

CLIENT ASSETS SOURCEBOOK (ENHANCEMENT) INSTRUMENT 2010**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) Part 1 of Annex A and Part 1 of Annex B come into force on 1 January 2011;
 - (2) Part 2 of Annex A and Part 2 of Annex B and come into force on 1 March 2011;
 - (3) Part 3 of Annex B and Part 1 of Annex C comes into force on 1 June 2011; and
 - (4) Part 3 of Annex A, Part 4 of Annex B and Part 2 of Annex C come into force on 1 October 2011.

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 (Enhancement) Instrument 2010.

By order of the Board
13 October 2010

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 1 January 2011

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

<i>CASS large firm</i>	has the meaning in CASS 1A.2.7R (CASS firm types).
<i>CASS medium firm</i>	has the meaning in CASS 1A.2.7R (CASS firm types).
<i>CASS small firm</i>	has the meaning in CASS 1A.2.7R (CASS firm types).
<i>CMAR</i>	a Client Money and Asset Return, containing the information specified in SUP 16 Annex 29R.

Part 2: Comes into force on 1 March 2011

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

<i>prime brokerage agreement</i>	an agreement between a <i>prime brokerage firm</i> and a <i>client</i> for <i>prime brokerage services</i> .
<i>prime brokerage firm</i>	a <i>firm</i> that provides <i>prime brokerage services</i> to a <i>client</i> and which may do so acting as <i>principal</i> .
<i>prime brokerage services</i>	a package of services provided under a <i>prime brokerage agreement</i> which gives a <i>prime brokerage firm</i> a right to use <i>safe custody assets</i> for its own account and which comprises each of the following: <ul style="list-style-type: none"> (a) <i>custody</i> or <i>arranging safeguarding and administration of assets</i>; (b) clearing services; and (c) financing, the provision of which includes one or more of the following: <ul style="list-style-type: none"> (i) capital introduction; (ii) margin financing; (iii) <i>stock lending</i>;

- (iv) stock borrowing;
- (v) entering into repurchase or reverse repurchase transactions;

and which, in addition, may comprise consolidated reporting and other operational support.

Part 3: Comes into force on 1 October 2011

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

CASS operational oversight function *controlled function* CF10a in the *table of controlled functions*, described more fully in *SUP 10.7.9R*.

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.

Part 1: Comes into force on 1 January 2011

After CASS 1 insert the following new chapter. The text is not underlined.

1A CASS firm classification and operational oversight

1A.1 Application

- 1A.1.1 R (1) This chapter applies to a *firm* to which either or both of CASS 6 (Custody rules) and CASS 7 (Client money rules) applies.
- (2) In relation to a *firm* to which CASS 5 (Client money: insurance mediation activity) and CASS 7 (Client money rules) apply, this chapter does not apply in relation to *client money* that a *firm* holds in accordance with CASS 5.

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 the reporting obligations that apply to it in SUP 16.14 (Client money and asset return).
- 1A.2.2 R (1) A *firm* must once every year, and within the time limit provided for by CASS 1A.2.9R, 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.
- (2) For the purpose of determining its ‘CASS firm type’ in accordance with CASS 1A.2.7R, a *firm* must:
- (a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year ending on 31 December and use that figure to determine its ‘CASS firm type’;
 - (b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the

current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year and use that figure to determine its 'CASS firm type'; but

- (c) in either case, exclude from its calculation any *client money* held in accordance with CASS 5 (Client money: insurance mediation activity).

1A.2.3 R 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 calendar year a *firm* must:

- (1) in complying with CASS 1A.2.2R(2)(a), base its calculation upon internal reconciliations performed during the previous year;
- (2) 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; and
- (3) in relation to *safe custody assets* only, calculate their total value using the previous *day's* closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

1A.2.4 G One of the consequences of CASS 1A.2.2R is that a *firm* that determines itself to be a *CASS small firm* or a *CASS medium firm* will, at least if it exceeds during the course of a calendar year either of the limits in CASS 1A.2.7R that applies to it, become in the next calendar year:

- (1) in the case of a *CASS small firm*, a *CASS medium firm* or a *CASS large firm*; and
- (2) in the case of a *CASS medium firm*, a *CASS large firm*.

