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CHAPTER

CASS 7A Client money distribution and transfer

Section : CASS 7A.1 Application and purpose

CASS 7A.1.1 **R**

Application

Subject to *CASS 7A.1.1A R*, this chapter (the *client money distribution and transfer rules*) applies to a *firm* that holds *client money* which is subject to the *client money rules* when a pooling event occurs.

CASS 7A.1.1A **R**

The *client money distribution and transfer rules* do not apply to any *client money* held by a *trustee firm* under *CASS 7.10.34R* to *CASS 7.10.40G*.

CASS 7A.1.1B **G**

As a result of *CASS 7A.1.1A R*, the *client money distribution and transfer rules* relating to *primary pooling events* and *secondary pooling events* will not affect any *client money* held by a *firm* in its capacity as *trustee firm*. Instead, the treatment of that *client money* will be determined by the terms of the relevant instrument of trust or by applicable law. However, the *client money distribution and transfer rules* do apply to a *firm* for any *client money* that it holds other than in that capacity which is subject to the *client money rules*.

CASS 7A.1.2 **G**

Purpose

The *client money distribution and transfer rules* set out the required treatment of *client money* on the occurrence of a pooling event so that where:

- (1) for example, a *firm fails* (but also in other situations where a primary pooling event occurs), the rules in *CASS 7A.2* (Primary pooling events) facilitate the return or transfer of *client money*; and
- (2) a *person* at which the *firm* holds *client money fails*, the rules in *CASS 7A.3* (Secondary pooling events) allocate any loss of *client money* among certain of the *firm's clients*.

Section : CASS 7A.2 Primary pooling events

CASS 7A.2.2 **R** Failure of the authorised firm: primary pooling event

A *primary pooling event* occurs:

- (1) on the *failure* of the *firm*;
- (2) on the vesting of assets in a trustee in accordance with an 'assets *requirement*' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act*;
- (3) on the coming into force of a *requirement* or *requirements* which, either separately or in combination:
 - (a) is or are for all *client money* held by the *firm*; and
 - (b) require the *firm* to take steps to cease holding all *client money*; or
- (4) when the *firm* notifies the *FCA*, in accordance with *CASS 7.15.33 R* (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

CASS 7A.2.3 **R** *CASS 7A.2.2R (4)* does not apply so long as:

- (1) the *firm* is taking steps, in consultation with the *FCA*, to establish those records; and
- (2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

CASS 7A.2.3A **R** If a *primary pooling event* occurs in circumstances where the *firm* had, before the *primary pooling event*, reduced its *margined transaction requirement* by utilising *approved collateral* under *CASS 7.16.33 R*, it must immediately liquidate this *approved collateral* and place the proceeds in a *client bank account* that relates to the relevant notional *pool* under *CASS 7A.2.4R(1)* (Pooling and distribution or transfer)

CASS 7A.2.3B **R** *CASS 7A.2.7-AR* (Client money received after the failure of the firm) does not apply to the proceeds under *CASS 7A.2.3A R*.

CASS 7A.2.3C **G** The proceeds of the assets realised under *CASS 7A.2.3A R*:

- (1) will form part of the relevant notional *pool* of *client money* (see *CASS 7A.2.4R(1A)(a)(i)* (Pooling and distribution or transfer)); and
- (2) must be distributed or transferred on behalf of *clients* in accordance with this chapter.

CASS 7A.2.3D **G** Client money reconciliations after a primary pooling event

- (1) If a special administrator has been appointed to the *firm* under the *IBSA Regulations* then they will be required to carry out a reconciliation under regulation 10H of the *IBSA Regulations*.
- (2) Notwithstanding regulation 10H of the *IBSA Regulations*, *CASS 7.15* has application to a *firm* after a *primary pooling event*, meaning, for example, that ongoing compliant record-keeping is required (see *CASS 7.15.15R(4)* (Internal client money reconciliations) and

CASS 7.15.26AR (Frequency of external reconciliations after a primary pooling event)).

CASS 7A.2.4



Pooling and distribution or transfer

If a *primary pooling event* occurs, then:

(1)

- (a) in respect of a *sub-pool*, the following is treated as a single notional *pool* of *client money* for the beneficiaries of that *pool*:
 - (i) any *client money* held in a *client bank account* of the *firm* relating to that *sub-pool*; and
 - (ii) any *client money* held in a *client transaction account* of the *firm* relating to that *sub-pool*, except for *client money* held in a *client transaction account* at an *authorised central counterparty* or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*;
- (b) in respect of the *general pool*, the following is treated as a single notional *pool* of *client money* for the beneficiaries of the *general pool*:
 - (i) any *client money* held in any *client bank account* of the *firm*;
 - (ii) any *client money* held in a *client transaction account* of the *firm*, except for *client money* held in a *client transaction account* at an *authorised central counterparty*, or a *clearing member* which is, in either case, held as part of a *regulated clearing arrangement*; and
 - (iii) any *client money* identifiable in any other account held by the *firm* into which *client money* has been received;

except, in each case, for *client money* relating to a *sub-pool* which falls under sub-paragraphs (1)(a)(i) or (ii); and

