

# Client assets – the FSA CASS Resolution Pack

The FSA's Policy Statement PS12/6 "The CASS Resolution Pack" was published on 26 March 2012 and sets out the changes to be made to the Client Assets sourcebook ("CASS") to introduce requirements for a CASS Resolution Pack. These changes will take effect on 1 October 2012. In theory, the Resolution Pack requirements should not be difficult to comply with, on the basis that firms should have the relevant records in place anyway, but there are some points which may cause difficulties.

## Main requirement

The main point in new CASS Chapter 10 is that firms must have the specified information regarding client assets available for retrieval within 48 hours of the appointment of an insolvency official or on request from the FSA.

The new requirements only apply where a firm actually holds client securities or client money, but this will apply to any entity holding client money, as well as custodians. The new requirements do not apply where a firm arranges for client assets to be held or, presumably, where a firm controls client assets, but the firm does not hold such client assets. A firm which includes custody in its scope of permitted business but does not for the time being hold client assets would not be subject to these requirements until it begins holding client assets. The challenge is likely to arise from the form in which such records are maintained, and how quickly they can be produced in a comprehensive form to constitute the Resolution Pack. (The new guidance specifically states that the 48 hour

period is for retrieval, not the time in which "to start producing these documents".)

## Particular issues

The practical challenges of the process are likely to become clearer once firms begin setting up arrangements to comply with the new requirements, but in the meantime points which seem likely to create concerns include the following:

- The 48 hour period does not mean 48 hours within a business day (although this is stated in the Policy Statement but not in the Guidance). Firms will therefore need to ensure that appropriate staff and facilities are available in each location which may host relevant information in order to enable production of the required items in this timeframe.
- Certain documents and records must be retrievable "immediately", such as the document identifying all institutions the firm has appointed to hold client money or client securities, acknowledgements from banks

## Key issues

- Firms must have the specified information regarding client assets available for retrieval within 48 hours of the appointment of an insolvency official or on request from the FSA.
- The 48 hour period does not mean 48 hours within a business day.
- The FSA is currently undertaking a fundamental review of the framework relating to the distribution of client assets therefore further changes to the CASS Rules are likely.

that cash is held by the firm on trust and set-off rights are limited, notifications to clearing houses and similar entities in relation to client money held in a client transaction account, and the most recent internal and external reconciliations regarding client money and client securities. This

is an Evidential Provision, not a Rule, but failure to comply "may be relied upon as tending to establish contravention of" the Rule requiring retrieval of the Resolution Pack within 48 hours.

- Firms are required to "ensure" that services from service/system providers continue so the records are retrievable (this is an Evidential Provision rather than a Rule). This suggests that firms will need to ensure that relevant service provider contracts do not contain insolvency termination provisions, but aside from this, it is unclear how a firm can compel a service provider to continue the provision of services in an insolvency situation, unless there is legislative support for this<sup>1</sup>.
- Somewhat oddly, although new CASS 10.1.5G(2) indicates that the Resolution Pack should be updated to reflect daily reconciliations, new CASS 10.1.11R(2) requires correction of inaccuracies to be made "no more than 5 business days" after the relevant change of circumstances which caused the information required for the Resolution Pack to be inaccurate. This is curious because it suggests that the new Rules permit a Resolution Pack retrieved in the required 48 hours to be inaccurate; presumably this is not the intention and therefore there is an implicit requirement to

update information immediately when a Resolution Pack is requested by the relevant insolvency practitioner or the FSA.

- The Resolution Pack must include a document identifying appointed representatives, tied agents, field representatives or other "agents" of the firm which receive client money or client assets in the capacity of the firm's "agent". It is unclear what is contemplated here, since the CASS Rules only envisage a firm holding client money through a relevant credit institution, or client securities through a nominee or sub-custodian.
- As well as identifying institutions with which the firm holds client securities or client money, the firm is required to produce copies of "each executed agreement" with the relevant institution. Does this mean firms are now expected to have written agreements with nominees?
- A firm must produce a document which identifies each group member and third party involved in "operational functions related to any obligations imposed on the firm by CASS 6 or CASS 7". It is unclear what "operational functions" means here, or in what respect the functions are "related" to the relevant CASS obligations. For example, the FSA surely cannot want details of couriers and power suppliers.
- In relation to third parties which the firm uses for the performance of "operational functions" related to CASS 6 or 7, the firm is required to document how to gain access to relevant information held by that third party, and how to "effect a transfer of any of the

client money or safe custody assets held by the firm but controlled by that third party". This may be aimed at arrangements with registrars, or possibly settlement systems and subcustodians, but it is not clear. It would probably also catch arrangements with CREST sponsors i.e. the person sending dematerialised instructions on behalf of the firm.

## What next?

It seems not unlikely that from 1 October the FSA will test the ability of firms to produce a Resolution Pack, or to retrieve relevant documents immediately, by making ad hoc requests to check compliance with the new Rules. Also, in the Policy Statement the FSA notes, unsurprisingly in view of the recent comments in the FSA Business Plan 2012/2013, that they "are currently undertaking a fundamental review of the framework relating to the distribution of client assets" which "may conclude that fundamental changes are required to the client assets distribution regime". As a result, further changes to the CASS Rules are likely, therefore firms must not only make appropriate arrangements for compliance with the new CASS Rules, but must also stay alert to future developments in the CASS Rules and the probable need to reflect by further amendment to documentation and systems.

<sup>1</sup> See for example *The Investment Bank Special Administration Regulations 2011, Regulation 14, which prohibits a supplier of certain types of services from terminating that supply after the commencement of special administration.*

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