1A.2.5 R (1) Notwithstanding CASS 1A.2.2R, provided that the conditions in (2) are satisfied a *firm* may elect to be treated:

- (a) as a *CASS medium firm*, in the case of a *firm* that is classed by the application of the limits in CASS 1A.2.7R as a *CASS small firm*; and
 - (b) as a *CASS large firm*, in the case of a *firm* that is classed by the application of the limits in CASS 1A.2.7R as a *CASS medium firm*.
- (2) The conditions to which (1) refers are that in either case:
- (a) the election is made by including it in the notice to the *FSA* provided under CASS 1A.2.8R or CASS 1A.2.9R;

- (b) it is given at least one week before the election is intended to take effect; and
- (c) the *FSA* has not objected.

1A.2.6 G CASS 1A.2.5R provides a *firm* with the ability to opt in to a higher category of ‘CASS firm type’. This may be useful for a *firm* whose holding of *client money* and *safe custody assets* is near the upper categorisation limit for a *CASS small firm* or a *CASS medium firm*.

1A.2.7 R CASS firm types

CASS firm type	Highest total amount of <i>client money</i> held during the <i>firm</i> ’s last calendar year or as the case may be that it projects that it will hold during the current calendar year	Highest total value of <i>safe custody assets</i> held by the <i>firm</i> during the <i>firm</i> ’s last calendar year or as the case may be that it projects that it will hold during the current calendar year
<i>CASS large firm</i>	more than £1 billion	more than £100 billion
<i>CASS medium firm</i>	an amount equal to or greater than £1 million and less than or equal to £1 billion	an amount equal to or greater than £10 million and less than or equal to £100 billion
<i>CASS small firm</i>	less than £1 million	less than £10 million

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.

- 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:
- (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; 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; 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; and
 - (4) in every case, of its ‘CASS firm type’ classification.
- 1A.2.10 R For the purpose of the annual notification to which CASS 1A.2.8R and CASS 1A.2.9R refer, 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 a *CMAR* for the period or month ending 31 December in compliance with SUP 16.14.5R.

1A.3 Responsibility for CASS operational oversight

- 1A.3.1 R A *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;
 - (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.3.2 R A CASS *large firm* and a CASS *medium firm* must not later than 31 January 2011 notify the *FSA* in writing of the identity of the *person* to whom responsibility has been allocated in accordance with CASS 1A.3.1R or,

where CASS 1A.2.8R(3) applies, before the date on which that *firm* begins to hold client *money* or *safe custody assets*.

- 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.
- (2) A *CASS small 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 *firm* must ensure that the record made under this *rule* is retained for a period of five years after it is made.

...

Sch 1 Record keeping requirements

...

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>CASS 1A.3.3R</u>	<u>Allocation of the CASS oversight responsibilities in CASS 1A.3.1R</u>	<u>The person to whom the CASS oversight responsibilities have been allocated, subject to the provisions of CASS 1A.3.3R</u>	<u>Upon allocation</u>	<u>5 years (from the date the record was made)</u>
...

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Sch 2 Notification requirements

Sch 2.1 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<u>CASS 1A.2.5R</u>	<u>Election to be treated as a CASS medium firm or a CASS large firm</u>	<u>The fact of that election</u>	<u>The fact of that election</u>	<u>To be made at least one week before the election is intended to take effect</u>