(1A)

- (a) a notional *pool* under paragraph (1) shall also include any *client money* that is:
 - (i) transferred by the *firm* under regulation 10H(3) of the *IBSA Regulations* to a *client bank account* that is included in that *pool* under paragraph (1);
 - (ii) paid under CASS 7A.2.3AR into a *client bank account* that is included in that *pool* under paragraph (1);
 - (iii) paid under CASS 7A.2.4R(3)(b) or CASS 7A.2.4R(3)(d) into a *client bank account* or *client transaction account* that is included in that *pool* under paragraph (1);
 - (iv) (subject to sub-paragraph (b)) otherwise received after the *primary pooling event* into a *client transaction account* that is included in that *pool* under paragraph (1) where the receipt is in relation to a *margined transaction* that the *firm* had entered into through the use of that *client transaction account* and which had not *closed out* before *primary pooling event*; and
 - (v) paid under CASS 7.15.29R(1) (Reconciliation discrepancies) after the *primary pooling event* into a *client bank account* that is included in that *pool* under paragraph (1); and
- (b) the *firm* must not transfer any *client money* in a notional *pool* under sub-paragraphs (1)(a) or (b) to a *client transaction account* except where necessary to comply with sub-

paragraph (2)(b);

(c) a notional *pool* under paragraph (1) shall cease to include *client money* from the point at which it is:

- (i) transferred by the *firm* under regulation 10H(4) of the *IBSA Regulations* from a *client bank account* that is included in that *pool* under paragraph (1); or
- (ii) paid out after the *primary pooling event* from a *client transaction account* that is included in that *pool* under paragraph (1) where the payment is in relation to a *margined transaction* that the *firm* had entered into through the use of that *client transaction account* and which had not *closed out* before *primary pooling event*.

(2) the *firm* must, as soon as reasonably practicable:

(a) (subject to paragraphs (4) and (5)) distribute *client money* comprising a notional *pool* in accordance with *CASS 7.17.2 R*, so that each *client* who is a beneficiary of that *pool* receives a sum which is rateable to the *client money* entitlement calculated in accordance with *CASS 7A.2.5R* (Client money entitlements); or

(b) (where applicable) transfer *client money* comprising a *sub-pool* to effect or facilitate *porting* of positions held for the *clients* who are beneficiaries of that *sub-pool*; 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* as part of that *person's* default management procedures, then, as soon as reasonably practicable:

(a) any such remittance in respect of a *client transaction account* that is an *individual client account* does not form a part of any notional *pool* under *CASS 7A.2.4R(1)* and must be distributed to the relevant *client* subject to *CASS 7.17.2R* (4) ;

(b) subject to sub-paragraphs (3)(c) and (d), 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)(b)* and be subject to distribution in accordance with *CASS 7A.2.4R(2)(a)*;

(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 does not form a part of any notional *pool* under *CASS 7A.2.4R(1)* and must be distributed to each such *client* in accordance with the information provided by the *authorised central counterparty* or *clearing member* subject to *CASS 7.17.2R* (4) ; and

(d) any such remittance in respect of a *client transaction account* that is a *net margined omnibus client account* in respect of which the *firm* maintains a *sub-pool* must form part of such *sub-pool* under *CASS 7A.2.4R(1)(a)* to be distributed in accordance with *CASS 7A.2.4R (2)(a)*; and

(4) as an alternative to distributing a *client's client money* in a notional *pool* to the relevant *client* under *CASS 7A.2.4R(2)(a)* and in respect of *client money* that is not required to be transferred under *CASS 7A.2.4R(2)(b)*, a *firm* (Firm A) may on its own initiative transfer some or all of that *client's client money* in the relevant notional *pool* to any other *person* (Firm B) for safekeeping on behalf of the *client* provided that:

(a) as a consequence of any such transfer, Firm A does not distribute to any other *client* whose *client money* is in that notional *pool*, or transfer on behalf of any such other *client* to another *person*, an amount of *money* that would be less than that which such other *client* was entitled to have distributed or transferred under this *rule*;

(b) unless Firm A is able to rely on regulation 10B(3)(b) of the *IBSA Regulations* for the transfer to Firm B to have effect without the consent of the *client*, either:

(i) Firm A has the specific consent of the *client* to the transfer to Firm B; or

(ii)

(A) there is a written agreement between Firm A and the *client* which provides that Firm A may transfer the *client's client money* to another *person*; and

(B) Firm A can lawfully rely on that provision to achieve the transfer under this *rule*;

(c) Firm A has, in advance of the transfer under this *rule*, either:

(i) obtained a contractual undertaking from Firm B that the *money* transferred will be held by Firm B as *client money* in accordance with the *client money rules*; or

