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CHAPTER

CASS 9 Information to clients

Section : CASS 9.1 Application

CASS 9.1.1

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This chapter applies as follows:

- (1) **CASS 9.2** and **CASS 9.3** apply to a *prime brokerage firm* to which **CASS 6** (Custody rules) applies;
- (2) subject to paragraphs (3) and (4), **CASS 9.4** and **CASS 9.5** apply to a *firm* to which either or both **CASS 6** (Custody rules) and **CASS 7** (Client money rules) applies;
- (3) **CASS 9.4** and **CASS 9.5** do not apply to a *firm* which only *arranges safeguarding and administration of assets*; and
- (4) for a *firm* to which **CASS 7** (client money rules) applies as well as either or both of **CASS 5** (Client money: insurance distribution activity) and **CASS 11** (Debt management client money chapter) apply, this chapter does not apply to *client money* that a *firm* holds in accordance with **CASS 5** or **CASS 11**.

Section : CASS 9.2 Prime broker's daily report to clients

CASS 9.2.1

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- (1) A *firm* must make available to each of its *clients* to whom it provides *prime brokerage services* a statement in a *durable medium*:
 - (a) showing the value at the close of each *business day* of the items in (3); and
 - (b) detailing any other matters which that *firm* considers are necessary to ensure that a *client* has up-to-date and accurate information about the amount of *client money* and the value of *safe custody assets* held by that *firm* for it.
- (2) The statement must be made available to those *clients* not later than the close of the next *business day* to which it relates.
- (3) The statement must include:
 - (a) the total value of *safe custody assets* and the total amount of *client money* held by that *prime brokerage firm* for a *client*;
 - (b) the cash value of each of the following:
 - (i) Cash loans made to that *client* and accrued interest;
 - (ii) *securities* to be redelivered by that *client* under open short positions entered into on behalf of that *client*;
 - (iii) current settlement amount to be paid by that *client* under any *futures* contracts;
 - (iv) short sale cash proceeds held by the *firm* in respect of short positions entered into on behalf of that *client*;
 - (v) cash margin held by the *firm* in respect of open *futures* contracts entered into on behalf of that *client*;
 - (vi) mark-to-market close-out exposure of any *OTC* transaction entered into on behalf of that *client* secured by *safe custody assets* or *client money*;
 - (vii) total secured obligations of that *client* against the *prime brokerage firm*; and
 - (viii) all other *safe custody assets* held for that *client*.
 - (c) total collateral held by the *firm* in respect of secured transactions entered into under a *prime brokerage agreement*, including where the *firm* has exercised a right of use in respect of that *client's safe custody assets*;
 - (d) the location of all of a *client's safe custody assets*, including assets held with a sub-custodian; and
 - (e) a list of all the institutions at which the *firm* holds or may hold *client money*, including money held in *client bank accounts* and *client transaction accounts*.

CASS 9.2.2

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Where a *firm* has entered into an agreement with a *client* under article 91 (Reporting obligations for prime brokers) of the *AIFMD level 2 regulation*, and to the extent that the *firm* makes available to the *client* the same statements as specified by that article that it is required to provide to the relevant *depository*, the *FCA* will treat the obligations under *CASS 9.2.1 R* as satisfied by the *firm*.

Section : CASS 9.3 Prime brokerage agreement disclosure annex

CASS 9.3.1

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- (1) A *firm* must ensure that every *prime brokerage agreement* that includes its right to use *safe custody assets* for its own account includes a disclosure annex.
- (2) A *firm* must ensure that the disclosure annex sets out a summary of the key provisions within the *prime brokerage agreement* permitting the use of *safe custody assets*, including:
 - (a) the contractual limit, if any, on the *safe custody assets* which a *prime brokerage firm* is permitted to use;
 - (b) all related contractual definitions upon which that limit is based;
 - (c) a list of numbered references to the provisions within that *prime brokerage agreement* which permit the *firm* to use the *safe custody assets*; and
 - (d) a statement of the key risks to that *client's safe custody assets* if they are used by the firm, including but not limited to the risks to the *safe custody assets* on the *failure* of the *firm*.
- (3) A *firm* must ensure that it sends to the *client* in question an updated disclosure annex if the terms of the *prime brokerage agreement* are amended after completion of that agreement such that the original disclosure annex no longer accurately records the key provisions of the amended agreement.

CASS 9.3.2

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- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *client's* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.
- (2) Subject to paragraph (3), a *prime brokerage firm* should not enter into "right to use arrangements" for a *client's safe custody assets* unless:
 - (a) in the case of a *CASS small firm* or a *firm* to which *CASS 1A.3.1C R* applies, the person in that *firm* to whom the responsibilities set out in *CASS 1A.3.1 R* or in *CASS 1A.3.1C R (2)* respectively have been allocated; or
 - (b) in the case of any other *firm*, the *person* who carries out the *CASS operational oversight function*; and
 - (c) those of that *firm's* managers who are responsible for those *safe custody assets*; are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10* which include (where applicable):
 - (i) the daily reporting obligation in *CASS 9.2.1 R*; and
 - (ii) the record-keeping obligations in *CASS 6.3.6AR*.
- (3) Paragraph (2) does not apply where the *prime brokerage firm* is also *acting as trustee or depositary of an AIF* which is an *unauthorised AIF* and exercises a right of reuse for a *safe custody asset* of that *unauthorised AIF* under *FUND 3.11.24 R* (Reuse of assets).