<u>CASS 1A.2.8R(1) - (3)</u>	<u>The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i>, as more fully described in CASS 1A.2.8R</u>	<u>The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i>, as more fully described in CASS 1A.2.8R.</u>	<u>The coming into force of CASS 1A.2.8R</u>	<u>31 January 2011 unless contrary provision is made in CASS 1A.2.8R.</u>
<u>CASS 1A.2.8R(4)</u>	<u>A <i>firm's</i> 'CASS firm type' classification</u>	<u>A <i>firm's</i> 'CASS firm type' classification</u>	<u>The coming into force of CASS 1A.2.8R</u>	<u>31 January 2011 unless contrary provision is made in CASS 1A.2.8R.</u>
<u>CASS 1A.2.9R(1) – (3)</u>	<u>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</u>	<u>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.</u>	<u>The need to comply with CASS 1A.2.9R(1) – (3)</u>	<u>Within 15 <i>business days</i> from the end of December of the previous calendar year unless contrary provision is made in CASS 1A.2.9R</u>
<u>CASS 1A.2.9R(4)</u>	<u>A <i>firm's</i> 'CASS firm type' classification</u>	<u>A <i>firm's</i> 'CASS firm type' classification</u>	<u>The need to comply with CASS 1A.2.9R(4)</u>	<u>Within 15 <i>business days</i> from the end of December of the previous calendar year unless contrary provision is made in CASS 1A.2.9R</u>
<u>CASS 1A.3.2R</u>	<u>The <i>person</i> to whom the responsibilities in CASS 1A.3.1R have</u>	<u>The name of the <i>person</i></u>	<u>Upon allocation</u>	<u>Until 31 January 2011</u>

	<u>been allocated</u>			
...

Part 2: Comes into force on 1 March 2011

3 Collateral

...

3.1.8 G *A prime brokerage firm is reminded of the additional obligations in CASS 9.3.1R which apply to prime brokerage agreements.*

...

6 Custody rules

6.1 Application

...

Prime brokerage agreements

6.1.9A G *A prime brokerage firm is reminded of the additional obligations in CASS 9.3.1R which apply to prime brokerage agreements.*

...

6.3 Depositing assets and arranging for assets to be deposited with third parties

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6.3.3 G A *firm* should consider carefully the terms of its agreements with third parties with which it will deposit *safe custody assets* belonging to a *client*. The following terms are examples of the issues *firms* should address in this agreement:

...

- (4) ~~the restrictions over the third party's right to claim a lien, right of retention or sale over any *safe custody asset* standing to the credit of the account; [deleted]~~

...

...

6.3.5 R *Subject to CASS 6.3.6R, in relation to a third party with which a firm*

deposits safe custody assets belonging to a client, a firm must ensure that the agreement with that third party relating to the custody of those assets does not include the grant to that third party, or to any other person, of a lien or a right of retention or sale over the safe custody assets, or a right of set-off over any client money derived from those safe custody assets.

- 6.3.6 R A firm may conclude an agreement with a third party relating to the custody of safe custody assets which does confer on that third party, or on another person, a lien, right of retention or sale, or right of set-off in favour of that third party or that other person if and only if that lien or right:
- (1) is confined to an individual client's safe custody assets or client money and extends only to that third party's (or a sub-custodian's, where a sub-custodian is appointed by that third party) properly incurred charges and liabilities arising from the provision of custody services to that client; or
 - (2) arises under the operating terms of a securities depository, securities settlement system or central counterparty in whose books or accounts a client's client money or safe custody assets is or are recorded or held, and provided that it does so for the purpose only of facilitating the settlement of that client's trades; or
 - (3) arises in relation to a client's safe custody assets or client money held in a jurisdiction outside the United Kingdom provided that:
 - (a) it does so as a result of local applicable law or as a necessary precondition for participation in a local market; and
 - (b) the firm has taken reasonable steps to determine that holding those assets or that money subject to such a lien or right is in the best interests of that client.

...

- 6.5.2A R A firm must keep a copy of every executed client agreement that includes that firm's right to use safe custody assets for its own account, including in the case of a prime brokerage agreement the disclosure annex referred to in CASS 9.3.1R.

...

After CASS 8 insert the following new chapter. The text is not underlined.

