

CLIENT ASSETS SOURCEBOOK (INDIRECT CLEARING) INSTRUMENT 2013

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 137A (FCA's general rule-making power);
 - (2) section 137B (FCA's client money rules);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (FCA's power to make guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 October 2013.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Client Assets sourcebook (CASS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Client Assets Sourcebook (Indirect Clearing) Instrument 2013.

By order of the Board of the Financial Conduct Authority
26 September 2013

Annex A

Amendments to the Glossary of definitions

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

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

<i>clearing member</i>	in relation to an <i>authorised central counterparty</i> , as defined in article 2(14) of <i>EMIR</i> .
<i>EMIR L2 Regulation</i>	Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP.
<i>indirect client</i>	as defined in article (1)(a) of the <i>EMIR L2 Regulation</i> .
<i>regulated clearing arrangement</i>	as the context requires, either: <ul style="list-style-type: none"> (a) an arrangement under which a <i>firm</i> directly places <i>client money</i> in a <i>client transaction account</i> that is an <i>individual client account</i> or an <i>omnibus client account</i> at an <i>authorised central counterparty</i>; or (b) an arrangement under which a <i>firm</i>, acting for a <i>client</i> who is also an <i>indirect client</i>, directly places <i>client money</i> of that <i>indirect client</i> in a <i>client transaction account</i> that is an <i>individual client account</i> or an <i>omnibus client account</i> at a <i>clearing member</i> for the purposes of having that <i>clearing member</i> clear the positions of that <i>indirect client</i> through an <i>authorised central counterparty</i>.

Amend the following as shown.

<i>individual client account</i>	<p><u>as the context requires, either:</u></p> <ul style="list-style-type: none"> (a) an <i>account</i> maintained by a <i>firm</i> at an <i>authorised central counterparty</i> for a <i>client</i> of the <i>firm</i> in respect of which the <i>authorised central counterparty</i> has agreed with the <i>firm</i> to provide <i>individual client segregation</i>; <u>or</u> <u>(b) an <i>account</i> maintained by a <i>firm</i> for an <i>indirect client</i> at a <i>clearing member</i> of an <i>authorised central counterparty</i> in respect of which the <i>clearing member</i> has agreed with the <i>firm</i> to provide segregation arrangements that satisfy the requirements of article</u>
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4(2)(b) of the EMIR L2 Regulation.

*omnibus client
account*

as the context requires, either:

- (a) an *account* maintained by a *firm* at an *authorised central counterparty* for more than one *client* of the *firm* in respect of which the *authorised central counterparty* has agreed with the *firm* to provide *omnibus client segregation*; or
- (b) an *account* maintained by a *firm* for more than one *indirect client* at a *clearing member* in respect of which that *clearing member* has agreed with the *firm* to provide segregation arrangements that satisfy the requirements of article 4(2)(a) of the *EMIR L2 Regulation*.

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

7 Client money rules

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Discharge of fiduciary duty

- 7.2.15 R *Money ceases to be client money (having regard to CASS 7.2.17R where applicable) if:*
- ...
- (7) it is paid by an *authorised central counterparty* directly to the *client* in accordance with CASS 7.2.15B; or
- (8) it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment to another firm or to another clearing member in accordance with CASS 7.2.15CR(1); or
- (9) it is transferred by the firm to a clearing member in connection with a regulated clearing arrangement and the clearing member remits payment directly to the indirect clients of the firm in accordance with CASS 7.2.15CR(2).
- 7.2.15A R *Client money received or held by which the firm and placed in a client transaction account that is an individual client account or an omnibus client account places at an authorised central counterparty in connection with a regulated clearing arrangement ceases to be client money for that firm if, as part of the default management process of that authorised central counterparty in respect of a default by the firm, it is ported by the authorised central counterparty in accordance with article 48 of EMIR.*
- 7.2.15B R *Client money received or held by which the firm and placed in a client transaction account that is an individual client account or an omnibus client account places at an authorised central counterparty in connection with a regulated clearing arrangement ceases to be client money if, as part of the default management process of that authorised central counterparty in respect of a default by the firm, it is paid directly to the client by the authorised central counterparty in accordance with the procedure described in article 48(7) of EMIR.*
- 7.2.15C R *Client money received or held by the firm and transferred to a clearing member who facilitates indirect clearing through a regulated clearing arrangement ceases to be client money for that firm and, if applicable, the*

clearing member, if the clearing member:

- (1) remits payment to another firm or to another clearing member in accordance with default management procedures adopted by the clearing member which comply with the requirements of article 4(4) of the EMIR L2 Regulation; or
- (2) remits payment to the indirect clients of the firm in accordance with default management procedures adopted by the clearing member which comply with the requirements of articles 4(4) and 4(5) of the EMIR L2 Regulation.

