

## Chapter 11

# Debt management client money chapter



## 11.1 Application

**11.1.1** **R** This chapter (the *debt management client money chapter*) applies to a CASS *debt management firm* that receives or holds *client money* as set out in this chapter.

**11.1.2** **G** The requirements imposed on a CASS *debt management firm* that holds *client money* vary depending on whether a *firm* is classified as a CASS *small debt management firm* or a CASS *large debt management firm* in **■ CASS 11.2.3 R** (CASS *debt management firm* types). **■ CASS 11.1.4 R** to **■ CASS 11.1.6 R** indicate which rules in the *debt management client money chapter* apply to which category of *firm*.

**11.1.3** **G** The *debt management client money chapter* applies (to the extent indicated by **■ CASS 11.1.4 R** to **■ CASS 11.1.6 R**) to a CASS *debt management firm*, even if at the date of the determination or, as the case may be, the notification, referred to in **■ CASS 11.2.4 R**, the CASS *debt management firm* is not holding *client money*, provided that:

- (1) it held *client money* in the previous calendar year; or
- (2) it projects to hold *client money* in the current calendar year.

### Application to CASS small debt management firms

**11.1.4** **R** Subject to **■ CASS 11.1.6 R**, only the rules and guidance in the *debt management client money chapter* listed in the table below apply to CASS *small debt management firms*.

Reference	Rule
CASS 11.1.1 R to CASS 11.1.4 R and CASS 11.1.6 R	Application
CASS 11.2.1 R to CASS 11.2.9 G	Firm classification
CASS 11.3.1 R to CASS 11.3.2 R and CASS 11.3.6 R	Responsibility for CASS operational oversight
CASS 11.4.1 G to CASS 11.4.4 G	Definition of client money and discharge of fiduciary duty
CASS 11.5.1 R and CASS 11.5.2 R	Organisational requirements
CASS 11.6.1 R and CASS 11.6.2 G	Statutory trust
CASS 11.7.1 G and CASS 11.7.5 G	Selecting an approved bank at which to hold client money

Reference	Rule
CASS 11.8.1 G to CASS 11.8.13 R	Client bank account acknowledgement letters
CASS 11.9.1 R to CASS 11.9.13 G	Segregation and the operation of client money accounts
CASS 11.10.1 R to CASS 11.10.7 G	Payments to creditors
CASS 11.11.1 R to CASS 11.11.12 R , CASS 11.11.30 R and CASS 11.11.32 G	Records, accounts and reconciliations
CASS 11.12.1 G to CASS 11.12.7 R	CASS 11 resolution pack
CASS 11.13.1 R to CASS 11.13.14 R	Client money distribution in the event of a failure of a firm or approved bank

### Application to CASS large debt management firms

- 11.1.5 **R** Subject to **■** CASS 11.1.6 R, the rules and guidance in the *debt management client money chapter* apply to *CASS large debt management firms*, except where indicated otherwise in the relevant rule.

### Solicitors

- 11.1.6 **R**
- (1) An *authorised professional firm* regulated by the Law Society of England and Wales, the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the following rules of its *designated professional body*, must comply with those rules and, if it does so, it will be deemed to comply with the *debt management client money chapter*.
  - (2) The relevant rules are:
    - (a) if the *firm* is regulated by the Law Society of England and Wales, the SRA Accounts Rules 2011;
    - (b) if the *firm* is regulated by the Law Society of Scotland, the Law Society of Scotland Practice Rules 2011; and
    - (c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.



## 11.2 Firm classification

- 11.2.1** **R** (1) A *CASS debt management firm* must, once every year and by the time it is required to make a notification in accordance with **■ CASS 11.2.4 R**, determine whether it is a *CASS large debt management firm* or a *CASS small debt management firm* according to the amount of *client money* which it held during the previous year or, if it did not hold *client money* during the previous year, according to the amount of *client money* it projects to hold in the following year, in each case using the limits set out in the table in **■ CASS 11.2.3 R**.
- (2) For the purpose of determining its '*CASS debt management firm type*' in accordance with **■ CASS 11.2.3 R**, a *CASS debt management firm* must:
- (a) if it currently holds *client money*, calculate the highest total amount of *client money* held during the previous calendar year ending on 31 December and use that figure to determine its '*CASS debt management firm type*';
  - (b) if it did not hold *client money* in the previous calendar year but projects that it will do so in the current calendar year, calculate the highest total amount of *client money* that it projects that it will hold during that year and use that figure to determine its '*CASS debt management firm type*'.

**11.2.2** **R** For the purpose of calculating the value of the total amounts of *client money* that it holds on any given *day* during a calendar year (in complying with **■ CASS 11.2.1 R**) a *CASS debt management firm* must base its calculation on accurate internal records of *client money* holdings. A *CASS large debt management firm* must do this using the internal reconciliations performed during the previous year that are prescribed in **■ CASS 11.11.13 R**. A *CASS small debt management firm* must use the records used in carrying out checks required of it under **■ CASS 11.11.8 R**.

**11.2.3** **R** CASS debt management firm types

CASS debt management firm type	Highest total amount of <i>client money</i> held during the <i>CASS debt management firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year
<i>CASS large debt management firm</i>	An amount equal to or greater than £1 million
<i>CASS small debt management firm</i>	Less than £1 million

**Notification**

- 11.2.4 **R** Once every calendar year, a *CASS debt management firm* must notify the *FCA*, in writing, of the information in (1), (2) or (3), as applicable, and the information in (4), in each case no later than the *day* specified in (1) to (4):
- (1) if it held *client money* in the previous calendar year, the highest total amount of *client money* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
  - (2) if it did not hold *client money* 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* 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, the highest total amount of *client money* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money*; and
  - (4) in every case, of its '*CASS debt management firm type*' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).

- 11.2.5 **R** For the purpose of the annual notification in **■ CASS 11.2.4 R**, a *CASS debt management firm* must apply the calculation *rule* in **■ CASS 11.2.2 R**.

**Option to be treated as a CASS large debt management firm**

- 11.2.6 **G** **■ CASS 11.2.7 R** provides a *CASS debt management firm* with the ability to opt in to a higher category of '*CASS debt management firm type*'. This may be useful for a *CASS debt management firm* whose holding of *client money* is near the upper categorisation limit for a *CASS small debt management firm*.

- 11.2.7 **R**
- (1) Notwithstanding **■ CASS 11.2.3 R**, provided that the conditions in (2) are satisfied, a *CASS debt management firm* that would otherwise be classified as a *CASS small debt management firm* under the limits provided for in **■ CASS 11.2.3 R** may elect to be treated as a *CASS large debt management firm*.
  - (2) The conditions to which (1) refers are that in either case:
    - (a) the election is notified to the *FCA* in writing;
    - (b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and
    - (c) the *FCA* has not objected.

