes showing that each instruction issued by the firm using a mandate was made in accordance with that mandate.

### Our response

While we acknowledge that some firms may have to amend their current record-keeping processes in order to comply with the rules as clarified, we consider that the costs of doing so would be immaterial as a firm would already be meeting other record-keeping requirements.

We are not requiring firms to repaper or restructure existing arrangements that do not amount to mandates to be brought in scope of the definition of mandate.

We have added further guidance to the final Handbook text to clarify the distinction between conditions around the use of a mandate and criteria for transactions effected by a firm with or for a client. This guidance is not limited to the context of discretionary investment management.

The requirement to maintain an up-to-date list of mandates should not be seen as a requirement to delete a record where the firm no longer has a mandate. Nor is the list of mandates intended to duplicate any actual mandates (because this could increase the risk of misuse). To address this issue, we have clarified that the requirement is to maintain an up-to-date list of mandates that the firm 'has obtained'. The list should be retained in accordance with the firm's applicable record-keeping requirements and procedures. We consider this change to be insignificant and unlikely to present any additional material costs to firms. It is our view that it could actually result in a saving to firms that currently remove references to mandates that they no longer have from their list. We have therefore implemented the proposal to clarify further the records and controls requirements of the mandate rules as consulted, while also clarifying that a firm should maintain an up-to-date list of mandates that the firm has obtained.

**4.22** The final rules are attached in Appendix 1 and come into force on 1 January 2013.



## Annex 1

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# List of non-confidential respondents

1. Below is a list of non-confidential respondents to those questions from CP12/15 addressed in this Policy Statement.

AJ Bell Securities

Association of Private Client Investment Managers and Stockbrokers (APCIMS)

Aviva UK Life

AXA Wealth

BlackRock

BNY Mellon

Brewin Dolphin Ltd

Capita Life & Pensions Regulated Services Limited

Cofunds

Compliance Management Services Ltd

Ernst & Young

FIL Holdings Ltd

Hargreaves Lansdowne

Institute of Chartered Accountants in England and Wales (ICAEW)

Integrated Financial Arrangements Plc

International Financial Data Services (IFDS)

Investment Managers Association (IMA)

Lloyds Banking Group

Pershing Securities Ltd

PricewaterhouseCoopers LLP (PWC)

RBC Investor Services Trust, UK Branch

Standard Life Savings Ltd

State Street

The Association of Private Client Investment Managers and Stockbrokers (APCIMS)

The Depository and Trustee Association (DATA)

Threesixty Services LLP

UBS AG

2. In addition to the above, there were two confidential responses to the consultation.



## Appendix 1

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# Made rules (legal instrument)

**CLIENT ASSETS SOURCEBOOK (FIRM CLASSIFICATION, OPERATIONAL  
OVERSIGHT, AND MANDATE RULES) INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approved persons);
  - (2) section 138 (General rule-making power);
  - (3) section 139 (Miscellaneous ancillary matters);
  - (4) section 156 (General supplementary powers); and
  - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force as follows:
- (1) Annex A, Annex B, and Part 1 of Annex C of this instrument come into force on 1 January 2013; and
  - (2) Part 2 of Annex C of this instrument comes into force on 28 February 2013.

**Amendments to the Handbook**

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

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

**Citation**

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

By order of the Board  
31 October 2012

**Annex A****Amendments to the Glossary of definitions**

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

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

## Annex B

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

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

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

##### 1A.1 Application

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

...

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

##### 1A.2 CASS firm classification

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

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

...

...

1A.2.5 R ...

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

(a) the election is ~~made by including it in the notice~~ notified to

the *FSA* provided under ~~CASS 1A.2.8R or CASS 1A.2.9R~~ in writing;

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

...

- 1A.2.8 R ~~In relation to the calendar year ending on 31 December 2011, a firm must notify the *FSA* in writing:~~
- (1) ~~by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, if it held *client money* or *safe custody assets* in that previous year; or~~
  - (2) ~~by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* that the firm projects that it will hold during 2011, if it did not hold *client money* or *safe custody assets* in the previous calendar year but at the date of its notification to the *FSA* projects that it will do so in 2011; or~~
  - (3) ~~in any other case, before the date on which the firm begins to hold *client money* or *safe custody assets*, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the firm projects that it will hold during the remainder of 2011; and~~
  - (4) ~~in every case, of its 'CASS firm type' classification. [deleted]~~
- 1A.2.8A R ~~In addition, in relation to the calendar year ending on 31 December 2011, a CASS small firm must by 31 July 2011 notify the *FSA* in writing of:~~
- (1) ~~the highest total amount of *client money* and the highest total value of *safe custody assets* held during the period between 1 January 2011 and 30 June 2011; or~~
  - (2) ~~if it did not hold *client money* or *safe custody assets* in that period, the highest total amount of *client money* and the highest total value of *safe custody assets* that the firm projects, as at the date of its notification to the *FSA* under this rule, it will hold between 1 July 2011 and 31 December 2011. [deleted]~~
- 1A.2.9 R ~~In relation to each calendar year beginning with that which ends on 31 December 2012, a firm must notify the *FSA* in writing: Once every calendar year a firm must notify to the *FSA* in writing the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the day specified in (1) to (4):~~