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7A Client money distribution

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Pooling and distribution

7A.2.4 R If a *primary pooling event* occurs:

- (1) all *client money* held in a *client bank account* or a *client transaction account* of the *firm* is treated as pooled (forming a notional pool) except for *client money* held in a *client transaction account* ~~that is an individual client account or an omnibus client account~~ at an authorised central counterparty or a clearing member which is, in either case, held as part of regulated clearing arrangement;
- (2) the *firm* must distribute *client money* comprising the notional pool in accordance with CASS 7.7.2R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with CASS 7A.2.5R; and
- (3) if, in connection with a regulated clearing arrangement, client money is remitted directly to the firm either from an authorised central counterparty or from a clearing member, then:
 - (a) any such remittance in respect of a *client transaction account* that is an *individual client account* must be distributed to the relevant *client* subject to CASS 7.7.2R(4);
 - (b) subject to (3)(c), any such remittance in respect of a *client transaction account* that is an *omnibus client account* must form part of the notional pool under CASS 7A.2.4R(1) and be subject to distribution in accordance with CASS 7A.2.4R(2); and
 - (c) any such remittance in respect of a *client transaction account* that is an *omnibus client account* must be distributed to the

relevant clients for whom that *omnibus client account* is held if:

- (i) no *client money* in excess of the amount recorded in that *omnibus client account* is held by the *firm* as margin in relation to the positions recorded in that *omnibus client account*; and
- (ii) the amount of such remittance attributable to each *client* of the *omnibus client account* is readily apparent from information provided to the *firm* by the *authorised central counterparty* or, in the case of indirect clients, the clearing member;

in which case the amount of such remittance must be distributed to each such *client* in accordance with the information provided by the *authorised central counterparty* or clearing member subject to CASS 7.7.2R(4).

7A.2.4A G (1) ...

(1A) Under the EMIR L2 Regulation, where a firm acting in connection with a regulated clearing arrangement for a client (who is also an indirect client) defaults, the clearing member with whom the firm has placed client money of the indirect client, may, in accordance with the EMIR L2 Regulation:

- (a) transfer the positions and assets either to another clearing member of the relevant authorised central counterparty or to another firm willing to act for the indirect client; or
- (b) liquidate the assets and positions of the indirect clients and remit all monies due to the indirect clients.

(1B) For the avoidance of doubt, 'relevant clients' in the case of CASS 7A.2.4AR(3)(a) and (3)(c) includes a client who is also an indirect client.

(2) Where any balance remitted from an *authorised central counterparty* or, in the case of indirect clients, a clearing member, to a *firm* is *client money*, CASS 7A.2.4R(3) provides for the distribution of remittances from either an *individual client account* or an *omnibus client account*.

(3) Remittances received by the *firm* falling within CASS 7A.2.4R(3)(a) and CASS 7A.2.4R(3)(c) should not be pooled with *client money* held in any *client bank account* operated by the *firm* at the time of the *primary pooling event*. Those remittances should be segregated and promptly distributed to each *client* on whose behalf the remittance was received.

- (4) For the avoidance of doubt, in respect of a regulated clearing arrangement, any *client money* remitted by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*, to the *firm* pursuant to CASS 7A.2.4R(3) should not be treated as *client money* received after the failure of the *firm* under CASS 7A.2.7R.

7A.2.5 R (-1) Each *client's client equity balance* must be reduced by:

- (a) any amount paid by:
- (i) an *authorised central counterparty* to a clearing member other than the *firm* in connection with a *porting* arrangement in accordance with CASS 7.2.15R(6) in respect of that *client*;
 - (ii) a clearing member to another clearing member or firm (other than the firm) in connection with a transfer in accordance CASS 7.2.15R(8);
- (b) any amount paid by:
- (i) an *authorised central counterparty* directly to that *client*, in accordance with CASS 7.2.15R(7); and
 - (ii) a clearing member directly to an indirect client in accordance CASS 7.2.15R(9); and
- (c) any amount that must be distributed to that *client* in accordance with CASS 7A.2.4R(3)(a) or (c).

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