**Effective date of firm type**

- 11.2.8 **R** A *firm's* '*CASS debt management firm type*' and any change to it takes effect:

- (1) if the *firm* notifies the *FCA* in accordance with ■ CASS 11.2.4 R (1) or ■ CASS 11.2.4 R (2), on 1 February following the notification; or
- (2) if the *firm* notifies the *FCA* in accordance with ■ CASS 11.2.4 R (3), on the *day* it begins to hold client money; or
- (3) if the *firm* makes an election under ■ CASS 11.2.7 R and provided the conditions in ■ CASS 11.2.7 R (2) are satisfied, on the *day* the notification made under ■ CASS 11.2.7 R (2)(a) states that the election is intended to take effect.

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**G** Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Debt Management Client Assets Firm Classification".



## 11.3 Responsibility for CASS operational oversight

### CASS small debt management firm other than a not-for-profit debt advice body

- 11.3.1** **R** (1) A CASS small debt management firm, other than a not-for-profit debt advice body, must allocate to a director or senior manager responsibility for:
- (a) oversight of the firm's operational compliance with ■ CASS 11;
  - (b) reporting to the firm's governing body in respect of that oversight; and
  - (c) completing and submitting a CCR005 return in accordance with ■ SUP 16.12.29CR.
- (2) A firm that is not an SMCR firm must make the allocation in (1) to a director or senior manager approved to perform a significant influence function in relation to that firm.

- 11.3.1A** **G** ■ CASS 11.3.3G(5) to (11) also apply to a CASS small debt management firm that is an SMCR firm and the function in ■ CASS 11.3.1R. However:
- (1) the function in ■ CASS 11.3.1R is not a separate FCA certification function; and
  - (2) the person performing that function will not necessarily be subject to the employee certification regime described in ■ SYSC 27 (Senior managers and certification regime: Certification regime).

### CASS small debt management firm that is a not-for-profit debt advice body

- 11.3.2** **R** A CASS small debt management firm that is a not-for-profit debt advice body must allocate to a director or senior manager:
- (1) oversight of the firm's operational compliance with ■ CASS 11;
  - (2) reporting to the firm's governing body in respect of that oversight; and
  - (3) completing and submitting a CCR005 return in accordance with ■ SUP 16.12.29C R.

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**CASS large debt management firm: the CASS operational oversight function (CF10a)**

- (1) ■ CASS 11.3.4R describes the *FCA controlled function* known as the *CASS operational oversight function (CF10a)* in relation to *CASS large debt management firms*, including *not-for-profit debt advice bodies*.
- (2) As a consequence of ■ CASS 11.3.4R (in conjunction with ■ SUP 10A.4.1R and ■ SUP 10A.7.10R), in a *CASS large debt management firm* (including a *not-for-profit debt advice body* fitting into that category) the function described in ■ CASS 11.3.4R is required to be discharged by a *director or senior manager*.
- (3) In the case of a *firm* that is not an *SMCR firm*, the *director or senior manager* in (2) should be an *approved person* under the *approved persons* regime provided for in ■ SUP 10A (FCA Approved Persons).
- (4) However, the *CASS operational oversight function* does not apply to an *SMCR firm*.
- (4A) For an *SMCR firm*, the function in ■ CASS 11.3.4R is not a separate *controlled function* and performing that function does not require approval as an *approved person*. Paragraphs (5) to (11) describe how ■ CASS 11.3.4R applies to such *firms*.
- (4B) There are three elements of the regime for *SMCR firms* that are particularly relevant to ■ CASS 11.3, although they do not all apply to all *SMCR firms*:
  - (a) a *firm's* obligation to allocate certain responsibilities to its *SMF managers* (see ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities));
  - (b) a *firm's* obligation to ensure that one or more of its *SMF managers* have overall responsibility for each of its activities, business areas and management functions (see ■ SYSC 26 (Senior managers and certification regime: Overall and local responsibility)); and
  - (c) the certification regime (see ■ SYSC 27 (Senior managers and certification regime: Certification regime)).
- (5) Paragraphs (6) to (9) explain how ■ CASS 11.3.4R applies to an *SMCR firm* to which ■ SYSC 24 and ■ SYSC 26 apply.
- (6) The *SMCR firm* must allocate responsibility for the *firm's* compliance with CASS to one of its *SMF managers* (see ■ SYSC 24.2.1R). That responsibility is an "*FCA-prescribed senior management responsibility*". The full list of *FCA-prescribed senior management responsibilities* is in the table in ■ SYSC 24.2.6R.
- (7) Although the CASS function in ■ SYSC 24.2.1R is different from the function in ■ CASS 11.3.4R, the *SMCR firm* may allocate the function in ■ CASS 11.3.4R to the *SMF manager* in (6).
- (8) The *SMCR firm* may allocate the *CASS FCA-prescribed senior management responsibility* described in (6) to an *SMF manager* who does not perform any other function coming within the *FCA* regime for *SMF managers* in *SMCR firms*. See ■ SUP 10C.7 (Other overall

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responsibility function (SMF18)) and ■ SUP 10C.8.1R (Other local responsibility function (SMF22)) for details.

- (9) The *SMCR firm* may choose to allocate the function in ■ CASS 11.3.4R to someone who is not an *approved person* and *SMF manager*. If so:
  - (a) that *person* will be subject to the employee certification regime described in ■ SYSC 27 (Senior managers and certification regime: Certification regime);
  - (b) that *person* will be subject to supervision by the *SMF manager* in (6); and
  - (c) the function in ■ CASS 11.3.4R will be the *CASS oversight FCA certification function* in ■ SYSC 27.8.1R.
- (10) In relation to an *SMCR firm* to which ■ SYSC 24 applies but ■ SYSC 26 does not apply the *guidance* in paragraphs (6), (7) and (9) applies, but the *guidance* in paragraph (8) does not apply.
- (11)
  - (a) The position of an *SMCR firm* to which neither ■ SYSC 24 nor ■ SYSC 26 apply is slightly different.
  - (b) The *firm* may choose to allocate the function in ■ CASS 11.3.4R to an *SMF manager*.
  - (c) The *firm* may instead choose to allocate the *CASS function* to someone who is not an *SMF manager*.
  - (d) Where (c) applies, the *person* performing the function in ■ CASS 11.3.4R will fall into the certification regime. The function in ■ CASS 1A.3.1AR will be the *CASS oversight FCA certification function* in ■ SYSC 27.8.1R.