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

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

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

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

- (1) if the *firm* notifies the *FSA* in accordance with CASS 1A.2.9R(1) or

CASS 1A.2.9R(2), on 1 February following the notification; or

- (2) if the *firm* notifies the *FSA* in accordance with CASS 1A.2.9R(3), on the *day* it begins to hold *client money* or *safe custody assets*; or
- (3) if the *firm* makes an election under CASS 1A.2.5R(1), and provided the conditions in CASS 1A.2.5R(2) are satisfied, on the *day* the notification made under CASS 1A.2.5R(2)(a) states that the election is intended to take effect.

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

### 1A.3 Responsibility for CASS operational oversight

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

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

...

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

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

- (c) completing and submitting the CMAR to the FSA in accordance with SUP 16.14.

...

- 1A.3.3 R (1) Subject to (2), a *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with ~~CASS 1A.3.1R<sub>2</sub>~~ CASS 1A.3.1AR or CASS 1A.3.1CR(2).

...

## 8 Mandates

### 8.1 Application

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

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

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

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

- (1) in relation to *client money* that the *firm* is holding in accordance with CASS 5 or CASS 7 (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with CASS 7.5.2R);  
or
- (2) in relation to *safe custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets (without arranging)* in accordance with CASS 6; or
- (3) in relation to a *client's* assets that the *firm* is holding or has received under an arrangement to which CASS 3 applies; or
- (4) when it acts as the *operator of a regulated collective investment scheme* in relation to property held for or within the *scheme*.

- 8.1.2B G (1) CASS 8.1.2AR is not an absolute exemption, but it excludes the application of the *mandate rules* in relation to *money* or assets that a



firm has received, is holding, or is responsible for (as appropriate and in the circumstances described in CASS 8.1.2AR).

- (2) This means that, for example in respect of CASS 8.1.2AR(1), a firm holding client money in accordance with CASS 5 or CASS 7 does not also need to comply with the mandate rules in relation to the client money which it actually holds, but the mandate rules would apply if the firm has a mandate under which it can receive a client's money from another person in the course of, or in connection with, the activities set out at CASS 8.1.1R(1) and (2).
- (3) Similarly, in respect of CASS 8.1.2AR(4), the mandate rules apply to a firm that is the operator of a regulated collective investment scheme if, for example, it has a mandate under which it can receive a client's money from another person for the purposes of investing it in the scheme.

...

#### Purpose

- 8.1.4 G ~~The mandate rules apply to those firms that control, rather than hold, clients' assets or are able to create liabilities in the name of a client. These rules seek to ensure that~~ require firms to establish and maintain records and internal controls to prevent the misuse of a mandate the authority granted by the client.
- 8.1.4A G The mandate rules only apply to a firm that has a mandate, and do not affect the duties of any other person to whom the firm is able to give the types of instructions referred to in CASS 8.2.1R(4). For example, if a person (A) has accepted a deposit from a client, and a firm (B) has a mandate in respect of that client's deposit held by A, the mandate rules only apply to B, and do not affect the duties of A in relation to the deposit.

#### General

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

~~loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*. [deleted]~~

After CASS 8.1 insert the following new sections. The text is not underlined.

## 8.2 Definition of mandate

- 8.2.1 R A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):
- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
  - (2) they are in written form at the time they are obtained from the *client*;
  - (3) they are retained by the *firm*;
  - (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
    - (a) instructions to another *person* in relation to the *client's* money that is credited to an account maintained by that other *person* for the *client*;
    - (b) instructions to another *person* in relation to any money to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client* money for the *client* in accordance with CASS 5 or CASS 7);
    - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments*);
    - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
  - (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

### Written form

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

together meet the conditions in CASS 8.2.1R.