9 Prime brokerage

9.1 Application

- 9.1.1 R This chapter applies to a firm:

- (1) to which CASS 6 (Custody rules) applies; and
- (2) which is a *prime brokerage firm*.

9.2 Prime broker's daily report to clients

- 9.2.1 R (1) A *firm* must make available to each of its *clients* to whom it provides *prime brokerage services* a statement in a *durable medium*:
- (a) showing the value at the close of each *business day* of the items in (3); and
 - (b) detailing any other matters which that *firm* considers are necessary to ensure that a *client* has up-to-date and accurate information about the amount of *client money* and the value of *safe custody assets* held by that *firm* for it.
- (2) The statement must be made available to those *clients* not later than the close of the next *business day* to which it relates.
- (3) The statement must include:
- (a) the total value of *safe custody assets* and the total amount of *client money* held by that *prime brokerage firm* for a *client*;
 - (b) the cash value of each of the following:
 - (i) Cash loans made to that *client* and accrued interest;
 - (ii) *securities* to be redelivered by that *client* under open short positions entered into on behalf of that *client*;
 - (iii) current settlement amount to be paid by that *client* under any *futures* contracts;
 - (iv) short sale cash proceeds held by the *firm* in respect of short positions entered into on behalf of that *client*;
 - (v) cash margin held by the *firm* in respect of open *futures* contracts entered into on behalf of that *client*;
 - (vi) mark-to-market close-out exposure of any *OTC* transaction entered into on behalf of that *client* secured by *safe custody assets* or *client money*;
 - (vii) total secured obligations of that *client* against the

prime brokerage firm; and

- (viii) all other *safe custody assets* held for that *client*.
- (c) total collateral held by the *firm* in respect of secured transactions entered into under a *prime brokerage agreement*, including where the *firm* has exercised a right of use in respect of that *client's safe custody assets*;
- (d) the location of all of a *client's safe custody assets*, including assets held with a sub-custodian; and
- (e) a list of all the institutions at which the *firm* holds or may hold *client money*, including money held in *client bank accounts* and *client transaction accounts*.

9.3 Prime brokerage agreement disclosure annex

- 9.3.1 R (1) A *firm* must ensure that every *prime brokerage agreement* that includes its right to use *safe custody assets* for its own account includes a disclosure annex.
- (2) A *firm* must ensure that the disclosure annex sets out a summary of the key provisions within the *prime brokerage agreement* permitting the use of *safe custody assets*, including:
- (a) the contractual limit, if any, on the *safe custody assets* which a *prime brokerage firm* is permitted to use;
 - (b) all related contractual definitions upon which that limit is based;
 - (c) a list of numbered references to the provisions within that *prime brokerage agreement* which permit the *firm* to use the *safe custody assets*; and
 - (d) a statement of the key risks to that *client's safe custody assets* if they are used by the *firm*, including but not limited to the risks to the *safe custody assets* on the *failure* of the *firm*.
- (3) A *firm* must ensure that it sends to the *client* in question an updated disclosure annex if the terms of the *prime brokerage agreement* are amended after completion of that agreement such that the original disclosure annex no longer accurately records the key provisions of the amended agreement.
- 9.3.2 G (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients' assets* when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is

responsible.

- (2) A *prime brokerage firm* should not enter into “right to use arrangements” for a *client’s safe custody assets* unless the *person* to whom the responsibilities set out in CASS 1A.3.1R have been allocated and each of the *firm’s* managers who are responsible for those *safe custody assets* are satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10* which include:
 - (a) the daily reporting obligation in CASS 9.2.1R; and
 - (b) the record-keeping obligations in CASS 6.5.

TP 1 Transitional Provisions

...

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8	CASS 6.3.5R	R	The <i>rule</i> listed in column (2) does not apply in relation to agreements executed before 1 March 2011.	1 March 2011 until 1 October 2011	1 March 2011

...

Sch 1 Record keeping requirements

...