#### 11.3.4

**R** A *CASS large debt management firm* must allocate to a *director* or *senior manager* the function of:

- (1) oversight of the operational effectiveness of that *CASS debt management firm's* systems and controls that are designed to achieve compliance with ■ CASS 11;
- (2) reporting to the *CASS debt management firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return to the *FCA* in accordance with ■ SUP 16.12.29C R.

#### 11.3.5

**R** If, at the time a *CASS debt management firm* that is not an *SMCR firm* becomes a *CASS large debt management firm* in accordance with ■ CASS 11.2.8 R, the *firm* is not able to comply with ■ CASS 11.3.4 R 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 11.3.4 R 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 large debt management firm*; and

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- (2) until such time as it is able to comply with ■ CASS 11.3.4 R, allocate to a *director or senior manager* performing a *significant-influence function* responsibility for:
  - (a) oversight of the *firm's* operational compliance with ■ CASS 11;
  - (b) reporting to the *firm's governing body* in respect of that oversight; and
  - (c) completing and submitting a CCR005 return to the *FCA* in accordance with ■ SUP 16.12.29C R.
- (1) ■ CASS 11.3.5R provides a grace period for a *firm* that is not an *SMCR firm* to apply for someone to be approved to perform the *CASS operational oversight function*.
- (2) There is no equivalent to ■ CASS 11.3.5R for an *SMCR firm*, because a *person* does not need specific *FCA* approval before carrying out the function. This is explained in (3) to (5), below.
- (3) As explained in ■ CASS 11.3.3G, the function in ■ CASS 11.3.5R is not, by itself, a *controlled function*.
- (4) Therefore, if an *approved person* is to perform the function for an *SMCR firm*, it can be allocated to any *director or senior manager* who is already an *approved person* who is suitable to carry it out. However, if the *firm* wishes to allocate the function to someone as described in ■ CASS 11.3.3G(8), it will need to get *FCA* approval before the *firm* appoints them.
- (5) If the function is to be carried out by a *certification employee*:
  - (a) *FCA* approval is not needed because performance of a role that falls into the certification regime does not require *FCA* approval;
  - (b) the *firm* should:
    - (i) either issue them with a certificate under ■ SYSC 27 (Senior managers and certification regime: Certification regime) before the *firm* becomes a *CASS large debt management firm*; or
    - (ii) give the function to a suitable *approved person* pending issue of the certificate.

**Record of responsibility for CASS operational oversight**

11.3.6

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- (1) Subject to (2), a *CASS debt management firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with, as applicable, ■ CASS 11.3.1 R, ■ CASS 11.3.2 R, and ■ CASS 11.3.4 R.
- (2) A *CASS small debt management firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
- (3) A *CASS debt management firm* must ensure that a record made under this rule is retained for a period of five years after it is made.

## 11.4 Definition of client money and the discharge of fiduciary duty

**11.4.1** **G** ■ CASS 11 provides important safeguards for the protection of *client money* held by CASS debt management firms that sit alongside the fiduciary duty owed by firms in relation to *client money*. ■ CASS 11.4.2 R to ■ CASS 11.4.4 G provide *guidance* and *rules* for when *money* ceases to be *client money* for the purposes of both those rules and of the fiduciary duty which CASS debt management firms owe to *clients* in relation to *client money*.

**11.4.2** **R** *Money* ceases to be *client money* if:

- (1) it is paid to the *client*, or a duly authorised representative of the *client*; or
- (2) it is:
  - (a) paid to a third party on the instruction of the *client*, or with the specific consent of the *client*; or
  - (b) paid to a third party further to an obligation on the *firm* under any applicable law; or
- (3) it is paid into an account of the *client* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *client*;
- (4) it is due and payable to the *firm* for its own account;
- (5) it is paid to the *firm* as an excess in the *client bank account* (see ■ CASS 11.11.12 R (2) and ■ CASS 11.11.23 R (3)).

**11.4.3** **R** When a CASS debt management firm draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid.

**11.4.4** **G** *Money* is not *client money* when it is properly due and payable to the *firm* for its own account. The circumstances in which *money* may become due and payable to the *firm* could include when fees have become due and payable from the *client* to the *firm* under the agreement between the *client* and the *firm*.

## 11.5 Organisational requirements

- 11.5.1 **R** A CASS debt management firm must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.
- 11.5.2 **R** A CASS debt management firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

## 11.6 Statutory trust

11.6.1 **R** A CASS debt management firm receives and holds client money as trustee on the following terms:

- (1) for the purposes and on the terms of the *debt management client money rules* and the *debt management client money distribution rules*;
- (2) subject to (3), for the *clients* for whom that *money* is held, according to their respective interests in it;
- (3) on *failure* of the CASS debt management firm, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
- (4) after all valid claims and costs under (2) and (3) have been met, for the CASS debt management firm itself.

11.6.2 **G** Section 137B(1) of the Act provides that rules may make provisions which result in *client money* being held by a *firm* on trust. ■ CASS 11.6.1 R creates such a rule in relation to *client money* held by a CASS debt management firm. The consequence of this rule is there is a fiduciary relationship between a CASS debt management firm and its *client*, under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the CASS debt management firm, costs relating to the distribution of *client money* may have to be borne by the trust.



## 11.7 Selecting an approved bank at which to hold client money

- 11.7.1** **G** A CASS *debt management firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.
- 11.7.2** **R** Before a CASS *large debt management firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the *firm* to hold *client money* at the *approved bank* concerned.
- 11.7.3** **R** A CASS *large debt management firm* must consider the risks associated with holding all *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.
- 11.7.4** **G** In complying with **■ CASS 11.7.3 R** a CASS *large debt management firm* should consider as appropriate, together with any other relevant matters:
- (1) the amount of *client money* held by the *firm*;
  - (2) the amount of *client money* the firm anticipates holding at the *approved bank*; and
  - (3) the credit worthiness of the *approved bank*.
- 11.7.5** **G** A CASS *small debt management firm* can demonstrate compliance with **■ CASS 11.7.1 G** by checking that the *person* it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm's* attention to cause it to believe that such *person* is not an appropriate place at which to hold *client money*.
- 11.7.6** **R** A CASS *large debt management firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of an *approved bank*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the *approved bank* to hold *client money*.