#### Retention by the firm

- 8.2.3 G (1) If a *firm* receives information that puts it in the position described in CASS 8.2.1R(4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retains it (for example by not destroying the relevant document):
- (a) after it uses it to effect those immediate transactions; or
  - (b) because those transactions are not, for whatever reason, effected immediately.
- (2) If a *firm* receives information that puts it in the position described in CASS 8.2.1R(4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

#### Ability to give instructions to another person

- 8.2.4 G The instructions referred to at CASS 8.2.1R(4) are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with CASS 5, CASS 6 or CASS 7 (for example, because of an exemption in those *rules*).
- 8.2.5 G A *mandate* in relation to the type of instructions referred to in CASS 8.2.1R(4)(a) could include a direct debit instruction over a *client's bank* account in favour of the *firm*.
- 8.2.6 G A *mandate* in relation to the type of instructions referred to in CASS 8.2.1R(4)(d) could include written information that sets out the *client's* credit card details.

#### Conditions on use of mandate and client's further involvement

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

practice, use those means without the *client's* further involvement, then the condition in CASS 8.2.1R(5) would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in CASS 8.2.1R(4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to those instructions.

### 8.3 Records and internal controls

- 8.3.1 R A *firm* that has *mandates* must establish and maintain adequate records and *internal controls* in respect of its use of the *mandates*.
- 8.3.2 R The records and *internal controls* required by CASS 8.3.1R must include:
- (1) an up-to-date list of each *mandate* that the *firm* has obtained, including a record of any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
  - (2) a record of each transaction entered into under each *mandate* that the *firm* has;
  - (3) *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
  - (4) the details of the procedures and *internal controls* around the giving of instructions under the *mandates* that the *firm* has (such instructions being those referred to in CASS 8.2.1R(4)); and
  - (5) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.
- 8.3.3 G A *firm* should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and criteria to which transactions effected by a *firm* with or for a *client* may be subject.
- (1) The requirements in CASS 8.3.2R(1) and CASS 8.3.2R(3) apply only in respect of conditions placed around the *firm's* use of a *mandate* itself or around the instructions described in CASS 8.2.1G(4). Examples of these include conditions under which a *mandate* may only be used by the *firm* in connection with transactions up to a certain value, or under which instructions under a *mandate* may only be given by certain personnel within the *firm*.

- (2) The requirements in *CASS* 8.3.2R(1) and *CASS* 8.3.2R(3) do not apply in respect of criteria which relate to the nature and circumstances of transactions effected by a *firm* with or for a *client*. Examples of those criteria include investment restrictions or exposure limits for a managed portfolio, and required or preferred execution prices or execution venues.

Amend the following as shown.

## 9 Prime brokerage

...

### 9.3 Prime brokerage agreement disclosure annex

...

#### 9.3.2 G ...

- (2) A *prime brokerage firm* should not enter into a “right to use arrangements” for a *client’s safe custody assets* unless:

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

...

are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle* 10...

## 10 CASS resolution pack

### 10.1 Application, purpose and general provisions

...

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

...

## Sch 1 Record keeping requirements

...

Sch  
1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 1A.3.3R	Allocation of the CASS oversight responsibilities in CASS 1A.3.1 R <del>or</del> of the CASS operational oversight function, or of the responsibilities in CASS 1A.3.1CR(2), as relevant	The person to whom the CASS oversight responsibilities have been allocated, subject to the provisions of CASS 1A.3.3R, <del>or</del> to whom the CASS operational oversight function has been allocated in accordance with CASS 1A.3.1AR <sub>2</sub> or to whom the responsibilities in CASS 1A.3.1CR(2) have been allocated	Upon allocation	5 years (from the date the record was made)
...				
CASS <del>8.1.5R</del> 8.3.1R	Adequate records and internal controls in respect of the firm's use of <del>mandates</del> mandates (see CASS 8.1.5R (4) 8.3.2R(1) to CASS 8.1.5R (4) 8.3.2R(5))	Up to date list of firm's <del>authorities</del> mandates and any conditions regarding the use of <del>authorities</del> mandates, all transactions entered into, details of procedures and <del>authorities</del> internal controls for giving and receiving of instructions under <del>authorities</del>	Maintain current full details	Not specified

		<i>mandates</i> , and important <i>client</i> documents held by the <i>firm</i>		
...				

