

CLIENT ASSETS SOURCEBOOK (AMENDMENT NO 9) INSTRUMENT 2016**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 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give 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 21 March 2016.

Amendments to the Handbook

- D. The modules of the FCA’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
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Client Assets sourcebook (CASS)	Annex C
Supervision manual (SUP)	Annex D

Citation

- E. This instrument may be cited as the Client Assets Sourcebook (Amendment No 9) Instrument 2016.

By order of the Board
17 March 2016

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

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

<i>non-P2P agreement</i>	an agreement between one <i>person</i> (“the borrower”) and another <i>person</i> (“the lender”) by which the lender provides the borrower with credit, which does not satisfy the conditions for being a <i>P2P agreement</i> .
<i>operating an electronic system in relation to non-P2P agreements</i>	the <i>unregulated activity</i> , carried on by a <i>person</i> who has <i>Part 4A permission to operate an electronic system in relation to lending</i> , of carrying on the activity described in article 36H of the <i>Regulated Activities Order</i> in relation to a <i>non-P2P agreement</i> or prospective <i>non-P2P agreement</i> .
<i>relevant electronic lending services</i>	<i>operating an electronic system in relation to lending</i> or <i>operating an electronic system in relation to non-P2P agreements</i> .

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text.

4.1 General requirements

...

- 4.1.8E R (1) *An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to P2P agreements.*
- (2) *If an operator of an electronic system in relation to lending has made a client money election under CASS 7.10.7AR, when it is operating an electronic system in relation to non-P2P agreements it must also not accept, take, or receive the transfer of full ownership of money relating to non-P2P agreements.*

...

Annex C

Amendments to the Client Assets sourcebook (CASS)

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

7.10 Application and purpose

...

7.10.5 G The opt-in to the *client money rules* ~~in this chapter~~ under CASS 7.10.3R does not apply in respect of *money* that a *firm* holds outside of either the:

...

7.10.6 G If a *firm* has opted to comply with this chapter under CASS 7.10.3R, the *insurance client money chapter* will have no application to the activities to which the election applies.

...

Loan-based crowdfunding

7.10.7A R (1) If both the conditions in (a) and (b) below are met in respect of a *firm*, or the *firm* reasonably expects that they will all be met in the future, then the *firm* has the option to elect to comply with this chapter for all of the *money* described in those conditions:

(a) the *firm* receives or holds *money* for one or more *persons* in the course of, or in connection with, the *firm's* activity of *operating an electronic system in relation to non-P2P agreements*; and

(b) those *persons* are customers of the *firm* in their capacity as lenders under *non-P2P agreements* or prospective lenders under *non-P2P agreements*.

(2) A *firm* can only make the election under (1) by informing the *FCA* in writing of the election at least one *month* before the date on which it intends to start holding the *money* in accordance with the *client money rules* (“the effective date”).

(3) The communication in (2) must specify the effective date.

(4) The *firm* may change the effective date after it has made the communication in (2) provided that:

(a) it informs the *FCA* in writing before the new effective date; and

(b) the new effective date is not less than one month after the date of the communication in (2).

7.10.7B R (1) When a firm makes an election under CASS 7.10.7AR it must write to any customer (“C”) with whom it has agreed to provide relevant electronic lending services in C’s capacity as a lender or prospective lender, informing C at least one month before it will start to hold the money in accordance with the client money rules:

(a) that all the money it holds in the course of, or in connection with, operating an electronic system in relation to non-P2P agreements for lenders and prospective lenders under non-P2P agreements will be treated in accordance with the client money rules; and

(b) of the date on which this will start.

(2) The firm must also write to any customer (“C”) with whom, following the firm’s election, it agrees to provide relevant electronic lending services in C’s capacity as a lender or prospective lender.

(a) The firm must make this communication in advance of it receiving any money from or on behalf of C.

(b) The communication must inform C that all the money the firm holds in the course of, or in connection with, operating an electronic system in relation to non-P2P agreements for lenders and prospective lenders under non-P2P agreements will be treated in accordance with the client money rules from the date specified under (1)(b) or, if that date has passed, that this will be the case from the time of the communication onwards.

7.10.7C R Once an election made by a firm under CASS 7.10.7AR becomes effective, and until it ceases to be effective:

(1) the firm must treat all the money referred to under CASS 7.10.7AR(1) in accordance with the election; and

(2) for the purposes of (1), this chapter applies to the firm in the same way that it applies to a firm that receives and holds money in the course of or in connection with its designated investment business, except that:

(a) CASS 7.10.10R will not apply to the money referred to under CASS 7.10.7AR(1); and

(b) “client” for the purposes of CASS and rules and guidance related to CASS and their application to the firm includes customers of the firm in their capacity as lenders or prospective lenders under non-P2P agreements.

7.10.7D R If a firm that has made an election under CASS 7.10.7AR subsequently

decides to cancel that election:

- (1) it can only do so by writing to the FCA, at least one month before the date the election ceases to be effective;
- (2) it must write to any customer with whom, as at the time of the cancellation, it has agreed to operate an electronic system in relation to non-P2P agreements in their capacity as a lender or prospective lender, informing them at least one month before the date the election ceases to be effective:
 - (a) of the extent to which it will cease to hold their money in accordance with the client money rules; and
 - (b) of the date from which those changes will take effect; and
- (3) it must write to any customer (“C”) with whom, following the firm’s decision to cancel the election but before the election ceases to be effective, it agrees to operate an electronic system in relation to non-P2P agreements in C’s capacity as a lender or prospective lender, in advance of the firm receiving any money from them or on their behalf, informing them:
 - (a) of the period during which it will continue to hold all the money of lenders and prospective lenders under non-P2P agreements in accordance with the client money rules;
 - (b) of the extent to which it will subsequently cease to hold their money in accordance with the client money rules; and
 - (c) of the date from which those changes will take effect.