## 11.8 Client bank account acknowledgement letters

- 11.8.1 **G** The main purposes of a *client bank account acknowledgement letter* are:
- (1) to put the *approved bank* on notice of a *firm's clients'* interests in *client money* that has been deposited with such *person*;
  - (2) to ensure that the *client bank account* has been opened in accordance with **■ CASS 11.9.3 R**, and is distinguished from any account containing money that belongs to the *firm*; and
  - (3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to such *person* (or *person* connected to such *person*).
- 11.8.2 **R**
- (1) For each *client bank account*, a *CASS debt management firm* must, in accordance with **■ CASS 11.8.4 R**, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the *approved bank* with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.
  - (2) Subject to **■ CASS 11.8.6 R**, a *CASS debt management firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the *approved bank* that has not been inappropriately redrafted and clearly identifies the *client bank account*.
- 11.8.3 **R** In drafting *client bank account acknowledgement letters* under **■ CASS 11.8.2 R** a *CASS debt management firm* is required to use the relevant template in **■ CASS 11 Annex 1 R**.
- 11.8.4 **R** When completing a *client bank account acknowledgement letter* under **■ CASS 11.8.2 R (1)** a *CASS debt management firm*:
- (1) must not amend any of the *acknowledgement letter fixed text*;
  - (2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and

(3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.

**11.8.5** **G** ■ CASS 11 Annex 2 contains *guidance* on using the template *client bank account acknowledgement letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.

**11.8.6** **R**

(1) If, on countersigning and returning the *client bank account acknowledgement letter* to a *firm*, the relevant *approved bank* has also:

(a) made amendments to any of the *acknowledgement letter fixed text*; or

(b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;

the *client bank account acknowledgement letter* will have been inappropriately redrafted for the purposes of ■ CASS 11.8.2 R (2).

(2) Amendments made to the *acknowledgement letter variable text*, in the *client bank account acknowledgement letter* returned to a *firm* by the relevant *approved bank*, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the *acknowledgement letter fixed text*, have been specifically agreed with the *firm* and do not cause the *client bank account acknowledgement letter* to be inaccurate.

**11.8.7** **R** A CASS *debt management firm* must use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

**11.8.8** **R** A CASS *debt management firm* must retain each countersigned *client bank account acknowledgement letter* it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last *client bank account* to which the acknowledgment letter relates is closed.

**11.8.9** **R** A CASS *debt management firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*).



- 11.8.10** **R** A CASS debt management firm must, periodically (at least annually, and whenever it becomes aware that something referred to in a *client bank account acknowledgement letter* has changed) review each of its countersigned *client bank account acknowledgement letters* to ensure that they remain accurate.
- 11.8.11** **R** Whenever a CASS debt management firm finds a countersigned *client bank account acknowledgement letter* to contain an inaccuracy, the firm must promptly draw up a new replacement *client bank account acknowledgement letter* under **■ CASS 11.8.2 R** and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant approved bank.
- 11.8.12** **G** Under **■ CASS 11.8.10 R**, a CASS debt management firm should obtain a replacement *client bank account acknowledgement letter* whenever:
- (1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or
  - (2) it becomes aware of an error or misspelling in the letter.
- 11.8.13** **R** If a CASS debt management firm's *client bank account* is transferred to another approved bank, the firm must promptly draw up a new *client bank account acknowledgement letter* under **■ CASS 11.8.2 R** and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant approved bank within 20 business days of the firm sending it to that person.

## 11.9 Segregation and the operation of client money accounts

### Requirement to segregate

- 11.9.1 **R** A CASS debt management firm must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an *approved bank*, rather than being first received into the *firm's* own account and then segregated.
- 11.9.2 **G** A CASS debt management firm should arrange for *clients* and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.
- 11.9.3 **R** A CASS debt management firm must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.
- 11.9.4 **R** Cheques received by a CASS debt management firm, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.
- 11.9.5 **R** Where a CASS debt management firm receives *client money* in the form of cash, a cheque or other payable order, it must:
- (1) pay the *money* into a *client bank account* in accordance with **■ CASS 11.9.1 R** promptly and no later than on the *business day* after it receives the *money*;
  - (2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle 10*; and
  - (3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of **■ CASS 11.11** (Records, accounts and reconciliations).

**Mixed remittance**

**11.9.6** **R** If a *CASS debt management firm* receives a *mixed remittance* it must:

- (1) pay the full sum into a *client bank account* promptly and in accordance with **■ CASS 11.9.1 R** to **■ CASS 11.9.5 R**; and
- (2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the money that is not *client money* out of the *client bank account*.

**Allocation of client money receipts**

**11.9.7** **R** (1) A *CASS debt management firm* must allocate in its books and records any *client money* it receives to an individual *client* promptly and, in any case, no later than five *business days* following the receipt.

- (2) Pending a *CASS debt management firm's* allocation of a client money receipt to an individual *client* under (1), it must record the received *client money* in its books and records as "unallocated client money".

**11.9.8** **R** If a *CASS debt management firm* receives money (either in a *client bank account* or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:

- (1) take all necessary steps to identify the *money* as either *client money* or its own *money*;
- (2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as "unidentified client money" while it performs the necessary steps under (1).

**11.9.9** **G** If a *CASS debt management firm* is unable to identify money that it has received as either *client money* or its own *money* under **■ CASS 11.9.8 R** (1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A *firm* should have regard to its fiduciary duties when considering such matters.

**Money received by appointed representatives, tied agents, field representatives and other agents**

**11.9.10** **R** A *CASS debt management firm* must ensure that *client money* received by its *appointed representatives, field representatives* or other agents is:

- (1) received directly into a *client bank account* of the *firm*; or
- (2) if it is received in the form of a cheque or other payable order:
  - (a) paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt; or

(b) forwarded to the *firm* or, in the case of a *field representative*, forwarded to a specified business address of the *CASS debt management firm*, to ensure that the *money* arrives at the specified business address promptly and, in any event, no later than the close of the third *business day* following the receipt of the *money* from the client; or

(3) if it is received in the form of cash, paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt.

### Interest

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11.9.11 **R** A *CASS debt management firm* must pay a *client* any interest earned on *client money* held for that *client*.

### Returning money to clients

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11.9.12 **R** A *CASS debt management firm* must, on receipt of a written request to withdraw from a *debt management plan*, promptly return to the *client* any *client money* held by it for the *client*.

11.9.13 **G** The *FCA* would expect compliance with the requirement in **R** CASS 11.9.12 R to return *client money* promptly to require *client money* to be returned to a *client* within five *business days* of the date on which a *client's* withdrawal from a *debt management plan* takes effect.