## Sch 2 Notification requirements

Sch  
2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>CASS</i> 1A.2.8R(1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in <i>CASS</i> 1A.2.8R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in <i>CASS</i> 1A.2.8R.	The coming into force of <i>CASS</i> 1A.2.8R	31 January 2011 unless contrary provision is made in <i>CASS</i> 1A.2.8R. [deleted]
<i>CASS</i> 1A.2.8R(4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The coming into force of <i>CASS</i> 1A.2.8R	31 January 2011 unless contrary provision is made in <i>CASS</i> 1A.2.8R. [deleted]
<i>CASS</i> 1A.2.8AR	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in <i>CASS</i> 1A.2.8AR	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in <i>CASS</i> 1A.2.8AR	The need to comply with <i>CASS</i> 1A.2.8AR	31 July 2011 unless contrary provision is made in <i>CASS</i> 1A.2.8AR [deleted]

CASS 1A.2.9R(1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9R.	The need to comply with CASS 1A.2.9R(1) - (3)	<del>Within 15 <i>business days</i> from the end of December of the previous calendar year</del> <u>By the <i>fifteenth business day</i> of January</u> unless contrary provision is made in CASS 1A.2.9R
CASS 1A.2.9R(4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The need to comply with CASS 1A.2.9R(4)	<del>Within 15 <i>business days</i> from the end of December of the previous calendar year</del> unless contrary provision is made in <del>CASS 1A.2.9R</del> <u>At the same time the <i>firm</i> makes the notification under CASS 1A.2.9R(1), (2) or (3)</u>
CASS 1A.3.2R	<del>The <i>person</i> to whom the responsibilities in CASS 1A.3.1R have been allocated</del>	<del>The name of the <i>person</i></del>	Upon allocation	Until 31 January 2011 [deleted]
...				



## Annex C

## Amendments to the Supervision manual (SUP)

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

## Part 1: Comes into force on 1 January 2013

## 16 Reporting requirements

...

## 16.14 Client money and asset return

...

## Report

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

arranging safeguarding and administration of assets in accordance with CASS 6; and

- (3) any client money or safe custody assets in respect of which the firm merely has a mandate in accordance with CASS 8.

...

**Part 2: Comes into force on 28 February 2013**

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

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

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

*Client Money and Asset Return* - SUP 16 Annex 29R

*see next page*

**Client Money & Asset Return**

Section 1 - Firm Information

*This section should be completed by all firms*

- 1 Name of CASS audit firm A
- 2 Name of CASS audit firm (if other was selected above)
- 3 Did the firm hold client money during the reporting period?
- 4 Did the firm safeguard and administer safe custody assets during the reporting period?
- 5 Was the firm subject to the CFTC Part 30 Exemption Order during the reporting period?
- Alternative Approach
- 6 Did the firm operate the alternative approach during the reporting period? (CASS 7.4.14G - 7.4.16G)
- 7 Has the alternative approach been signed off by the firm's auditors (as detailed in CASS 7.4.14G - 7.4.16G)?

Overview of firm's activities subject to CASS

*Please complete the table below with all business types undertaken for segregated clients*

	A Type of business activity	B Number of clients	C Balance of client money	D Value of safe custody assets as at reporting period end date
8				
		Total		

Section 2 - Balances

*This section should be completed by all firms*

- 9 Highest client money balance held during the reporting period A
- 10 Lowest client money balance held during the reporting period
- 11 Highest value of safe custody assets held during the reporting period
- 12 Lowest value of safe custody assets held during the reporting period

Section 3 - Segregation of client money

This section should only be completed if the answer to question 3A is "Yes"

		A	B	C	D	E
13		Type	Institution where client money held	Client money balances	Country of incorporation of the institution	Is this a group entity
Total						

Section 4 - Client money requirement and resources

This section should only be completed if the answer to question 3A is "Yes"

		A
14	Client money requirement	
of which:		
15	Unallocated to individual clients but identified as client money	
16	Unidentified client money in client bank accounts	
17	Uncleared payments e.g. unrepresented cheques sent to clients	
18	Excess cash in segregated accounts	
19	Client money resource	
20	Surplus (+)/deficit (-) of client money resource against client money requirement.	
21	Adjustments made to withdraw an excess or rectify a deficit identified as a result of an internal reconciliation	

Section 5 - Client money reconciliations

This section should only be completed if the answer to question 3A is "Yes"

		A
		Frequency
22	Client money internal reconciliation	
23	Client money external reconciliation	

  

		A	B	C	D
		6-29 days	30-59 days	60-90 days	90+ days
24	Client money unreconciled items				



Notifiable CASS Breaches

*This section should be completed by all firms*

- 31 Did the firm fail to comply with the requirements in any of CASS 6.5.1R, 6.5.2R, 6.5.6R and 6.5.10R? A
- 32 If yes, was a notification made to the FSA?
- 33 Did the firm failed to comply with the requirements in any of CASS 7.6.1R, 7.6.2R, 7.6.9R, 7.6.13R to 7.6.15?
- 34 If yes, was a notification made to the FSA?

