

Table of Contents

CASS 8 Mandates

CASS 8.1 Application

CASS 8.2 Definition of mandate

CASS 8.3 Records and internal controls

CHAPTER

CASS 8 Mandates

Section : CASS 8.1 Application

- CASS 8.1.1 R** This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm's*:
- (1) *designated investment business* (including *MiFID business*); or
 - (2) *insurance distribution activity*, except where it relates to a *reinsurance contract*;
 - (3) *debt management activity*.
- CASS 8.1.2A R** The *mandate rules* do not apply to a *firm*:
- (1) in relation to *client money* that the *firm* is holding in accordance with **CASS 5** or **CASS 7** (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with **CASS 7.14.2R**) or **CASS 11**; or
 - (2) in relation to *custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets (without arranging)*, *acting as trustee or depositary of an AIF* or *acting as trustee or depositary of a UK UCITS* in accordance with **CASS 6**; or
 - (2A) in relation to *custody assets* for which a *small AIFM* is:
 - (a) carrying on those *excluded custody activities* that would amount to *safeguarding and administration of assets (without arranging)* but for the exclusion in article 72AA of the *RAO*; and
 - (b) is doing so in accordance with **CASS 6**; or
 - (3) in relation to a *client's* assets that the *firm* is holding or has received under an arrangement to which **CASS 3** applies; or
 - (4) when it acts as the *operator* of a *regulated collective investment scheme* in relation to property held for or within the *scheme*.
- CASS 8.1.2B G**
- (1) **CASS 8.1.2A R** is not an absolute exemption, but it excludes the application of the *mandate rules* in relation to *money* or assets that a *firm* has received, is holding, or is responsible for (as appropriate and in the circumstances described in **CASS 8.1.2A R**).
 - (2) This means that, for example in respect of **CASS 8.1.2A R (1)**, a *firm* holding *client money* in accordance with **CASS 5** or **CASS 7** does not also need to comply with the *mandate rules* in relation to the *client money* which it actually holds, but the *mandate rules* would apply if the *firm* has a *mandate* under which it can receive a *client's money* from another *person* in the course of, or in connection with, the activities set out at **CASS 8.1.1 R (1)** and **CASS 8.1.1 R (2)**.
 - (3) Similarly, in respect of **CASS 8.1.2A R (4)**, the *mandate rules* apply to a *firm* that is the *operator* of a *regulated collective investment scheme* if, for example, it has a *mandate* under which it can receive a *client's money* from another *person* for the purposes of investing it in the *scheme*.

CASS 8.1.4 G Purpose

The *mandate rules* require *firms* to establish and maintain records and *internal controls* to prevent the misuse of a *mandate*.

CASS 8.1.4A



The *mandate rules* only apply to a *firm* that has a *mandate*, and do not affect the duties of any other *person* to whom the *firm* is able to give the types of instructions referred to in *CASS 8.2.1R (4)*. For example, if a *person* (A) has accepted a *deposit* from a *client*, and a *firm* (B) has a *mandate* in respect of that *client's deposit* held by A, the *mandate rules* only apply to B, and do not affect the duties of A in relation to the *deposit*.

Section : CASS 8.2 Definition of mandate

CASS 8.2.1

R

A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):

- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
- (2) where those means are obtained in the course of, or in connection with, the *firm's insurance distribution activity*, they are in written form at the time they are obtained from the *client*;
- (3) they are retained by the *firm*;
- (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
 - (a) instructions to another *person* in relation to the *client's money* that is credited to an account maintained by that other *person* for the *client*;
 - (b) instructions to another *person* in relation to any *money* to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client money* for the *client* in accordance with *CASS 5* or *CASS 7*);
 - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments, acting as trustee or depositary of an AIF* or *acting as trustee or depositary of a UK UCITS*);
 - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
- (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

CASS 8.2.2

G

The form of a mandate

A *mandate* can take any form and need not state that it is a *mandate*. For example it could take the form of:

- (1) a standalone document containing certain information conferring authority to control a *client's* assets or liabilities on the *firm*;
- (2) a specific provision within a document or agreement that also relates to other matters; or
- (3) an authority provided by a client orally.