## 11.10 Payments to creditors

- 11.10.1** **R** Where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, the *firm* must pay that *money* to creditors as soon as reasonably practicable, save in the circumstances in **■ CASS 11.10.3 R**.
- 11.10.2** **G** In the *FCA's* view, the payment to creditors under **■ CASS 11.10.1 R** should normally be within five *business days* of the receipt of cleared funds.
- 11.10.3** **R** The circumstances referred to in **■ CASS 11.10.1 R** are:
- (1) the contract between the *client* and the *CASS debt management firm* expressly provides that *client money* might be held for more than five *business days* without being distributed to creditors;
  - (2) the existence of such a term expressly providing that *client money* might be held for more than five *business days* without being distributed to creditors has been separately brought to the attention of the *client* prior to his entering into the contract; and
  - (3) the *CASS debt management firm* has explained to the *client* the risks and implications, if any, of payment to creditors being delayed prior to the entry into the contract.
- 11.10.4** **R** On each occasion that a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and it is proposed not to make a *client's* payment to creditors within five *business days* of receipt of the *client money* in the circumstances described in **■ CASS 11.10.3 R** (1), it must:
- (1) as soon as reasonably practicable and within the five *business day* period, inform the *client's* creditors of the fact that it has received *client money* from the *client* for the purpose of distribution to his or her creditors and that it will not distribute that *client money* to the creditors within the five *business-day* period; and
  - (2) perform daily reconciliations of the money held for the *client* concerned in accordance with the provisions of **■ CASS 11.11**.
- 11.10.5** **R** On each occasion a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and is unable for any reason other than

in the circumstances described in ■ CASS 11.10.3 R (1) to make a payment to the *client's* creditors within five *business days* of receipt, it must:

- (1) inform the *client* of the delay and the reason for the delay;
- (2) inform the *client* of the risks and implications of the late payments;
- (3) inform the *client's* creditors of this delay as soon as reasonably practicable and within the period of five *business days* of the receipt of the relevant *client money*; and
- (4) perform daily checks of its records of the money held for the *client* concerned in accordance with the provisions of ■ CASS 11.11.

11.10.6 **R**

- (1) Subject to (2), where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, and it fails to pay that *money* to creditors as soon as reasonably practicable following its receipt (see ■ CASS 11.10.1 R and ■ CASS 11.10.2 G), it must put the *client* into the financial position he would have been in had the delay not occurred.
- (2) Paragraph (1) does not apply in the circumstances described in ■ CASS 11.10.3 R or where the delay is due to circumstances beyond the *firm's* control.

11.10.7 **G**

Putting a *client* into the position he would have been in had the delay not occurred under ■ CASS 11.10.6 R should include paying to the *client* a sum equivalent to the amount of any additional interest which would not have accrued but for the delay and any default charges that have been applied to the account as a result of the delay.



## 11.11 Records, accounts and reconciliations

### Records and accounts

**11.11.1** **R** A CASS debt management firm must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.

**11.11.2** **G** In accordance with **■** CASS 11.11.1 R, a CASS debt management firm must maintain internal records and accounts of the *client money* it holds (for example, a cash book). These internal records are separate to any external records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

**11.11.3** **R** A CASS debt management firm must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *clients*.

**11.11.4** **R** A CASS debt management firm must maintain up-to-date records that detail all payments to, from, or made on behalf of, *clients* and written and oral contact with *clients* and their creditors.

### Policies and procedures

**11.11.5** **G** CASS debt management firms are reminded that they must, under **■** SYSC 6.1.1 R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* in this chapter.

### Checks and reconciliations of internal records

**11.11.6** **G** So that a CASS debt management firm may check that it has sufficient *money* segregated in its *client bank accounts* to meet its obligations to *clients* for whom it is undertaking *debt management activity*, it is required periodically to carry out reconciliations of its internal records and accounts to check that the total amount of *client money* that it should have segregated in *client bank accounts* is equal to the total amount of *client money* it actually has segregated in *client bank accounts*. **■** CASS 11.11.8 R to **■** CASS 11.11.23 R provide *rules* that the different types of CASS debt management firm are obliged to follow to meet this obligation.

**Checks of internal records: CASS small debt management firm**

- 11.11.7 **G** For a *CASS small debt management firm* to demonstrate it has maintained its records and accounts in a way envisaged by **■ CASS 11.11.3 R**, it should carry out checks of its internal records and accounts that are reasonable and proportionate to its business. **■ CASS 11.11.8 R** provides a rule that a *CASS small debt management firm* is obliged to follow to meet this obligation.
- 11.11.8 **R** A *CASS small debt management firm* must undertake periodic checks of its internal accounts and records to ensure that the amount of money it holds in its *client bank accounts* is equal to the amount of *client money* that should be segregated under **■ CASS 11.9**.
- 11.11.9 **R** In carrying out the checks required by **■ CASS 11.11.8 R** a *CASS small debt management firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).
- 11.11.10 **G** The checks that a *CASS small debt management firm* is required to undertake under **■ CASS 11.11.8 R** include checking that its internal records and accounts accurately record the balances of *client money* held in respect of individual *clients*, and that the aggregate of those individual *client money* balances are equal to the total *client money* segregated in its *client bank accounts*. In undertaking the comparison between the internal records of balances of *client money* and the *client money* segregated in *client bank accounts*, a *firm* should use the previous day's closing *client money* balances and should compare those with other records relating to the same day. In determining an appropriate frequency for its record checks, a *firm* should consider the volume and frequency of transactions in its *client bank accounts*.
- 11.11.11 **G** In seeking to comply with its obligation to carry out checks on its internal records and accounts, a *CASS small debt management firm* may choose to follow the steps specifically required of *CASS large debt management firms* in undertaking a *CASS large debt management firm internal client money reconciliation* and *CASS large debt management firm external client money reconciliation*. A *CASS small debt management firm* which follows that procedure is likely to be regarded by the *FCA* as having fulfilled its obligation under **■ CASS 11.11.8 R**.

**CASS small debt management firms: remedying discrepancies**

- 11.11.12 **R** Where the check of its internal records and accounts that a *CASS small debt management firm* is required to undertake under **■ CASS 11.11.8 R** reveals a difference between the amount of *money* it holds in its *client bank accounts*



and the amount of *client money* that should be held and segregated under ■ CASS 11.9, a *CASS small debt management firm* must:

- (1) ensure that any shortfall in the amount held in its *client bank accounts* as compared to the amount that should be held there is made up by a prompt payment into the *firm's client bank accounts*;
- (2) ensure that any excess in the amount held in its *client bank accounts* as compared to the amount that should be held there is promptly withdrawn from its *client bank accounts*; and
- (3) ensure that any correction of a shortfall or excess of the kind referred to in (1) and (2) is carried out, at the latest, before the end of the *business day* following the day on which difference was discovered.