Section : CASS 9.4 Information to clients concerning custody assets and client money

- CASS 9.4.1 **G** (1) *Firms* to which *COBS 6.1* applies are reminded that, under *COBS 6.1.7R*, a *firm* that holds *client designated investments* or *client money* must provide its *clients* with specific information about how the *firm* holds those *client designated investments* and *client money* and how certain arrangements might give rise to specific consequences or risks for those *client designated investments* and *client money*.
- (2) *COBS 6.1* (Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)) applies to a *firm* in relation to its *designated investment business*, other than *MiFID, equivalent third country or optional exemption business* or *insurance distribution activities*, for a *retail client*.
- CASS 9.4.2 **R** A *firm* to which *COBS 6.1* applies that holds *custody assets* or *client money* must, in relation to its business for which *COBS 6.1* applies:
- (1) provide the information in *COBS 6.1.7 R* for any *custody assets* the *firm* may hold for a *client*, including any *custody assets* which are not *designated investments*; and
- (2) provide the information in *COBS 6.1.7 R* and in (1) to each of its *clients*.
- CASS 9.4.2A **R** (1) *Firms* to which *COBS 6.1ZA* applies are reminded of the requirements under article 49 of the *MiFID Org Regulation* (which are directly applicable to some *firms* and which are also applied to *firms* in other circumstances under *COBS 6.1ZA.3R*) to provide certain information to a *client* when the *firm* is holding the *client's financial instruments* or funds (see *COBS 6.1ZA.9EU*) and the requirement under *COBS 6.1ZA.10AR* when a *firm* doing *insurance distribution activities* is holding *client money* and has elected to comply with the *client money chapter*.
- (2) *COBS 6.1ZA* (Information about the firm and compensation information (MiFID and insurance distribution provisions)) applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business* or its *insurance distribution activities* for a *client*.
- CASS 9.4.2B **R** A *firm* to which *COBS 6.1ZA* applies that holds *custody assets* or *client money* must, in relation to its business for which *COBS 6.1ZA* applies:
- (1) provide the information referred to in paragraphs 2 to 7 of article 49 of the *MiFID Org Regulation* for any *custody asset* that the *firm* may hold for a *client*, including:
- (a) any *custody asset* which is a *designated investment* but not a *financial instrument*; and
- (b) any *custody asset* which is neither a *designated investment* nor a *financial instrument*; and
- (2) provide the information in (1) to each of its *clients*.
- CASS 9.4.3 **G** A *firm* should provide the information required in *CASS 9.4.2 R* or *CASS 9.4.2BR* (as applicable) to any *client* for whom it holds *custody assets* or *client money*, including a *retail*

client, a *professional client* and an *eligible counterparty*.

CASS 9.4.4

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(1) *Firms* are reminded of their obligation, under *COBS 4.2.1 R*, to be fair, clear and not misleading in their communications with *clients*.

(2) *Firms* are also reminded of the requirements in respect of communications made to *retail clients* under *COBS 4.5* and *clients* under article 44 of the *MiFID Org Regulation* and *COBS 4.5A* (as applicable).