(ii) where the *client money rules* do not apply to Firm B, or where they do apply but Firm B is able to hold the *money* transferred other than as *client money*, satisfied itself, having exercised all due skill care and diligence in its assessment, that Firm B will apply adequate measures to protect the *money* transferred;

(d) where regulation 10C(3) of the *IBSA Regulations* does not apply, Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B will return the money to the *client* at the *client's* request; and

(e) Firm A has, in advance of the transfer under this *rule*, obtained a contractual undertaking from Firm B that Firm B will notify the *client*, within 14 *days* of the transfer of that *client's* balance having commenced:

(i) of the applicable regulatory regime under which the *money* will be held by Firm B;

(ii) either:

(A) of any relevant compensation scheme limits that may apply in respect of Firm B's handling of the transferred *money*; or

(B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and

(iii) where regulation 10C(3) of the *IBSA Regulations* does not apply, that the *client* has the option of having its *money* returned to it by Firm B; and

(5)

(a) subject to (b), as a further alternative to distributing a *client's client money* in a notional *pool* to the relevant *client* under *CASS 7A.2.4R(2)(a)* and in respect of *client money* that is not required to be transferred under *CASS 7A.2.4R(2)(b)*, a *firm* may transfer all of that *client's client money* in the relevant notional *pool* to a *dormant asset*

fund operator under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with *CASS 7.11.57AR*; and

(b) as a consequence of any such transfer to a *dormant asset fund operator*, the *firm* must not distribute to any other *client* whose *client money* is in that notional *pool*, or transfer on behalf of any such other *client* to another *person*, an amount of *money* that would be less than that which such other *client* was entitled to have distributed or transferred under this *rule*.

CASS 7A.2.4-A

G

The purpose of *CASS 7A.2.4(4)(a)* and *(5)(b)* is to ensure that where a particular *client's client money* is transferred (under *CASS 7A.2.4R(4)* to another *person* for safekeeping or under *CASS 7A.2.4R(5)* to a *dormant asset fund operator*), such a transfer does not prejudice any other *client*. This means, for example, that the amounts that may be transferred under those provisions should take account of any *shortfall* that affects the relevant *clients*.

CASS 7A.2.4-B

G

Where regulation 10C(3) of the *IBSA Regulations* does apply, Firm A should, in advance of the transfer under *CASS 7A.2.4R(4)*, obtain a contractual undertaking from Firm B that:

- (1) Firm B will comply with the *client's* request for a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*; and
- (2) Firm B will notify the *client*, within 14 *days* of the transfer of that *client's safe custody asset* having commenced, that the *client* can demand a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*.

CASS 7A.2.4-C

G

Under *CASS 7A.2.4R(1)(b)(i)* a *firm* should include the balances of *client money* referred to at *CASS 7.13.40AR(2)*, *CASS 7.13.53AR(2)* and *CASS 7.13.72AR(2)* in the relevant *pool*.

CASS 7A.2.4A G

- (1) Under *EMIR*, where a *firm* that is a *clearing member* of an *authorised central counterparty* defaults, the *authorised central counterparty* may:
 - (a) *port client* positions where possible; and
 - (b) after the completion of the default management process:
 - (i) return any balance due directly to those *clients* for whom the positions are held, if they are known to the *authorised central counterparty*; or
 - (ii) remit any balance to the *firm* for the account of its *clients* if the *clients* are not known to the *authorised central counterparty*.
- (1A) Under the *EMIR L2 Regulation* or the *MiFIR indirect clearing RTS*, 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 indirect clearing default management obligations* or *MiFIR indirect clearing default management obligations*:
 - (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.2.4R (3)(a)* and *CASS 7A.2.4R (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.2.7-AR* (Client money received after a primary pooling event).

(5) The *firm's* obligation to its *client* in respect of *client money* held in a *sub-pool* is discharged to the extent that the *firm* transfers that *client money* to facilitate *porting* in accordance with *CASS 7.11.34R (8)*.

CASS 7A.2.4B **G**

(1) The restrictions on transfers of *client money* at *CASS 7A.2.4R(4)* are each of the type referred to at regulation 10B(4) of the *IBSA Regulations* as "a restriction in client money rules".

(2) Where Firm A has complied with the restrictions at *CASS 7A.2.4R(4)* for any transfers to Firm B, any *money* transferred to Firm B ceases to be *client money* held by Firm A (see *CASS 7.11.34R(2)(e)* (Discharge of fiduciary duty)).

(3) But any *money* returned by Firm B to Firm A in the event of a 'reverse transfer' will be subject to the *client money rules* and *client money distribution and transfer rules* as applied to Firm A, and should be treated by Firm A in accordance with *CASS 7A.2.7-AR* (Client money received after the failure of the firm).

CASS 7A.2.5 **R**

Client money entitlements

(-2)

(a) Subject to paragraph (-2)(b), each *client's* entitlement to *client money* in a notional *pool* is calculated with reference to the *client money requirement* as shown by an *internal client money reconciliation* carried out in accordance with *CASS 7.15.15R(4)(a)* (Internal client money reconciliations) as at the *primary pooling event*.