**CASS large debt management firms internal client money reconciliation**

11.11.13 R A *CASS large debt management firm* must, as regularly as is necessary, but no less often than every five *business days*, carry out a *CASS large debt management firm internal client money reconciliation*.

11.11.14 R A *CASS large debt management firm internal client money reconciliation* requires a *CASS large debt management firm* to check whether its *client money resource*, as determined by ■ CASS 11.11.16 R, on the previous *business day*, was at least equal to the *client money requirement*, as determined by ■ CASS 11.11.17 R as at the close of business on that day.

11.11.15 R In carrying out a *CASS large debt management firm internal client money reconciliation*, a *CASS large debt management firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

**Calculating the client money resource**

11.11.16 R The *client money resource* for *client money* held in accordance with ■ CASS 11.11.14 R is the aggregate of the balances on the *firm's client bank accounts*, as at the close of business on the previous *business day*.

**Calculating the client money requirement**

- (1) The *client money requirement* is the sum of:
  - (a) the aggregate of all individual *client* balances calculated in accordance with ■ CASS 11.11.21 R and ■ CASS 11.11.22 R;
  - (b) the amount of any unallocated *client money* under ■ CASS 11.9.7 R;
  - (c) the amount of any unidentified *client money* under ■ CASS 11.9.8 R; and
  - (d) any other amounts of *client money* included in the calculation under (2).

(2) For the purposes of (1)(d), the *CASS debt management firm* must consider whether there are amounts of *client money*, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its *client money* requirement and, if so, adjust the calculation accordingly.

**11.11.18** **G** The *client money* requirement calculated in accordance with **■ CASS 11.11.17 R** should represent the total amount of *client money* a *CASS debt management firm* is required to have segregated in *client bank accounts* under the *debt management client money chapter*.

**11.11.19** **G** *Firms* are reminded that, under **■ CASS 11.4.3 R**, if a *firm* has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its *clients* (for example, to return *client money* to the *client* or distribute it to the *client's* creditors), the sum concerned must be included in the *firm's* calculation of its *client money* requirement until the cheque or order is presented and paid.

**11.11.20** **G** The following *guidance* applies where a *CASS debt management firm* receives *client money* in the form of cash, a cheque or other payable order:

(1) In carrying out the calculation of the *client money* requirement, a *CASS debt management firm* may initially include the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with **■ CASS 11.9.5 R**. If it does so, the *firm* should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the *firm's* *client money* requirement and *client money* resource.

(2) In carrying out the calculation of the *client money* requirement, a *CASS debt management firm* may alternatively exclude the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with **■ CASS 11.9.5 R**. If it does so, the *firm* is reminded that it must separately record the receipt of the *money* in the *firm's* books and records under **■ CASS 11.9.5 R** (3).

(3) A *CASS debt management firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* into a *client bank account* promptly and no later than on the *business day* after it receives the *money* (see **■ CASS 11.9.5 R**).

**11.11.21** **R** The individual *client* balance for each *client* must be calculated as follows:

(1) the amount paid by the *client* to the *CASS debt management firm*;  
plus

(2) the amount of any interest, and any other sums, due to the *client*;

less:

(3) the aggregate of the amount of *money*;

- (a) paid back to that *client*; and
- (b) due and payable by the *client* to the *CASS debt management firm*; and
- (c) paid out to a third party for, or on behalf of, that *client*.

**11.11.22** **R** Where the individual *client* balance calculated in respect of an individual *client* under **■ CASS 11.11.21 R** is a negative figure (because the amounts paid by or due to a *client* under **■ CASS 11.11.21 R (1)** and **■ CASS 11.11.21 R (2)** are less than the amounts paid out or due and payable by that *client* under **■ CASS 11.11.21 R (3)**, that individual *client* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in **■ CASS 11.11.17 R**.

### Large debt management firms: reconciliation differences and discrepancies

**11.11.23** **R** When a *CASS large debt management firm internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a *CASS large debt management firm* must:

- (1) identify the reason for the difference;
- (2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which difference was discovered; and
- (3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

### CASS large debt management firm external client money reconciliation

**11.11.24** **G** The purpose of the reconciliation process required by **■ CASS 11.11.25 R** is to ensure the accuracy of a *firm's* internal accounts and records against those of any third parties by whom *client money* is held.

**11.11.25** **R** A *CASS large debt management firm* should perform a *CASS large debt management firm external client money reconciliation*:

- (1) as regularly as is necessary; and
- (2) no less frequently than the *CASS large debt management firm internal client money reconciliations*; and
- (3) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of *approved banks* with whom *client money* is deposited.

11.11.26 **R** A CASS large debt management firm external client money reconciliation requires a CASS large debt management firm to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.

11.11.27 **G** The FCA expects a CASS large debt management firm which carries out transactions for its clients on a daily basis to carry out a CASS large debt management firm external client money reconciliation on a daily basis.

11.11.28 **R** When any discrepancy is revealed by a CASS large debt management firm external client money reconciliation, a CASS large debt management firm must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.

11.11.29 **R** While a CASS large debt management firm is unable to resolve a discrepancy arising from the CASS large debt management firm external client money reconciliation, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant account.

#### Notification requirements

11.11.30 **R** A CASS debt management firm must inform the FCA in writing without delay if:

- (1) its internal records and accounts of *client money* are materially out of date or materially inaccurate so that the *firm* is no longer able to comply with the requirements in ■ CASS 11.11.1 R to ■ CASS 11.11.4 R; or
- (2) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in ■ CASS 11.9.

11.11.31 **R** A CASS large debt management firm must inform the FCA in writing without delay if:

- (1) after having carried out a CASS large debt management firm internal client money reconciliation in accordance with ■ CASS 11.11.13 R it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a *client bank account* so that the *firm* is unable to comply with ■ CASS 11.11.23 R;
- (2) after having carried out a CASS large debt management firm external client money reconciliation in accordance with ■ CASS 11.11.25 R it will

be unable to, or materially fails to, identify and correct any discrepancies in accordance with ■ CASS 11.11.28 R;

(3) it will be unable to or materially fails to conduct a *CASS large debt management firm internal client money reconciliation* in compliance with ■ CASS 11.11.13 R; or

(4) it will be unable to or materially fails to conduct a *CASS large debt management firm external client money reconciliation* in compliance with ■ CASS 11.11.25 R.

**11.11.32** **G** *CASS debt management firms* are also reminded of their obligation to notify the *appropriate regulator* of a significant breach of a *rule* under ■ SUP 15.3.11 R.

