

**CLIENT ASSETS SOURCEBOOK (TITLE TRANSFER) (AMENDMENT)
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 138 (General rule-making power);
 - (2) section 139 (Miscellaneous ancillary matters);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 December 2010.

Amendments to the Handbook

- D. The Client Assets sourcebook (CASS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Client Assets Sourcebook (Title Transfer) (Amendment) Instrument 2010.

By order of the Board
10 November 2010

Annex

Amendments to the Client Assets sourcebook (CASS)

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

Title transfer collateral arrangements

- 6.1.6 R (1) The *custody rules* do not apply where a *client* transfers full ownership of a *safe custody asset* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.

[Note: recital 27 to *MiFID*]

(2) Excepted from (1) is a transfer of the full ownership of a *safe custody asset*:

- (a) belonging to a *retail client*;
- (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* (other than a *rolling spot forex contract*) entered into with a *firm* acting as *market maker*; and
- (c) which is made to that *firm* or to any other *person* arranging on its behalf.

- 6.1.6A R (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's safe custody assets*.

(2) The application of (1) is confined to the taking of a transfer of full ownership:

- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* (other than a *rolling spot forex contract*) entered into with a *firm* acting as *market maker*; and
- (b) which is made to that *firm* or to any other *person* arranging on its behalf.

...

Title transfer collateral arrangements

- 7.2.3 R (1) Where a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*.

[Note: recital 27 to *MiFID*]

- (2) Excepted from (1) is a transfer of the full ownership of *money*:
- (a) belonging to a *retail client*;
 - (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* (other than a *rolling spot forex contract*) entered into with a *firm* acting as *market maker*; and
 - (c) which is made to that *firm* or to any other *person* arranging on its behalf.

- 7.2.3A R (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's money*.

- (2) The application of (1) is confined to the taking of a transfer of full ownership:

- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* (other than a *rolling spot forex contract*) entered into with a *firm* acting as *market maker*; and
- (b) which is made to that *firm* or to any other *person* arranging on its behalf.

...

- 7.2.10A G *Firms* are reminded that, notwithstanding that *money* may be due and payable to them, they have a continuing obligation to segregate *client money* in accordance with the *client money rules*. In particular, in accordance with *CASS 7.6.2R*, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out internal reconciliations of *client money* balances, either in accordance with the *standard method of internal client money reconciliation* or a different method which meets the requirements of *CASS 7.6.7R* and *CASS 7.6.8R*.

...

TP 1 Transitional Provisions

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
...					
9	<u>CASS 6.1.6R(2) and CASS 6.1.6AR</u>	R	<u>The rules to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 6.1.6AR.</u>	<u>1 December 2010 to 31 December 2010</u>	<u>1 December 2010</u>
		G	<u>Notwithstanding the operation of CASS TP 1.1(9)R, a firm should as soon as reasonably practicable modify its contractual agreement with that retail client so as to remove its ability to utilise that title transfer collateral arrangement.</u>		
10	<u>CASS 7.2.3R(2) and CASS 7.2.3AR</u>	R	<u>The rules to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 7.2.3AR.</u>	<u>1 December 2010 to 31 December 2010</u>	<u>1 December 2010</u>
		G	<u>Notwithstanding the operation of CASS TP 1.1(10)R, a firm should as soon as reasonably practicable modify its contractual agreement with that retail client so as to remove its ability to utilise that title transfer collateral arrangement.</u>		