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period

...
<u>CASS 6.5.2AR</u>	<u>Client agreements that include a firm's right to use safe custody assets for its own account</u>	<u>A copy of every executed client agreement that includes a firm's right to use safe custody assets for its own account</u>	<u>Maintain up-to-date records</u>	<u>5 years (from the date the record was made)</u>
...

Part 3: Comes into force on 1 June 2011

7.4 Segregation of client money

...

7.4.9A R A firm must limit the funds that it deposits or holds with a relevant group entity or combination of such entities so that those funds do not at any point in time exceed 20 per cent of the balance on:

- (1) all of its general client bank accounts considered in aggregate;
- (2) each of its designated client bank accounts; and
- (3) each of its designated client fund accounts.

7.4.9B R For the purpose of CASS 7.4.9AR an entity is a relevant group entity if it is:

- (1) a BCD credit institution, a bank authorised in a third country, a qualifying money market fund, or the entity operating or managing a qualifying money market fund; and
- (2) a member of the same group as that firm.

7.4.9C G The rules in SUP 16.14 provide that a firm must report to the FSA in relation to the identity of the entities with which it deposits client money and the amounts of client money deposited with them. The FSA will use that information to monitor compliance with the diversification rule in CASS 7.4.9AR.

...

Part 4: Comes into force on 1 October 2011**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 the reporting obligations that apply to it in SUP 16.14 (Client money and asset return).

...

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;
- (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.

CF10a: the CASS operational oversight function

- 1A.3.1A R A CASS medium firm and a CASS large firm must allocate to a director or senior manager the function of:

- (1) oversight of the operational effectiveness of that firm’s systems and controls that are designed to achieve compliance with CASS;
- (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.3.1B G CASS 1A.3.1AR describes the controlled function known as the CASS operational oversight function. The table of controlled functions in SUP 10.4.5R together with SUP 10.7.9R specify the CASS operational oversight function as a required function for a firm to which CASS 1A.3.1AR applies.

- 1A.3.2 R ~~A CASS large firm and a CASS medium firm must not later than 31 January 2011 notify the FSA in writing of the identity of the person to whom responsibility has been allocated in accordance with CASS 1A.3.1R or, where CASS 1A.2.8R(3) applies, before the date on which that firm begins to~~

~~hold client money or safe custody assets.~~ [deleted]

- 1A.3.3 R (1) Subject to (2), a *firm* must make and retain an appropriate record of the *person* to whom the responsibility or function is allocated in accordance with CASS 1A.3.1R or CASS 1A.3.1AR.
- (2) A CASS *small 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 *firm* must ensure that the record made under this *rule* is retained for a period of five years after it is made.

9.3 Prime brokerage agreement disclosure annex

- 9.3.2 G (1) ...
- (2) A *prime brokerage firm* should not enter into “right to use arrangements” for a *client’s safe custody assets* unless:
- ... (a) in the case of a CASS *small firm*, the *person* in that *firm* to whom the responsibilities set out in CASS 1A.3.1R have been allocated; or
- (b) in the case of any other *firm*, the *person* who carries out the CASS *operational oversight function*; and
- (c) ~~and each of the~~ those of that *firm*’s managers who are responsible for those *safe custody assets*;
- are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10* which include:
- (a) (i) the daily reporting obligation in CASS 9.2.1R; and
- (b) (ii) the record-keeping obligations in CASS 6.5.
- ...

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.3.1R <u>or of the CASS operational oversight function, as relevant</u>	The <i>person</i> to whom the CASS oversight responsibilities have been allocated, subject to the provisions of <u>CASS 1A.3.3R, or to whom the CASS operational oversight function has been allocated in accordance with CASS 1A.3.1AR</u>	Upon allocation	5 years (from the date the record was made)
...				

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 June 2011

16 Reporting requirements

...