## 11.12 CASS 11 resolution pack

- 11.12.1 **G** The purpose of the *CASS 11 resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in dealing with *client money* in a timely manner.
- 11.12.2 **R** A *CASS debt management firm* which holds *client money* must maintain at all times and be able to retrieve, in the manner described in this section, a *CASS 11 resolution pack*.
- 11.12.3 **R** A *CASS debt management firm* must include within its *CASS 11 resolution pack* all those documents referred to in **■ CASS 11.12.4 R**.
- 11.12.4 **R** The documents in **■ CASS 11.12.3 R** that a *CASS debt management firm* must include within its *CASS 11 resolution pack* are:
- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS 11 resolution pack*;
  - (2) a document which identifies all the *approved banks* with whom *client money* may be deposited;
  - (3) a document which identifies each *appointed representative, field representative* or other agent of the *firm* which may receive *client money* in its capacity as the *firm's agent*;
  - (4) a document which identifies each *senior manager and director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* under the *debt management client money rules*;
  - (5) for all *approved banks* identified in (2) the written *client bank account acknowledgement letters* sent and received in accordance with **■ CASS 11.8.2 R**; and

- (6) records relating to the internal and external client money checks it is required to carry out under ■ CASS 11.11.

**11.12.5** **R** In relation to each document in a *CASS debt management firm's CASS 11 resolution pack* a *firm* must:

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

**11.12.6** **R** (1) A *CASS debt management firm* must ensure that it reviews the content of its *CASS 11 resolution pack* on an ongoing basis to ensure that it remains accurate.

- (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in ■ CASS 11.12.4 R, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.

**11.12.7** **R** A *CASS debt management firm* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, ■ CASS 11.12.2 R and ■ CASS 11.12.6 R.



## 11.13 Client money distribution in the event of a failure of a firm or approved bank

### Application

- 11.13.1 **R** This section (the *debt management client money distribution rules*) applies to a *CASS debt management firm* that holds *client money* which is subject to the *debt management client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

### Purpose

- 11.13.2 **G** The *debt management client money distribution rules* seek, in the event of the *failure* of a *CASS debt management firm* or of an *approved bank* at which the *CASS debt management firm* holds *client money*, to protect *client money* and to facilitate the timely payment of sums to creditors or the timely return of *client money* to clients.

### Failure of a CASS debt management firm: primary pooling event

- 11.13.3 **R** A *primary pooling event* occurs:
- (1) on the *failure* of a *CASS debt management firm*;
  - (2) on the vesting of assets in a *trustee* in accordance with an '*assets requirement*' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act* where such a *requirement* is imposed in respect of all *client money* held by the *firm*.

### Pooling and distribution after a primary pooling event

- 11.13.4 **R** If a *primary pooling event* occurs, then:
- (1) all *client money*:
    - (a) held in the *CASS debt management firm's client bank accounts*;
    - and



(b) received by the *CASS debt management firm* on behalf of a *client* but not yet paid into the *firm's client bank accounts*;

is treated as pooled together to form a notional pool;

(2) a *CASS debt management firm* must calculate the amount it should be holding on behalf of each individual client as at the time of the *primary pooling event* using the method of calculating individual client balance provided for by ■ CASS 11.11.21 R;

(3) a *CASS debt management firm* must decide whether it is in the best interests of its clients to transfer all its *debt management activity* business to another *CASS debt management firm*.

### **Distribution if client money not transferred to another firm**

**11.13.5** **R** Where a *primary pooling event* occurs and the *client money* is not transferred to another *firm* in accordance with ■ CASS 11.13.4 R, a *CASS debt management firm* must distribute *client money* comprising the notional pool so that each *client* receives a sum that is rateable to their entitlement to the notional pool calculated in ■ CASS 11.13.4 R (2).

### **Transfer of client money to another firm**

**11.13.6** **G** If in the event of a *primary pooling event* occurring the *debt management activity* business undertaken by a *CASS debt management firm* ("the transferor") is to be transferred to another *CASS debt management firm* ("the transferee"), then the transferor may also move the *client money* associated with that business to the transferee.

**11.13.7** **R** The remaining *client money* may be transferred under ■ CASS 11.13.6 G only if it will be held by the transferee in accordance with the *debt management client money chapter*, including the statutory trust in ■ CASS 11.6.1 R.

**11.13.8** **R** If there is a *shortfall* in the *client money* transferred under ■ CASS 11.13.6 G then the *client money* must be allocated to each of the *clients* for whom the *client money* was held so that each client is allocated a sum which is rateable to that client's *client money* entitlement in accordance with ■ CASS 11.13.4 R (2). This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.

**11.13.9** **R** The transferee must, within seven *days* after the transfer of *client money* under ■ CASS 11.13.6 G notify *clients* that:

(1) their *money* has been transferred to the transferee; and

(2) they have the option of having *client money* returned to them or to their order by the transferee, otherwise the transferee will hold the *client money* for the *clients* and conduct *debt management activities* for those *clients*.

**Failure of an approved bank: secondary pooling event**

- 11.13.10 **R** A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *CASS debt management firm* holds *client money* in a *client bank account*.
- 11.13.11 **R** (1) Subject to (2), if a *secondary pooling event* occurs as a result of the *failure* of an *approved bank* where one or more *client bank accounts* are held then in relation to every *client bank account* of the *firm*, the provisions of ■ CASS 11.13.12 R (1), ■ CASS 11.13.12 R (2) and ■ CASS 11.13.12 R (3) will apply.
- (2) ■ CASS 11.13.12 R does not apply if, on the *failure* of the *approved bank*, the *CASS debt management firm* pays to its *clients*, or pays into a *client bank account* at an unaffected *approved bank*, an amount equal to the amount of *client money* that would have been held if a shortfall had not occurred as a result of the *failure*.
- 11.13.12 **R** Money held in each *client bank account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *client bank accounts*, that has arisen as a result of the *failure* of the *approved bank*, must be borne by all *clients* whose *client money* is held in a *client bank account* of the *firm*, rateably in accordance with their entitlements to the pool;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *CASS debt management firm* must make and retain a record of each *client's* share of the *client money* shortfall at the *failed approved bank* until the *client* is repaid; and
- (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in ■ CASS 11.11.17 R.
- 11.13.13 **R** The term 'which should have been held' is a reference to the *failed approved bank's* failure to hold the *client money* at the time of the pooling event.
- 11.13.14 **R** Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with ■ CASS 11.9.11 R (Interest).