Section 9 - Outsourcing & Offshoring

*This section should be completed by all firms*

	A	B	C	D
35	Who do you outsource and/or offshore your client money and/or custody asset operations to? (name of entity)	What function of your CASS operations do you outsource and/or offshore?	Location of service provider	Significant changes being made or planned to existing arrangements

Amend the following as shown.

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

### Client Money and Asset Return (CMAR)

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

#### General

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

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

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

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

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

#### Reporting Period

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

#### Valuation

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

- ~~(a) if it has the previous *day*’s mark-to-market value of the *safe custody asset* in question, use that value; or~~

(b) ~~if it does not have the previous day's mark to market value, calculate the value of that asset using the most recent mark to market value that it does have; and~~

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

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

### **Reporting Client Money Balances using internal reconciliations**

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

Where this data item requires a firm to report any client money balances, unless otherwise specified the firm should report on the basis of balances used for its internal reconciliation carried out on the first business day following the reporting period in question. This means using the values contained in the firm's accounting records, for example its cash book, rather than values contained in statements received from its banks and other third parties.

### **Currency**

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

### **Section 1 Firm information**

1 Name of CASS audit firm

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

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

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

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

A firm should state "Yes" or "No".



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

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

A *firm* should state “Yes” or “No”.

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

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

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

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

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

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

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

- 8A Type of business activity

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

In completing this data field a *firm* should use a separate row to distinguish between each type of business activity or service to which *CASS 6* or *CASS 7* applies, in a way that the *firm* considers reasonably appropriate.

The rows do not necessarily need to distinguish between *regulated activities* or *client categories*, and could for example reflect the distinctions between business lines that a *firm* makes in its internal management reporting or published accounts, or the different business units within the *firm*.

Where possible a *firm* should also identify, as a separate single business activity, any allocated but unclaimed *client money* or *safe custody assets* held by the *firm* which the *firm* continues to treat as such. This would include, for example, *client money*

balances or *safe custody assets* held in respect of *clients* whom the *firm* is no longer able to contact. The *firm* should only use one row in this data field for this purpose (so the amounts stated in that row would reflect the aggregate of allocated but unclaimed *client money* or *safe custody assets* across all its relevant business activities or services).

8B Number of *clients*

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

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

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

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

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

Paragraph 8A describes how allocated but unclaimed *client money* should, where possible, be identified as a separate business activity in its own row (together with allocated but unclaimed *safe custody assets*). The balance shown in that row may also include any balance that is included in data field 17.

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

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

Paragraph 8A describes how allocated but unclaimed *safe custody assets* should, where possible, be identified as a separate business activity in its own row (together with allocated but unclaimed *client money*).

## Section 2 Balances

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

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

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

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

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

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

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

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

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

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

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

### Section 3 Segregation of client money

- 13A Type

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

- 13B Institution where *client money* held

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

- 13C *Client money* balances

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

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

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

The balance shown in that row may also include any balance that is included in data field 17.

13D Country of incorporation of the institution

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

13E Group entity

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

**Section 4 Client money requirement and resource**

14 *Client money* requirement

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

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

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

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

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

A *firm* should report the amount of unallocated *client money* that it holds. Examples of this might include a *client* entitlement as described in CASS 7.4.27G or *money* received into a *client bank account* that has not yet been allocated to an individual *client*. A *firm* may be unable to allocate *client money* to an individual *client* on initial receipt of that *money* because of differences in trading hours, late journal adjustments or a failure by a third party to mark *money* (such as a dividend payment) that it sends to the *firm* as being for the account of the *client* in question.

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

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

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

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

18 Excess cash in segregated accounts

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

19 *Client money* resource

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

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

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

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

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

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

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

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

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

Data fields 15-18 relate to *client money* balances identified in a *firm*'s accounting records, for example its cash book, that form part of the *client money* requirement reported in data field 14. Data fields 15-18 will not equal the *client money* requirement reported in data field 14 unless the balances reported for data fields 15-18 include all balances that are allocated to individual *clients*.