Section : CASS 9.5 Reporting to clients on request

CASS 9.5.1	G	<p>(1) <i>Firms</i> to which <i>COBS 16.4</i> applies are reminded that, under <i>COBS 16.4</i>, they are required to send to each of their <i>clients</i> at least once a year a statement in a <i>durable medium</i> of those <i>designated investments</i> and/or <i>client money</i> they hold for that <i>client</i>. A <i>firm</i> which <i>manages investments</i> may provide this statement in its <i>periodic statement</i>, as required under <i>COBS 16.3</i>.</p> <p>(2) <i>COBS 16.4</i> (Statements of client designated investments or client money) applies, in accordance with <i>COBS 16.1.2R</i>, to a <i>firm</i> carrying on <i>designated investment business</i> other than <i>MiFID, equivalent third country or optional exemption business</i>.</p>
CASS 9.5.2	G	<i>Firms</i> are reminded that the requirements in <i>COBS 16.4</i> , article 63 of the <i>MiFID Org Regulation</i> and <i>COBS 16A.4</i> only set out the minimum frequency at which <i>firms</i> must report to their <i>clients</i> on their holdings of <i>designated investments</i> and/or <i>client money</i> . <i>Firms</i> may choose to report to their <i>clients</i> more frequently.
CASS 9.5.3	G	Subject to <i>CASS 9.5.5AR</i> and <i>CASS 9.5.6 R</i> , <i>CASS 9.5.4R</i> , <i>CASS 9.5.4BR</i> and <i>CASS 9.5.5 R</i> require <i>firms</i> to comply with a <i>client's</i> request for information on the <i>custody assets</i> and/or <i>client money</i> the <i>firm</i> holds for a <i>client</i> under <i>CASS 6</i> and/or <i>CASS 7</i> , and such request may be made by a <i>client</i> at any time.
CASS 9.5.4	R	When a <i>firm</i> to which <i>COBS 16.4</i> applies receives a request, made by a <i>client</i> , or on a <i>client's</i> behalf, for a statement of the <i>custody assets</i> and/or <i>client money</i> that the <i>firm</i> holds for that <i>client</i> , the <i>firm</i> must provide the <i>client</i> with the statement requested in a <i>durable medium</i> .
CASS 9.5.4A	R	<p>(1) <i>Firms</i> to which <i>COBS 16A</i> applies are reminded of the requirements under article 63 of the <i>MiFID Org Regulation</i> (which are directly applicable to some <i>firms</i> and which are also applied to <i>firms</i> in other circumstances under <i>COBS 16A.1.2R</i>) in relation to quarterly statements when the <i>firm</i> is holding a <i>client's financial instruments</i> or funds (see <i>COBS 16A.4.1EU</i> and <i>COBS 16A.5.1EU</i>).</p> <p>(2) <i>COBS 16A</i> (Reporting information to clients (MiFID provisions)) applies to a <i>firm</i> in relation to its <i>MiFID, equivalent third country or optional exemption business</i>.</p>
CASS 9.5.4B	R	When a <i>firm</i> to which <i>COBS 16A</i> applies receives a request, made by a <i>client</i> , or on a <i>client's</i> behalf, for a statement of the <i>custody assets</i> that the <i>firm</i> holds for that <i>client</i> , it must provide the <i>client</i> with a statement in a <i>durable medium</i> in relation to any <i>custody assets</i> that are not <i>financial instruments</i> .
CASS 9.5.4C	G	A <i>firm</i> to which <i>COBS 16A</i> applies may combine the statement required under <i>CASS 9.5.4BR</i> with a statement issued in response to a request made under the last sentence of the first subparagraph of article 63(1) of the <i>MiFID Org Regulation</i> .

CASS 9.5.5	R	When a <i>firm</i> receives a request, made by a <i>client</i> , or on a <i>client's</i> behalf, for a copy of any statement of <i>custody assets</i> and/or <i>client money</i> previously provided to that <i>client</i> , the <i>firm</i> must provide the <i>client</i> with the copy of the statement requested in a <i>durable medium</i> and within five <i>business days</i> following the receipt of the request.
CASS 9.5.5A	R	<p>A <i>firm</i> is not required to provide a <i>client</i> with a statement under <i>CASS 9.5.4R</i> or <i>CASS 9.5.4BR</i>, or a copy of a statement under <i>CASS 9.5.5R</i> (as applicable) where the following conditions are met:</p> <ul style="list-style-type: none"> (1) the <i>firm</i> provides the <i>client</i> with access to an online system, which qualifies as a <i>durable medium</i>; (2) up-to-date statements of the <i>client's custody assets</i> and/or <i>client money</i> can be easily accessed by the <i>client</i> via the system under (1); and (3) the <i>firm</i> has evidence that the <i>client</i> has accessed this statement at least once during the relevant quarter.
CASS 9.5.6	R	Any charge agreed between the <i>firm</i> and the <i>client</i> for providing the statements in <i>CASS 9.5.4R</i> , <i>CASS 9.5.4BR</i> or <i>CASS 9.5.5R</i> (as applicable) must be at a commercial cost.
CASS 9.5.7	G	Any statement provided to a <i>client</i> under <i>CASS 9.5.4 R</i> or <i>CASS 9.5.5 R</i> (as applicable) may, although it is not required to, be in the same form as the statement a <i>firm</i> is required to provide to a <i>client</i> under <i>COBS 16.4</i> or, if appropriate, <i>COBS 16.3</i> .
CASS 9.5.8	G	Consistent with the <i>fair, clear and not misleading rule</i> , a <i>firm</i> should ensure that, in any statements of <i>custody assets</i> and/or <i>client money</i> it provides to its <i>clients</i> , it is clear from the statement which assets and/or monies the <i>firm</i> reports as holding for the <i>client</i> are, or are not, protected under <i>CASS 6</i> and/or <i>CASS 7</i> (e.g. if the statement also includes information regarding assets and/or monies which are held by the <i>firm</i> for that <i>client</i> which are not subject to the <i>custody rules</i> and/or <i>client money rules</i>) .
CASS 9.5.9	G	<i>Firms</i> are reminded that under <i>CASS 3.2.4 G firms</i> that enter into arrangements with <i>retail clients</i> covered by <i>CASS 3</i> (Collateral) should, when appropriate, identify in any statement of <i>custody assets</i> sent to the <i>client</i> under <i>COBS 16.4</i> (Statements of client designated investments or client money), article 63 of the <i>MiFID Org Regulation</i> or <i>COBS 16A.4</i> (as applicable) or this section the details of the assets which form the basis of that collateral arrangement.