16.1.2 G The only categories of *firm* to which no section of this chapter applies are:

- (1) an *ICVC*;
- (2) an *incoming EEA firm* or *incoming Treaty firm*, unless it is:
 - (a) a *firm* of a type listed in SUP 16.1.3 R as a type of *firm* to which ~~SUP 16.6, SUP 16.7, SUP 16.9 or~~ SUP 16.12, or SUP 16.14 applies; or

...

...

16.1.3 R Application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<u>SUP 16.14</u>	<u>A firm with permission to conduct MiFID business or, to the extent that any business is not MiFID business, designated investment business, except for those categories of firm which are excluded by SUP 16.14.2R.</u>	<u>Entire section</u>

...

16.3.2 G This chapter has been split into the following sections, covering:

...

- (9) integrated regulatory reporting (*SUP 16.12*); ~~and~~
- (10) reporting under the *Payment Services Regulations*; and
- (11) client money and asset return (*SUP 16.14*).

...

After SUP 16.13 insert the following new section. The text is not underlined.

16.14 Client money and asset return

Application

- 16.14.1 R Except as provided for in *SUP 16.14.2R*, this section applies to a *firm* with *permission* to conduct *MiFID business* or, to the extent that any business is not *MiFID business*, *designated investment business*.
- 16.14.2 R This section does not apply to a *firm* that falls into any of the following categories:
- (1) The *firm* is:
 - (a) an *ICVC*;
 - (b) a *UCITS qualifier*;
 - (c) an *incoming EEA firm* but this exclusion only applies with respect to its *passport activities*;
 - (d) an *authorised professional firm* but this exclusion only applies with respect to its *non-mainstream professional activities*; or
 - (e) an *insurer* unless it is a *long-term insurer* which is also a *MiFID investment firm*.
 - (2) The *firm's permission* prevents it from holding *safe custody assets* and:
 - (a) the *firm* is an *authorised professional firm* and it complies with the requirements in *CASS 7.1.15R* in respect of any money received or held by it that falls into *CASS 7.1.1R*; or
 - (b) the *firm's permission* prevents it from holding *client money* in relation to either:
 - (i) all the activities in *SUP 16.14.1R* for which it has *permission*; or
 - (ii) all the activities in (i) except for *insurance mediation activities* in relation to *life policies* but in

this case this exclusion only applies if the *firm* has validly elected to act in accordance with CASS 5 (Client money: insurance mediation activity) in relation to its *client money*.

- (3) The *firm's permission* prevents it from holding *client money* and it meets the following conditions:
- (a) it acts as the *operator* of a *regulated collective investment scheme* or it is a *personal investment firm*; and
 - (b) either it holds no *safe custody assets* or all the *safe custody assets* that it holds are exempt from CASS 6 (Custody rules) due to CASS 6.1.16BR (Operators of regulated collective investment schemes) or CASS 6.1.16CR (Personal investment firms).

- 16.14.3 R The exclusions in SUP 16.4.2R only apply to a *firm* with respect to the obligation to submit a particular *CMAR* if it meets the conditions for the whole of the period that would have been covered by that *CMAR* and for the period up to the date by which the *CMAR* would otherwise have had to be submitted.

Purpose

- 16.14.4 G The purpose of the *rules* and *guidance* in this section is to ensure that the *FSA* receives regular and comprehensive information from a *firm* which is able to hold *client money* and *safe custody assets* on behalf of its *clients*.

Report

- 16.14.5 R (1) A *CASS large firm* and a *CASS medium firm* must submit a completed *CMAR* to the *FSA* within 15 *business days* of the end of each *month*.
- (2) A *CASS small firm* must submit a completed *CMAR* to the *FSA* within 15 *business days* of the conclusion of each six *month* period ending on 30 June and 31 December.
- ... (3) In SUP 16.14.5R *month* means a calendar month and SUP 16.3.13R(4) does not apply.
- 16.14.6 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.
- 16.14.7 G For the avoidance of doubt, the effect of SUP 16.14.6R(1) is that any *client money* held in accordance with CASS 5 is to be excluded from any

calculations which the *CMAR* requires.