CASS 8.2.3

G

Retention by the firm

- (1) If a *firm* receives information that puts it in the position described in *CASS 8.2.1 R (4)* in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retained it (for example by not destroying the relevant document, electronic record or telephone recording):
 - (a) after it uses it to effect those immediate transactions; or
 - (b) because those transactions are not, for whatever reason, effected immediately.

(2) If a *firm* receives information that puts it in the position described in *CASS 8.2.1 R (4)* and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

CASS 8.2.4 **G** **Ability to give instructions to another person**

The instructions referred to at *CASS 8.2.1 R (4)* are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with *CASS 5*, *CASS 6* or *CASS 7* (for example, because of an exemption in those *rules*).

CASS 8.2.5 **G** A *mandate* in relation to the type of instructions referred to in *CASS 8.2.1 R (4)(a)* could include a direct debit instruction over a *client's* bank account in favour of the *firm*. The fact that the instruction was given by the *client* in the form of a paperless direct debit would not prevent it from being a *mandate*.

CASS 8.2.6 **G** A *mandate* in relation to the type of instructions referred to in *CASS 8.2.1 R (4)(d)* could include the *client's* credit card details.

CASS 8.2.7 **G** **Conditions on use of mandate and client's further involvement**

(1) If a *firm* obtains the means by which it can give the types of instructions referred to in *CASS 8.2.1 R (4)*, but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client* might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.

(2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in *CASS 8.2.1 R (4)*, but the *firm* cannot, in practice, use those means without the *client's* further involvement, then the condition in *CASS 8.2.1 R (5)* would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in *CASS 8.2.1 R (4)(a)* in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to those instructions.

Section : CASS 8.3 Records and internal controls

CASS 8.3.1	R	A <i>firm</i> that has <i>mandates</i> must establish and maintain adequate records and <i>internal controls</i> in respect of its use of the <i>mandates</i> .
CASS 8.3.2	R	<p>The records and <i>internal controls</i> required by CASS 8.3.1 R must include:</p> <ul style="list-style-type: none"> (1) an up-to-date list of each <i>mandate</i> that the <i>firm</i> has obtained, including a record of any conditions placed by the <i>client</i> or the <i>firm's</i> management on the use of the <i>mandate</i> and, where a <i>mandate</i> was received in non-written form in the course of, or in connection with, its <i>designated investment business</i>, the details required under CASS 8.3.2C R; (2) a record of each transaction entered into under each <i>mandate</i> that the <i>firm</i> has; (3) <i>internal controls</i> to ensure that each transaction entered into under each <i>mandate</i> that the <i>firm</i> has is carried out in accordance with any conditions placed by the <i>client</i> or the <i>firm's</i> management on the use of the <i>mandate</i>; (4) the details of the procedures and <i>internal controls</i> around the giving of instructions under the <i>mandates</i> that the <i>firm</i> has (such instructions being those referred to in CASS 8.2.1 R (4)); and (5) where the <i>firm</i> holds a passbook or similar documents belonging to the <i>client</i>, <i>internal controls</i> for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the <i>client</i> held by the <i>firm</i>.
CASS 8.3.2A	R	<p>A firm's list of mandates</p> <ul style="list-style-type: none"> (1) A <i>firm's</i> up-to-date list of <i>mandates</i> under CASS 8.3.2 R (1) must be maintained in a medium that allows the storage of information in a way accessible for future reference by the <i>FCA</i> or by an auditor preparing a report under SUP 3.10.4 R. (2) It must be possible for any corrections or other amendments, and the contents of the list prior to such corrections and amendments, to be easily ascertained.
CASS 8.3.2B	G	A <i>firm</i> may use version control to comply with CASS 8.3.2A R (2) .
CASS 8.3.2C	R	<p>An entry in a <i>firm's</i> list of <i>mandates</i> under CASS 8.3.2 R (1) that relates to a <i>mandate</i> that was received in non-written form (eg in a telephone call) in the course of, or in connection with, its <i>designated investment business</i> must, as well as the information referred to at CASS 8.3.2 R (1), include the following details:</p> <ul style="list-style-type: none"> (1) the nature of the <i>mandate</i> (eg debit card details); (2) the purpose of the <i>mandate</i> (eg collecting insurance premiums); (3) how the <i>mandate</i> was obtained (eg by telephone); (4) the name of the relevant <i>client</i>; and (5) the date on which the <i>mandate</i> was obtained.
CASS 8.3.2D		If a <i>firm</i> receives information through a telephone call in the course of, or in connection with, its