(b) If, as at the *primary pooling event*, the *firm* had entered in to one or more cleared *margined transactions* through the use of a *client transaction account* at a *clearing house* that had not *closed out* as at the *primary pooling event*, the *client money requirement* under (-2)(a) must be calculated as follows:

(i) *CASS 7.16.28R* does not apply in respect of those cleared *margined transactions*; and

(ii) subject to *CASS 7.16.30R*, in respect of those cleared *marginised transactions* a *client's equity balance* is instead the amount which the *firm* is liable to pay to the *client* (or the *client* to the *firm*) under the *client money rules* for *marginised transactions* following the *close out* of those *marginised transactions*. This balance should include any cash margin the *firm* has received from the *client* in connection with those transactions.

(-1)

Each *client's client equity balance* following any adjustments under paragraph (-2) 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 7.11.34R (6)* in respect of that *client*; and

(ii) a *clearing member* to another *clearing member* or *firm* (other than the *firm*) in connection with a transfer in accordance with *CASS 7.11.34R (8)*;

(b) any amount paid by:

(i) an *authorised central counterparty* directly to that *client*, in accordance with *CASS 7.11.34R (7)*; and

(ii) a *clearing member* directly to an *indirect client* in accordance with *CASS 7.11.34R (9)*; and

(c) any amount that must be distributed to that *client* by the *firm* in accordance with *CASS 7A.2.4R (3)(a)* or *(c)*.

(1) When, in respect of a *client* who is a beneficiary of a *pool* and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a positive *individual client balance* and a negative *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *individual client balance* for that *client*.

(2) When, in respect of a *client* who is a beneficiary of a *pool* and following any adjustments under paragraph (-2) and reductions under paragraph (-1), there is a negative *individual client balance* and a positive *client equity balance* in relation to that *pool*, the credit for that *pool* must be offset against the debit for that *pool* reducing the *client equity balance* for that *client*.

CASS 7A.2.5A **G**

(1)

(a) The effect of *CASS 7A.2.5R(-2)(b)* is that the *client equity balance* for the relevant cleared *marginised transaction* is with reference to the eventual *close out* or 'hindsight' value of the transaction, instead of being a notional balance as at the *primary pooling event* under *CASS 7.16.28R*.

(b) *CASS 7A.2.5R(-2)(b)* applies in respect of cleared *marginised transactions* that a *firm* had entered into for any *client*, including for *indirect clients* where the *firm* is itself a *client* of a *clearing member*.

(2) In cases where *CASS 7A.2.5R(-2)(b)* does not apply, the *client equity balance* for a *marginised transaction* will be the notional balance as at the *primary pooling event* under

CASS 7.16.28R.

CASS 7A.2.6A **R****Closing a client money pool**

- (1) Before a *firm* ceases to treat a balance of *client money* in a notional *pool* as *client money* by transferring it to itself under *CASS 7.17.2R(5)* it must:
- (a) (subject to paragraph (2)) attempt to distribute the balance to the relevant *client* or transfer it to another *person* for safekeeping on behalf of the *client* in accordance with *CASS 7A.2.4R* (Pooling and distribution or transfer);
 - (b) (subject to paragraph (3)) take reasonable steps to notify any *client* in respect of whom the *firm* has evidence that the *money* may belong, of the *firm's* proposed course of action;
 - (c) where the *firm* has *failed*, apply any of the following types of balances of *client money* in the notional *pool* towards any costs incurred in accordance with *CASS 7.17.2R(4)*, including any costs incurred under paragraph (1)(d):
 - (i) *client money* allocated to a *client* for which, following the steps taken by the *firm* to satisfy paragraph (1)(b), the *client* to whom the *client money* belongs has not provided the *firm* with instructions that would enable the *firm* to make a distribution or transfer under paragraph (1)(a); or
 - (ii) *client money* belonging to a *client* who, in response to a notification made under paragraph (1)(b), has confirmed to the *firm* that it disclaims the benefit of the statutory trust under *CASS 7.17.2R* in relation to the *client money*; or
 - (iii) *client money* that, following the steps taken by the *firm* to satisfy paragraph (1)(b), is unallocated to any *client* in the *firm's* records and accounts; and
 - (d) immediately before transferring the balances of *client money* under paragraph (1)(c) to the *firm* itself carry out the actions in (i) and (ii) in the following order:
 - (i) attempt to transfer them to a *dormant asset fund operator* under the applicable provisions of Part 1 of the Dormant Assets Act 2022 and in accordance with *CASS 7.11.57AR* (but this only applies if, prior to a *primary pooling event*, the *firm* had put in place contractual or other arrangements with a *dormant asset fund operator* of the sort described at section 23 of the Dormant Assets Act 2022); and
 - (ii) apply any remaining balances towards making good any outstanding *shortfall* in the notional *pool*, and subsequently distribute or transfer them in accordance with *CASS 7A.2.4R* to or on behalf of *clients* for whom the *firm* is able to make such distributions or transfers.
- (2) A *firm* is not required to attempt to return or transfer the balance of *client money* under paragraph (1)(a) where the *client* to whom the balance belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under *CASS 7.17.2R* in relation to the balance *client money*.
- (3) A *firm* is not required to notify a *client* under paragraph (1)(b) where:
- (a) the *firm* is able to distribute the *client money* to the relevant *client* or transfer it to another *person* on behalf of the *client* in accordance with *CASS 7A.2.4R* (Pooling and distribution or transfer);