- 16.14.8 G Nil returns are required for reporting in this section. In other words, if this section applies to a *firm* but it does not hold *client money* to which the *client money rules* in *CASS 7* apply then it should still complete the *CMAR*. It should report that it does not hold *client money*. The same applies to *safe custody assets* under *CASS 6*.

...

After SUP 16 Annex 28BG insert the following new annex. The text is not underlined.

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

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

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

see next page

Section 1 – Firm information

For further guidance please go to section 0 and validation at section 9

Please ensure all monetary values are entered in GBP thousands (000's): (£1000 =1)

- 1a) Firm Name
- 1b) FSA firm reference number
- 1c) Reporting Period End Date
- 1d) What is your reporting frequency?
- 1e) Name of CASS audit firm
- 1f) Name of CASS audit firm (if Other was selected above)
- 1g) Does the firm hold Client Money?
- 1h) Does the firm safeguard and administer custody assets?
- 1i) Are you subject to the CFTC Part 30 Exemption Order?

Alternative Approach:

- 1j) Do you operate the Alternative Approach? (CASS 7.4.14G)
- 1k) Has the Alternative Approach been signed off by your auditors (as detailed in CASS 7.4.15R)?

Overview of firm's activities subject to CASS

- 1l) Please complete the table below with all business types undertaken for segregated clients

Type of Business Activity	Number of clients	Balance of Client Money as at reporting period end date	Value of Custody Assets as at reporting period end date

Section 2 - Balances

Please ensure all monetary values are entered in GBP thousands (000's): (£1000 =1)

CASS – Client Money and Client Asset balances

Firms are reminded that this form should not be completed for client money subject to CASS 5

Please provide the following information:

- 2a) Highest Client Money balance during this reporting period:
- 2b) Lowest Client Money balance during this reporting period:
- 2c) Highest value of Custody Assets held during this reporting period:
- 2d) Lowest value of Custody Assets held during this reporting period:

Provision of the above figures does not have any immediate effect on your categorisation. Any re-assessment of a firm's categorisation will normally take place on an annual basis, based on year end data.

Section 3a – Segregation of Client Money

Please ensure all monetary values are entered in GBP thousands (000's): (£1000 =1)

Firms are reminded that this form should not be completed for client money subject to CASS 5

Where the firm holds client money as at reporting period end date

	Type - Select from drop down box	Institution where client money held	Client Money Balances	Country of incorporation of the institution (select from list)	Is this a group entity?
			Total: 0		
1					
2					

Section 3b – Segregation of Safe Custody Assets

Please ensure all monetary values are entered in GBP thousands (000's): (£1000 =1)

Where the firm holds safe custody assets as at reporting period end date

	Where & How Held? - Select from drop down box?	Name of Institution	Number of lines of stock	Value of Assets as at reporting period end date	Country of incorporation of the institution (select from list)	Is this a group entity?
				Total: 0		
1						
2						

Section 4 - Client Money Requirement and Resource

Please ensure all monetary values are entered in GBP thousands (000's): (£1000 =1)

Client Money Requirement and Resource

CASS 7 Annex 1G
Enter Amount

4a) Client Money Requirement
of which:

Enter Amount

- 4ai) Unallocated to individual clients but identified as client money
- 4aii) Unidentified client money in client money bank accounts
- 4aiii) Uncleared payments e.g. unrepresented cheques sent to clients
- 4aiv) Excess cash in segregated accounts

4b) Client Money resource
: Money Requirement v Resource

(Autocalc: 4a – 4b)

4bi) Any adjustments made to withdraw an excess or rectify a deficit identified as a result of an internal reconciliation?