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## **CASS debt management firm client bank account acknowledgement letter template**

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

*CASS debt management firm client bank account acknowledgement letter template - CASS 11 Annex 1*  
R



## Guidance notes for client bank account acknowledgement letters (CASS 11.8.5G)

### Introduction

1. This annex contains *guidance* on the use of the template *client bank account acknowledgement letters* in ■ CASS 11 Annex 1.

### General

2. Under ■ CASS 11.8.2 R (2), *CASS debt management firms* are required to have in place a duly signed and countersigned *client bank account acknowledgement letter* for a *client bank account* before they are allowed to hold or receive *client money* in or into the account.

3. For each *client bank account* a *CASS debt management firm* is required to complete, sign and send to the *approved bank* a *client bank account acknowledgement letter* identifying that account and in the form set out in ■ CASS 11 Annex 1 (*CASS debt management firm client bank account acknowledgement letter template*).

4. When completing a *client bank account acknowledgement letter* using the appropriate template, a *CASS debt management firm* is reminded that it must not amend any of the text which is not in square brackets (*acknowledgment letter fixed text*). A *CASS debt management firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.

### Clear identification of relevant accounts

5. A *CASS debt management firm* is reminded that for each *client bank account* it needs to have in place a *client bank account acknowledgement letter*. As a result, it is important that it is clear to which account or accounts each *client bank account acknowledgement letter* relates. As a result, the templates in ■ CASS 11 Annex 1 require that the *client bank account acknowledgement letter* include the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each *client bank account*.

6. The title and unique identifiers included in a *client bank account acknowledgement letter* for a *client bank account* should be the same as those reflected in both the records of the *CASS debt management firm* and the relevant *approved bank*, as appropriate, for that account. Where an *approved bank's* systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

(a) the account may continue to be appropriately identified in line with the requirements of ■ CASS 11 (for example, 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct' etc); and

(b) when completing a *client bank account acknowledgement letter*, such letter must include both the long and short versions of the account title.

7. A CASS debt management firm should ensure that all relevant account information is contained in the space provided in the body of the *client bank account acknowledgement letter*. Nothing should be appended to a *client bank account acknowledgement letter*.

8. In the space provided in the template letters for setting out the account title and unique identifiers for each relevant account/deposit, a CASS debt management firm may include the required information in the format of the following table:

Full account title	Unique identifier	Title reflected in [ <i>name of approved bank</i> ] systems
[ <i>Debt Management Firm Client Bank Account</i> ]	[00-00-00 12345678]	[DM FIRM CLIENT A/C]

9. Where a *client bank account acknowledgement letter* is intended to cover a range of *client bank accounts*, some of which may not exist as at the date the *client bank account acknowledgement letter* is countersigned by the *approved bank*, a CASS debt management firm should set out in the space provided in the body of the *client bank account acknowledgement letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (e.g. with the word 'client' in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (e.g. all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in ■ CASS 11 Annex 1 which allows a CASS debt management firm to include the account title and a unique identifier for each relevant account, a CASS debt management firm should include a statement to the following effect:

**Any account open at present or to be opened in the future which contains the term ['client'] [insert appropriate abbreviation of the term 'client' as agreed and to be reflected in the Approved Bank's systems] in its title and which may be identified with [the following [insert common unique identifier]][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].**

### Signatures and countersignatures

10. A CASS debt management firm should ensure that each *client bank account acknowledgement letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or the *approved bank* may require more than one signatory).

11. A *client bank account acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in ■ CASS 11.8. However, where electronic signatures are used, a CASS debt management firm should consider whether, taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.

### Completing a client bank account acknowledgment letter

12. A CASS debt management firm should use at least the same level of care and diligence when completing a *client bank account acknowledgement letter* as it would in managing its own commercial agreements.

13. A CASS debt management firm should ensure that each *client bank account acknowledgement letter* is legible (e.g. any handwritten details should be easy to read), produced on the *firm's* own letter-headed paper, dated and addressed to the correct legal entity (e.g. where the *approved bank* belongs to a group of companies).

14. A *CASS debt management firm* should also ensure each *client bank account acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).

15. A *CASS debt management firm* should similarly ensure that no square brackets remain in the text of each *client bank account acknowledgement letter* (e.g. after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the templates in ■ CASS 11 Annex 1) and that each page of the letter is numbered.

16. A *CASS debt management firm* should complete a *client bank account acknowledgement letter* so that no part of the letter can be easily altered (e.g. the letter should be signed in ink rather than pencil).

17. In respect of the *client bank account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (l) and (m) of the template *client bank account acknowledgement letters*), a *CASS debt management firm* should agree with the approved bank and reflect in the letter that the laws of a particular jurisdiction will govern the *client bank account acknowledgement letter* and that the courts of that same jurisdiction will have jurisdiction to settle any disputes arising out of, or in connection with, the *client bank account acknowledgement letter*, its subject matter or formation.

18. If a *CASS debt management firm* does not, in any *client bank account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

- (a) the laws of the jurisdiction under which either the *firm* or the relevant *approved bank* are organised; or
- (b) as is found in the underlying agreement/s (e.g. banking services agreement) with the relevant *approved bank*;

then the *CASS debt management firm* should consider whether it is at risk of breaching either ■ CASS 11.8.4 R (3) or, if it is a *CASS large debt management firm*, ■ CASS 11.7.2 R.

### Authorised signatories

19. A *CASS debt management firm* is required under ■ CASS 11.8.7 R to use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

20. If an individual that has countersigned a *client bank account acknowledgement letter* does not provide the *CASS debt management firm* with sufficient evidence of his/her authority to do so then the *CASS debt management firm* is expected to make appropriate enquiries to satisfy itself of that individual's authority.

21. Evidence of an individual's authority to countersign a *client bank account acknowledgement letter* may include a copy of the *approved bank's* list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *client bank account acknowledgement letter*.

22. A *CASS debt management firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *client bank account acknowledgement letter* as the *firm* would seek when managing its own commercial arrangements.

### Third party administrators

23. If a *CASS debt management firm* uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgement letter*, the text "[Signed by **[Name of Third Party Administrator]** on behalf of [*CASS debt management firm*]]" should be inserted to confirm that the *client bank account acknowledgement letter* was signed by the TPA on behalf of the *CASS debt management firm*.

24. In these circumstances, the *CASS debt management firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgement letter* on the *CASS debt management firm's* behalf. A *CASS debt management firm* should also ensure that the *client bank account acknowledgement letter* continues to be drafted on letter-headed paper belonging to the *CASS debt management firm*.

### Client bank accounts

25. A *CASS debt management firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that all *client bank accounts* include the term 'client' in their title or an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition.

26. All references to the term "Client Bank Account[s]" in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.