G *designated investment business* that amounts to a *mandate* as a result of the *firm* retaining a recording of the call (see *CASS 8.2.3 G*), the requirements at *CASS 8.3.2 R (1)* apply, regardless of whether or not the *firm* intends to use the *mandate* in the future. The *firm* will meet the requirements of *CASS 8.3.2 R (1)* if the *firm's* list of *mandates* is updated with the details of the *mandate* that the *firm* obtained as a result of the call.

CASS 8.3.2E G A *firm* should not reproduce information meeting the conditions under *CASS 8.2.1 R* as a separate record (eg by including such information in its list of *mandates* under *CASS 8.3.2 R (1)*) unless the *firm* considers this necessary, as this creates additional risk of misuse. Making a record of the details concerning the *mandate* described in *CASS 8.3.2C R* would be appropriate.

CASS 8.3.2F G When keeping its list of *mandates* under *CASS 8.3.2 R (1)* up to date:

- (1) a *firm* should create a new entry in the list each time the *firm* obtains a new *mandate*;
- (2) if, for an existing entry on its list, a *firm* obtains the same information meeting the conditions in *CASS 8.2.1 R* again (eg in a written confirmation following a paperless direct debit), the additional *mandate* is not a new *mandate* and the *firm* should not create another entry on the list; but
- (3) the *firm* should, for every entry on its list, identify each of the locations in which it has retained the information that meets the conditions in *CASS 8.2.1 R* (eg a *client's* debit card details retained in a telephone recording and also the *firm's* written log of the call, or two separate documents containing the same information).

CASS 8.3.2G R Retention of records

A *firm* must retain the records required under *CASS 8.3.1 R* in relation to a particular *mandate* for the following period after it ceases to have the *mandate* (e.g. because the *firm* has destroyed the relevant document, electronic record or telephone recording), as applicable:

- (1) subject to (2), a minimum of one year;
- (2) a minimum of five years, where the relevant *mandate* was held by the *firm* in the course of, or in connection with, its *MiFID business*.

CASS 8.3.2H G Where a *firm* has an obligation under *CASS 8.3.2G R* to retain records after it ceases to have a particular *mandate*, it may keep the *mandate* on the *firm's* list under *CASS 8.3.2 R (1)* for the relevant period, but the list should be updated to reflect the fact that it ceased to have the relevant *mandate* at the relevant date.

CASS 8.3.3 G A *firm* should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and criteria to which transactions effected by a *firm* with or for a *client* may be subject.

- (1) The requirements in *CASS 8.3.2 R (1)* and *CASS 8.3.2 R (3)* apply only in respect of conditions placed around the *firm's* use of a *mandate* itself or around the instructions described in *CASS 8.2.1 R (4)*. Examples of these include conditions under which a *mandate* may only be used by the *firm* in connection with transactions up to a certain value, or under which instructions under a *mandate* may only be given by certain personnel within

the *firm*.

(2) The requirements in *CASS 8.3.2 R (1)* and *CASS 8.3.2 R (3)* do not apply in respect of criteria which relate to the nature and circumstances of transactions effected by a *firm* with or for a *client*. Examples of those criteria include investment restrictions or exposure limits for a managed portfolio, and required or preferred execution prices or execution venues.