Section 5a – Safe Custody Asset Reconciliations

Please ensure all monetary values are entered in GBP thousands (000's): (£1000 =1)

Safe Custody Asset unreconciled items

	30days	60days	90days
Please enter value:			

	Method	Frequency	Type of custody asset	Frequency (if 'g' is Other)
1				
2				

Section 5b - Client money reconciliations

Please ensure all monetary values are entered in GBP thousands (000's): (£1000 =1)

Client money reconciliations

Type	Frequency
5a) Client Money Internal Reconciliation	
5b) Frequency (if Other was selected above)	
5c) Client Money External reconciliation	
5d) Frequency (if Other was selected above)	

Client Money unreconciled items

6-29 days	30-59 days	60-90 days	90+ days

Enter number of unreconciled items even if it is 0

Section 6 - Record Keeping & Breaches

Record Keeping

	Type of Account:	Total number of accounts held at beginning of reporting period	Number of new accounts opened during the reporting period	Number of accounts closed during the reporting period	Total number of accounts at the end of the reporting period	Number of trust status letters and/or acknowledgement letters in place which cover these accounts	Explanation of Discrepancies.
6a)	Client Bank Account						
6b)	Client Transaction Account						
		(Enter values even if 0)		TOTAL:			

Breaches

6c) Has the firm reported any of the following notifiable breaches? Must be completed either Yes or No

Custody Asset Notification requirements (CASS 6.5.13R)

6d) Has the firm complied with the requirements in CASS 6.5.1R, 6.5.2R and 6.5.6R? Must be completed if 6c is Yes

6e) Following reconciliation, is the firm able to comply with the requirements in CASS 6.5.10R without material differences? Must be completed if 6c is Yes

Client Money Notification Requirements CASS 7.6.16R)

6f) Has the firm complied with the requirements in CASS 7.6.1R, 7.6.2R and 7.6.9R? Must be completed if 6c is Yes

6g) Following reconciliation, is the firm able to comply with the requirements in CASS 7.6.13R and 7.6.15R without material differences? Must be completed if 6c is Yes

6h) Are there any other CASS matters you wish to draw to our attention?

Section 7 - Does the firm outsource and/or offshore any of your client money and/or custody asset operations?

	Who do you outsource and/or offshore these operations to? (name of entity)	What function of your CASS operations do you outsource and/or offshore?	Location of outsourcer/ TPA
1			
2			

Are there any significant changes being made or planned changes being considered to the firms existing outsourcing arrangements? Please provide the detail of any such consideration:

TP 1 Transitional Provisions

...

TP 1.2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
<u>13B</u>	<u>SUP 16.14.5R(2)</u>	<u>R</u>	<u>In the case of a CASS small firm with a reporting period ending on 30 June 2011, that period begins on 1 June 2011</u>	<u>1 June 2011 until 30 June 2011</u>	<u>1 June 2011</u>

...

Sch 2 Notification requirements

...

Sch 2.2 G

...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
<i>SUP 16.13.3 D to SUP 16.13.4 D</i>
<u>SUP 16.14.5R</u>	<u>CMAR</u>	<u>The items listed in the form contained in SUP 16 Annex 29R</u>	<u>For CASS large firms and CASS medium firms, the end of each month.</u> <u>For CASS small firms, the conclusion of each six month</u>	<u>For CASS large firms and CASS medium firms, within 15 business days of the end of each month.</u> <u>For CASS small firms, within 15</u>

			<u>period ending on 30 June and 31 December.</u>	<u>business days of the conclusion of each six month period ending on 30 June and 31 December.</u>
...				

Part 2: Comes into force on 1 October 2011

10.4 Specification of functions

...

10.4.5 R Controlled functions

Type	CF	Description of controlled function
...		
<i>Required functions*</i>		
...		
	<u>10a</u>	<u>CASS operational oversight function</u>
...		

...

10.7 Required functions

...

CASS operational oversight function (CF10a)

10.7.9 G ~~{deleted}~~ In relation to a CASS medium firm and a CASS large firm, the
 R CASS operational oversight function is the function of acting in the capacity of a person to whom is allocated the function set out in CASS 1A.3.1AR.