(b) the *client* to whom the balance of *client money* belongs has confirmed to the *firm* that it disclaims the benefit of the statutory trust under *CASS 7.17.2R* in relation to the balance *client money*;

(c) in respect of a *client* for whom the *firm* has evidence that they were a *retail client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that *client* in the notional *pool* is £25 or less when calculated under *CASS 7A.2.5R* (Client money entitlements); or

(d) in respect of a *client* for whom the *firm* has evidence that they were a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*, the entitlement of that client is £100 or less when calculated under *CASS 7A.2.5R* (Client money entitlements).

CASS 7A.2.6B **G**

(1) A *firm* may propose to cease to treat a balance of *money* as *client money* under *CASS 7A.2.6AR(1)* where the *firm* is using the procedure under regulation 12C of the *IBSA Regulations* to set a 'hard bar date' by giving a 'hard bar date notice', or another similar procedure in accordance with the legal procedure for the *firm's failure*.

(2) In any case, a *firm* should consider the whether its obligations under law (including trust law) or any agreement permit it to cease to treat a balance of *money* as *client money* in the way in which it proposes to do so.

(3) Balances of *client money* under *CASS 7A.2.6AR(1)(c)(iii)* include any remaining amount of those that the *firm* is holding to comply with:

- (a) *CASS 7.13.41R* (Prudent segregation);
- (b) *CASS 7.13.65R(1)* (The alternative approach to client money segregation); and
- (c) *CASS 7.13.73R(1)* (Use of the normal approach in relation to certain regulated clearing arrangements).

CASS 7A.2.6C **E**

(1) Reasonable steps in *CASS 7A.2.6AR(1)(b)* include the following course of conduct:

(a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;

(b) for a *client* for whom the *firm* has evidence that it was a *professional client* for the purposes of the *client money rules* at the time of the *primary pooling event*:

(i) writing to the *client* at the last known address either by post or by electronic mail:

(A) to inform it of the *firm's* intention to no longer treat the balance as *client money*;

(B) to inform it of the consequences of the *firm's* proposed course of action in relation to the *client's* ability to assert an ownership right to that *money*; and

(C) to invite the *client* to submit a claim for the *money*; and

(ii) where the *client* has not responded within 28 *days* of the communication under sub-paragraph (i), attempting to communicate the information in sub-paragraph (i) to the *client* on at least one further occasion by any means other than that used in (i) including by post, electronic mail, telephone or media advertisement; and

(c) for any other *client*.

- (i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and
- (ii) where the *client* has not responded within 28 *days* of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the *client* on at least one further occasion by any means other than one in respect of which the *firm* has obtained positive confirmation that the *client* is not receiving such communications.

(2) Compliance with paragraph (1) may be relied on as tending to establish compliance with *CASS 7A.2.6AR(1)(b)*.

(3) Contravention of paragraph (1) may be relied on as tending to establish contravention of *CASS 7A.2.6AR(1)(b)*.

CASS 7A.2.6D **G**

For the purpose of *CASS 7A.2.6CE(1)(a)*, a *firm* may use any available means to determine the correct contact details for the relevant *client*, including:

- (1) telephoning the *client*;
- (2) searching internal and/or public records;
- (3) media advertising;
- (4) mortality screening; and
- (5) using credit reference agencies or tracing agents.

CASS 7A.2.6E **R**

If the *firm* undertook a tracing exercise for the purposes of *CASS 7.11.50R(3)* (Allocated but unclaimed client money) before the *primary pooling event* but had not made the charity payment under that *rule* by the time of the *primary pooling event* then the findings of that exercise may be relied on for the purposes of *CASS 7A.2.6CE(1)(a)*.

CASS 7A.2.6F **R**

(1) A *firm* must make a record of any balance under *CASS 7A.2.6AR(1)(c)(i)* or (ii) which is to be applied towards any costs or towards any *shortfall* in the relevant notional *pool* in accordance with *CASS 7A.2.6AR(1)(c)* or (d) respectively, immediately before taking such steps.