## Section 5 Client money reconciliations

- 22 *Client money* internal reconciliation

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

- 23 *Client money* external reconciliation

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

- 24 *Client money* unreconciled items

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

For the purposes of this data field, the number of unreconciled *client money* items refers to the number of individual discrepancies/breaks identified as part of a *firm's* internal and external reconciliations which have remained unresolved for period of 6 calendar *days* or more. For the purposes of this data field unreconciled items should include any unresolved differences that have not yet been allocated to individual *clients* and any unidentified *client money* balances, but should not include items that were in fact reconciled by taking into account timing differences between a *firm's* own accounting records (e.g. cash book entries) and *client bank account* statements.

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

A *firm* should also report the balances of these individual unreconciled items as appropriate in data fields 15 and 16.

## Section 6 Segregation of safe custody assets

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

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

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

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

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

For each group of *safe custody assets* that a *firm* (in carrying on the *regulated activity of safeguarding and administering investments*) held at the reporting period end date, the *firm* should identify the method of registration it used in accordance with *CASS*

6.2.3R, by specifying one of the following categories of *person* in whose name legal title to the *safe custody assets* were registered during the reporting period:

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

Firms that registered the legal title to *safe custody assets* in joint names should select option (a) if one of those names is the *client's* name. If none of those names are the *client's* name then the *firm* should select an option that corresponds to any one of those named *persons*.

In relation to *safe custody assets* that a *firm* held in its physical possession and for which the *firm* did not register legal title (for example bearer notes), the *firm* should select option (b).

#### 25B Name of institution where held

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

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

In relation to any dematerialised *safe custody assets* which a *firm* held as the sole *custodian* the *firm* should report the name of the central securities depository where the *safe custody assets* were deposited, for example CREST, Euroclear, etc. and should select 'deposited with any other third party' when completing data field 25G.

#### 25C Number of lines of stock

In relation to each *nominee company* or third party institution identified in 25B combination of registration and holding method identified in 25A and 25G, a *firm* should report the total number of lines of stock being *safe custody assets* that the *firm* held at the reporting period end date to which in the case of a *nominee company* legal title has been registered and recorded in its name and in any other case which it has



~~deposited with a third party institution.~~ As a *firm* is only being asked to enter the total number of lines of stock in relation to each identified institution, it is not expected to identify separately *safe custody assets* belonging to an individual *client*.

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

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

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

25E Country of incorporation of the institution

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

25F Group entity

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

25G Where held

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

- (a) held in the *firm's* physical possession (for example any non-dematerialised assets such as bearer notes);
- (b) deposited with a third party *custodian* (this may include any third party that has responsibility to the *firm* for the *safe custody assets*, such as a sub-custodian or a fund manager);
- (c) deposited with a third party exchange;
- (d) deposited with a third party *clearing house*;
- (e) deposited with a third party intermediary; or
- (f) deposited with any other third party (where none of the above options adequately describe how the *safe custody assets* are held).

In relation to any dematerialised *safe custody assets* which a *firm* held as the sole *custodian* the *firm* should select option (f) and report the name of the central securities depository where the *safe custody assets* were deposited, for example CREST, Euroclear, etc. when completing data field 25B.

## Section 7 Safe Custody Assets Reconciliations

### 26 *Safe custody assets* unreconciled items

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

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

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

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

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

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

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

~~(b) — items which have remained unreconciled for 91 *days* or more.~~

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

### 27A Method

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

### 27B Frequency

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

### 27C Type of *safe custody asset*

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

## Section 8 Record keeping and breaches

### 28 Client bank account

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

### 28F Explanation of discrepancies

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

### 29 Client transaction account

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

### 29F Explanation of discrepancies

A firm should provide a brief explanation where there is a difference between the number of client transaction accounts reported for 29D and the number of trust/acknowledgement letters to cover these accounts reported for 29E (see CASS 7.8.2R).

### 31 Has the firm complied with the requirements in Did the firm fail to comply with any of the requirements set out in CASS 6.5.1R, CASS 6.5.2R, and CASS 6.5.6R and CASS 6.5.10R?

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

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

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

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

If a firm, having carried out a reconciliation, has not complied with or is unable in any material respect to comply with CASS 6.5.10R, it should record that fact in this data field. CASS 6.5.10R provides that a firm must promptly correct any discrepancies which are revealed in the reconciliations envisaged by CASS 6.5, and make good, or

~~provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Section 9 Outsourcing and offshoring

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

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

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

A *firm* should state either:

- (a) the full name of the legal entity that business has been outsourced to;  
or
- (b) if the business is offshored, the name of the *firm* itself.

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

Validation

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



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