- 7.10.7E R (1) A firm must make and retain a written record of any election it makes under CASS 7.10.7AR including:
- (a) the date from which the election is to be effective; and
 - (b) if it cancels the election, the date from which the election is to cease to be effective.
- (2) The firm must:
- (a) make the record on the date it makes the election;
 - (b) update the record if it decides to cancel the election or change the effective date; and
 - (c) keep the record for a period of five years after ceasing to use the election.

- 7.10.7F G (1) Where a firm has made an election under CASS 7.10.7AR:

- (a) it should treat *money* held for a *client* as *client money* both in the course of or in connection with:
 - (i) *operating an electronic system in relation to lending; and*
 - (ii) *operating an electronic system in relation to non-P2P agreements;*
 - (b) (a) is regardless of whether, at the time the *firm* is holding the *money*, the *client* could or could not be a lender under a *P2P agreement*; and
 - (c) under SYSC 4.1.8ER(2) it will be not be able to accept, take, or receive the transfer of full ownership of *money* relating to *non-P2P agreements*.
- (2) Where a *firm* has not made an election under CASS 7.10.7AR, or where it has previously made an election but the election has ceased to be effective under CASS 7.10.7DR, any *money* it holds:
- (a) in the course of, or in connection with *relevant electronic lending services*, for a *client* who at that time will or could be a lender under a *P2P agreement* in respect of that *money*, should be treated as *client money* (for example because that *client's* contractual investment criteria permit that *money* to be invested in a *P2P agreement*); and
 - (b) in the course of, or in connection with, *operating an electronic system in relation to non-P2P agreements*, for a customer who at that time could not be a lender under a *P2P agreement* in respect of that *money*, should not be treated as *client money* (for example because that customer's contractual investment criteria only permit that *money* to be invested in a *non-P2P agreement*).

...

- 7.10.8 G CASS 7.10.9G to CASS 7.10.15G do not apply to a *firm* in relation to *money* held in connection with its *MiFID business* to which this chapter applies or in relation to *money* for which the *firm* has made an election under CASS 7.10.3 R(1) or CASS 7.10.7AR.

...

Amend the following as shown.

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
...					
9C	<u>CASS 7.10.7AR(2)</u>	R	<u>A firm need not give the FCA at least one month's notice under this rule, if it informs the FCA immediately at the time of making the election under CASS 7.10.7AR(1).</u>	<u>From 21 March 2016 to 22 April 2016</u>	<u>21 March 2016</u>
9D	<u>CASS 7.10.7BR(1)</u>	R	<u>A firm need not give customers at least one month's advance notice under this rule, if it informs customers as soon as practicable at the time of making the election under CASS 7.10.7AR(1).</u>	<u>From 21 March 2016 until 22 April 2016.</u>	<u>21 March 2016</u>
...					

Insert the following new row in the appropriate numerical position in **Schedule 1 (Record keeping requirements)**. The new text is underlined.

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS 7.8.10R	...			
<u>CASS 7.10.7ER</u>	<u>The election made under CASS 7.10.7AR</u>	<u>The election including the date from which the election is to be effective and,</u>	<u>At the time of the election and, if the firm cancels the election, at the</u>	<u>Five years after ceasing to use the election</u>

		<u>if the <i>firm</i> cancels the election, the date from which the election is to cease to be effective</u>	<u>time it is cancelled</u>	
...				

Insert the following new rows in the appropriate numerical position in **Schedule 2 (Notification requirements)**. The new text is underlined.

Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
CASS 6.6.57R(6)	...			
<u>CASS 7.10.7AR(2)-(4)</u>	<u>The <i>firm's</i> election under CASS 7.10.7AR(1), the effective date and any change to the effective date</u>	<u>The <i>firm's</i> election under CASS 7.10.7AR(1)</u>	<u>Making the election or changing the effective date</u>	<p><u>For a notification under CASS 7.10.7AR(2), at least one month before the date on which the <i>firm's</i> election is to be effective</u></p> <p><u>For a notification of a new effective date under CASS 7.10.7AR(4), the notification must be made before the new effective date.</u></p>
<u>CASS 7.10.7DR(1)</u>	<u>The cancellation of the <i>firm's</i> election under CASS 7.10.7AR(1)</u>	<u>The cancellation of the <i>firm's</i> election under CASS 7.10.7AR(1)</u>	<u>Cancelling the election</u>	<u>At least one month before the date on which the <i>firm's</i> election is to cease to be effective</u>
...				

Annex D

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

TP 1 Transitional provisions

...					
SUP TP 1.2					
(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
...					
14D	...				
<u>14E</u>	<u>SUP 16.14.3R</u>	<u>R</u>	<u>Where, as a result of making the election under CASS 7.10.7AR(1), a firm exceeds the limit in the bottom row of the table in CASS 1A.2.7R (CASS <i>small firm</i>), SUP 16.14.3R (requirement to submit CMAR) does not apply to the firm.</u>	<u>From 21 March 2016 until 1 January 2017</u>	<u>21 March 2016</u>
<u>14F</u>	<u>SUP 16.14.3R</u>	<u>G</u>	<u>CASS TP 14E means that a CASS <i>small firm</i> which becomes a CASS <i>medium firm</i> or a CASS <i>large firm</i> as a result of making the election under CASS 7.10.7AR(1) does not need to submit a CMAR until January 2017.</u>	<u>From 21 March 2016 until 1 January 2017</u>	<u>21 March 2016</u>
...					