(2) The record under paragraph (1) must state:

- (a) the amount of the balance of *client money*;
- (b) the name and contact details of any *client* to whom that balance was allocated according to the *firm's* records at the time of making the record under this *rule*; and
- (c) either:
 - (i) the efforts applied by the *firm* to determine the *client's* correct contact details under *CASS 7A.2.6CE(1)(a)*; or
 - (ii) if being relied on under *CASS 7A.2.6ER*, the efforts applied by the *firm* to determine the *client's* correct contact details for the purposes of *CASS 7.11.50R(3)* (Allocated but unclaimed client money).

(3) A *firm* must keep the record under (1) indefinitely.

CASS 7A.2.7-A

Client money received after a primary pooling event

R

- (1) This *rule* applies in respect of *client money* received by a *firm* after a *primary pooling event* that does not form part of a notional *pool*.
- (2) Where the *firm* is using the normal approach under *CASS 7.13.6R* (The normal approach), *client money* to which this *rule* applies must be received into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under *CASS 7A.2.4R(1)* (Pooling and distribution or transfer).
- (3)
- (a) This paragraph applies in respect of *client money* that is received by a *firm* into an account other than a *client bank account* as required under *CASS 7.13.62R* (The alternative approach to client money segregation) or as permitted under *CASS 7.13.72R* (Use of the normal approach in relation to certain regulated clearing arrangements).
- (b) To the extent the *firm* makes any transfers from its own account to a *client bank account* under *CASS 7.13.62R(3)* (The alternative approach to client money segregation) or *CASS 7.13.72R(2)(b)* (Use of the normal approach in relation to certain regulated clearing arrangements), such transfers must be made into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under *CASS 7A.2.4R(1)* (Pooling and distribution or transfer).
- (4) Subject to paragraphs (5) and (6), a *firm* must promptly return to each relevant *client* all *client money* to which this *rule* applies.
- (5) To the extent that *client money* relates to a transaction for a *client* that was concluded before the *primary pooling event* but had not yet settled at the time of the *primary pooling event*, the *firm* may use that *client money* to settle that transaction.
- (6)
- (a) This paragraph applies where *client money* which is not received by the *firm* into a *client transaction account* relates to one or more cleared *marginised transactions* entered into by the *firm* through the use of a *client transaction account* at a *clearing house*.
- (b) Where such transactions have not *closed out* as at the *primary pooling event*, then provided that the *firm* has not *failed*, it may transfer that *client money* to a *client transaction account* with the relevant *clearing house* in accordance with *CASS 7.14* (Client money held by a third party) for the purpose of collateralising those *marginised transactions*.

CASS 7A.2.7A **G**

A *firm* may open a *client bank account* after a *primary pooling event* for the purposes of complying with *CASS 7A.2.7-AR(2)* and *CASS 7A.2.10AR(2)*. If it does so it must comply with *CASS 7.18.15R* regarding *acknowledgement letters*.

CASS 7A.2.7B **G**

Following a *failure*, *CASS 7.17.2R(4)* applies in respect of costs properly attributable to the return of a *client's client money* under *CASS 7A.2.7-AR(4)*.

CASS 7A.2.9 **R**

If a *firm* receives a *mixed remittance* after a *primary pooling event* other than where using the alternative approach under *CASS 7.13.62R* or under a *regulated clearing arrangement* to which *CASS 7.13.72R* applies, it must:

- (1) pay the full sum into a *client bank account* that meets the requirements of *CASS 7A.2.7-*

AR(2); and

(2) pay the *money* that is not *client money* out of that *client bank account* into a *firm's* own bank account within one *business day* of the *day* on which the *firm* would normally expect the remittance to be cleared.

CASS 7A.2.10 **G** Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

CASS 7A.2.10A **R** **Money due to a client from a firm after a primary pooling event**

A *firm* that is operating the normal approach to segregation under *CASS 7.13* (Segregation of client money) which becomes liable to pay *money* to a *client* after a *primary pooling event* must promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

- (1) to, or to the order of, the *client*; or
- (2) into a *client bank account* that does not contain any *client money* forming part of a notional *pool* under *CASS 7A.2.4R(1)*.

CASS 7A.2.10B **G** Where the *firm* has payment instructions from the *client*, the *firm* should pay the money to the order of the *client*, rather than into a *client bank account*.

CASS 7A.2.11 **R** **Secondary pooling events**

If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.

Section : CASS 7A.3 Secondary pooling events

- CASS 7A.3.1 R** A *secondary pooling event* occurs on the *failure* of a *person* to which *client money* held by the *firm* has been transferred under *CASS 7.13.3R (1)* to *CASS 7.13.3R (3)* (Depositing client money) or *CASS 7.14.2 R* (Client money held by a third party).
- CASS 7A.3.2 R** *CASS 7A.3.6 R* to *CASS 7A.3.12AR* do not apply if, on the *failure* of the relevant *person*:
- (1) there is no *secondary pooling shortfall*; or
 - (2) where there is a *secondary pooling shortfall*, the *firm* pays an amount equal to the amount of *client money* which would have been held at that *person* if a *secondary pooling shortfall* had not occurred either:
 - (a) to its *clients* in the appropriate amounts such that they are compensated by the amount of the *secondary pooling shortfall* that they would otherwise be required to bear under this section; or
 - (b) into a *client bank account* at an unaffected bank with the effect that any *shortfall* that would otherwise arise for the purposes of *CASS 7.15* (Records, accounts and reconciliations) is avoided.
- CASS 7A.3.4 G** When a *person* to which *client money* held by the *firm* has been transferred under *CASS 7.13.3R(1)* to *CASS 7.13.3R(3)* (Depositing client money) or *CASS 7.14.2R* (Client money held by a third party) *fails*, and the *firm* decides not to make good any *secondary pooling shortfall* in the amount of *client money* held at that *person* (see *CASS 7A.3.2R(2)*), a *secondary pooling event* will occur. The *firm* should reflect the *secondary pooling shortfall* that arises in the *general pool* (where the *firm* maintains only a *general pool*) and, where relevant, in a particular *sub-pool* (where the *firm* maintains both a *general pool* and one or more *sub-pools*) in its records of the entitlement of *clients* and of *money* held with third parties under *CASS 7.15* (Records, accounts and reconciliations).
- CASS 7A.3.5 G** The *client money distribution and transfer rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.
- CASS 7A.3.6 R** **Failure of a bank: pooling**
- If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, and/or where one or more *designated client bank accounts* or *designated client fund accounts* are held, for the *general pool* or a particular *sub-pool*, then:
- (1) in relation to every *general client bank account* of the *firm* maintained in respect of that *pool*, the provisions of *CASS 7A.3.8 R*, *CASS 7A.3.13 R* and *CASS 7A.3.14 R* will apply;
 - (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank for the relevant *pool*, the provisions of *CASS 7A.3.10 R*, *CASS 7A.3.13 R* and *CASS*

7A.3.14 R will apply;

(3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank for the relevant *pool*, the provisions of CASS 7A.3.11 R, CASS 7A.3.13 R and CASS 7A.3.14 R will apply;

(4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* for the relevant *pool*, is not pooled with any other *client money* held for that *pool* or any other *pool*; and

(5) any *money* held in a *designated client fund account* in respect of that *pool*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money* held for that *pool* or any other *pool*.

CASS 7A.3.6A **G** Depending on the *person* at which the *secondary pooling event* occurs, the types of *client bank accounts* and *client transaction accounts* that are affected by the *secondary pooling shortfall*, and the nature of a *firm's* business with a particular *client*, it is possible that the *client's* overall entitlement to *client money* held by the *firm* may be affected by a combination of CASS 7A.3.8R, CASS 7A.3.8AR, CASS 7A.3.10R and CASS 7A.3.11R.

CASS 7A.3.7A **R** **Failure of an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty: pooling**

If a *secondary pooling event* occurs as a result of the *failure* of an exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, then, in relation to every *general client bank account* and *client transaction account* of the *firm*, CASS 7A.3.8R and CASS 7A.3.13R will apply, and CASS 7A.3.8AR will additionally apply in the case of the *failure* of an *authorised central counterparty*.

CASS 7A.3.8 **R** **Failure of a bank, intermediate broker, settlement agent, OTC counterparty, exchange or clearing house: treatment of general client bank accounts and client transaction accounts**

Money Subject to CASS 7A.3.8AR, if a *secondary pooling event* occurs as a result of the *failure* of a bank, *intermediate broker*, *settlement agent*, *OTC* counterparty, exchange or *clearing house*, *money* held in each *general client bank account* and *client transaction account* of the *firm* for the *general pool* or a *sub-pool* must be treated as pooled and:

(1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts* for the relevant *pool*, that has arisen as a result of the *failure* of the bank, exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, must be borne by all the *clients* of that *pool* whose *client money* is held in such *general client bank account* or *client transaction account* of the *firm*, rateably in accordance with their entitlements;

(2) a new *client money* entitlement must be calculated for each *client* of the relevant *pool* by the *firm*, to reflect the requirements in paragraph (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;

(3) the *firm* must make and retain a record of each *client's* share of the *secondary pooling shortfall* until the *client* is repaid; and

(4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to *CASS 7.15.3 R* (Records and accounts) for that *pool*.

CASS 7A.3.8A **R**

If a *secondary pooling event* occurs as a result of the *failure* of an *authorised central counterparty*:

- (1) any *money* held in a *client transaction account* that is an *individual client account* at the *failed authorised central counterparty* is not pooled by the *firm* with any of its other *client money*;
- (2) any *money* held in a *client transaction account* that is an *omnibus client account* at the *failed authorised central counterparty* is not pooled by the *firm* with any of its other *client money* provided that:
 - (a) 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
 - (b) the *client* or *clients* of the *firm* to whom the amount recorded in that *omnibus client account* relates is or are readily apparent from information provided to the *firm* by the *authorised central counterparty* or, in the case of *indirect clients*, the *clearing member*;
- (3) any *money* held in a *client transaction account* that is a *net margined omnibus client account* at the failed *authorised central counterparty* in respect of which the *firm* maintains a *sub-pool* is not pooled by the *firm* with any of its other *client money*;
- (4) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in an *individual client account* to which paragraph (1) applies must be borne by the *client* whose *client money* was held in that *individual client account*;
- (5) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in an *omnibus client account* to which paragraph (2) applies must either:
 - (a) be borne by all the *clients* whose *client money* is held in that account, rateably in accordance with their entitlements; or
 - (b) if the *firm* is required under applicable law to allocate the *secondary pooling shortfall* other than as under (a), be allocated as required by applicable law;
- (6) the proportion of any *secondary pooling shortfall* that arises as a result of *client money* held, or which should have been held, in a *net margined omnibus client account* to which paragraph (3) applies must be borne by all the *clients* whose *client money* is held in the relevant *sub-pool*, rateably in accordance with their entitlements;
- (7) a new *client money* entitlement must be calculated for each relevant *client* of the relevant *pool*, to reflect the requirements in paragraphs (1), (2) and (3), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (8) the *firm* must make and retain a record of each *client's* share of the *secondary pooling shortfall* until the *client* is repaid; and
- (9) the *firm* must use the new *client money* entitlements calculated under paragraph (7) for

the purposes of reconciliations pursuant to **CASS 7.15.3R** (Records and accounts) for the relevant *pool*.

CASS 7A.3.9 G The term "which should have been held" is a reference to the relevant *failed person's* failure to hold the *client money* at the time of its *failure*.

CASS 7A.3.9A G

(1) **CASS 7A.3.8AR(5)(b)** enables a *firm* to allocate the relevant part of a *secondary pooling shortfall* that arises in an *omnibus client account* under **CASS 7A.3.8AR(2)** other than on a "pro rata" basis, where this is required by applicable law.

(2) This would include, for example, where applicable law requires the *firm* to attribute a *secondary pooling shortfall* only to a particular *client* or *clients*.

CASS 7A.3.10 R **Failure of a bank: treatment of designated client bank accounts and designated client fund accounts**

For each *client* with a *designated client bank account* maintained by the *firm* for the *general pool* or a particular *sub-pool* and held at the *failed* bank:

- (1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* of the relevant *pool* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their *client money* entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients* of the relevant *pool* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *secondary pooling shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to **CASS 7.15.3 R** (Records and accounts) in respect of the relevant *pool*.

CASS 7A.3.11 R *Money* held by the *firm* in each *designated client fund account* for the *general pool* or a particular *sub-pool* with the *failed bank* must be treated as pooled with any other *designated client fund accounts* for the *general pool* or a particular *sub-pool* as the case may be which contain part of the same designated fund and:

- (1) any *secondary pooling shortfall* in *client money* held, or which should have been held, in *designated client fund accounts* that has arisen as a result of the *failure*, must be borne by each of the *clients* of the relevant *pool* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* of the relevant *pool* by the *firm*, in accordance with paragraph (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *secondary pooling*

shortfall at the *failed* bank until the *client* is repaid; and

(4) the *firm* must use the new *client money* entitlements, calculated in accordance with paragraph (2), for the purposes of reconciliations pursuant to **CASS 7.15.3 R** (Records and accounts) for the relevant *pool*.

CASS 7A.3.12 R A *client* whose *money* was held, or which should have been held, in a *designated client bank account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* or *client transaction account* of the *firm*.

CASS 7A.3.12A R A *client* whose *money* was held, or which should have been held, in a *designated client fund account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* of the *firm* that is not part of the same designated fund or against any *client transaction account* of the *firm*.

CASS 7A.3.13 R **Client money received after the secondary pooling event**

Client money received by the *firm* after the failure of a bank, exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, that would otherwise have been paid into a *client bank account* or *client transaction account* at that bank, exchange, *clearing house*, *intermediate broker*, *settlement agent* or *OTC* counterparty, as the case may be, for either the *general pool* or a particular *sub-pool*:

- (1) must not be transferred to the *failed person* unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed person*; and
- (2) must be, subject to paragraph (1), placed in a *client bank account* or *client transaction account* relating to the *general pool* or the particular *sub-pool* as the case may be other than an account at the *failed person*.

CASS 7A.3.14 R If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
- (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

CASS 7A.3.15 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

CASS 7A.3.19 R **Notification to the FCA of secondary pooling event**

A *firm* must notify the *FCA* as soon as reasonably practical after it becomes aware of the *failure* of any bank, exchange, *clearing house*, *intermediate broker*, *settlement agent*, *OTC* counterparty or other entity with which it has placed, or whom it has allowed to hold, *client money*.

(1) [deleted]

(2) [deleted]

(3) whether it intends to make good any *secondary pooling shortfall* that has arisen or may arise; and

(4) the amount of that *secondary pooling shortfall*, or the expected amount if the actual amount is not known.