

Client assets and living wills: Law-Now alerts, tools and latest news

Law-Now alerts and other tools

Article "[Client money still key for the new protectors](#)", (10/10/11)

Click [here](#) to access archived Law-Now alerts and other tools

Latest news

Client assets

PS12/2: Client assets sourcebook- custody liens

This PS summarises the feedback to the second part of the consultation in CP11/15, gives FSA's response to this feedback, and publishes final rules in relation to custody liens. Firms must ensure that any custody agreement they enter into on or after 1 April 2012 complies with these rules and any custody agreement entered into before 1 April 2012 complies with these rules as soon as possible but no later than 30 September 2012. It is noted that FSA has not at this time taken a position either for or against the use of omnibus accounts, but may in future investigate their use in line with developments in European legislation. (20/01/12) <http://www.fsa.gov.uk/pubs/policy/ps12-02.pdf>

FMLC: Analysis of legal uncertainty in CASS and arising from judicial decisions relating to the administration of Lehman Brothers International (Europe)

The paper considers uncertainties highlighted in the High Court's decision in Lehman Brothers International (Europe) v CRC Credit Fund Limited and the decision of the Court of Appeal in the Lehman Case surrounding the point at which the statutory trust created pursuant to CASS arises; uncertainties regarding the nature of the assets and claims forming part of the statutory trust and the remedies available to the holders of the beneficial interests under the statutory trust where a firm has failed to segregate monies in the client account; and some policy solutions for addressing uncertainties above, including the power to transfer unsegregated monies from the house account to the client account and the power to treat a claim for client monies as an expense of a firm's administration in cases where the statutory trust and/or proprietary remedies fail. (2/11/11) <http://www.fmlc.org/papers/Issue147PaperOct11.pdf>

FRC: Providing assurance on client assets to the Financial Services Authority

FRC has published this bulletin which provides guidance on the responsibilities of auditors under revised CASS Rules applicable for periods ending 30 September 2011 onwards. It notes that auditors are required to approach the evaluation of the regulated firm's compliance with FSA rules from the perspective of the position if the regulated firm becomes insolvent; that auditors should focus on whether controls are designed and operated to ensure compliance with the CASS Rules (ie are preventative), rather than focusing on whether controls will subsequently detect any non-compliance; and the CASS auditor's report to FSA must report any and all breaches (irrespective of materiality) of the rules that the auditor becomes aware of. (13/10/11)
http://www.frc.org.uk/images/uploaded/documents/Bulletin%202011_2%20WEB%20OPTIMIZED%20final.pdf (NB: over 90 pages long)

FSA: Individuals approved for the CASS operational oversight controlled function (CF10a)

Details of the individuals approved for CF10a are provided in two lists which are available via the following link, sorted by surname and first named. (They are not currently shown on the FSA Register). (4/10/11)
<http://www.fsa.gov.uk/pages/Doing/Regulated/Approved/persons/cf10a.shtml>

FSA: Client Money and Assets Return (CMAR): FAQ

FSA has published a webpage which sets out some frequently asked questions on this topic. (22/08/11)
<http://www.fsa.gov.uk/Pages/Doing/Regulated/Returns/IRR/gabriel/faqs/cmar/index.shtml>

CP11/16***: Recovery and resolution plans

FSA has published the above combined CP/DP, which covers proposals for recovery and resolution plans (RRP), policy proposals aimed at reducing the impact of firms' failure in relation to their investment business client money and custody assets holdings. The CP covers the requirement for banks and large investment firms in the UK to prepare and maintain RRP's and the DP explores matters relevant to the resolution of financial services firms. The CP also sets out proposed requirements relating to investment business client money and custody assets, known as the CASS Resolution Pack (CASS RP). The CASS RP aims to promote the speedier return of CMA to clients, once a firm has failed, by ensuring that vital CMA information would be readily accessible to the Insolvency Practitioner appointed to that failed firm. The CASS RP proposals apply to all firms subject to CASS 6 or 7 due to their holding of (investment business only). The DP explores different approaches to removing barriers to resolution and enhancing resolvability including the resolution of trading books, enhancing the resolution toolkit and bail-ins.. Responses are required by 9 November 2011. FSA plans to issue a PS at the end of 2011 and notes that it expects some firms to have RRP's in place by 30 June 2012 (policy work on the CASS RP proposals may follow different timings). (9/08/11) [FSA publishes Recovery and Resolution Plans consultation](http://www.fsa.gov.uk/pubs/cp/cp11_16.pdf)
http://www.fsa.gov.uk/pubs/cp/cp11_16_dp_annexes.pdf (Annexes – NB: over 50 pages long)
http://www.fsa.gov.uk/pubs/cp/cp11_16_rrp_guidance_pack.pdf (RRP guidance pack for firms – NB: over 50 pages long)
http://www.fsa.gov.uk/pubs/cp/cp11_16_draft_handbook.pdf

CP11/15**: Client assets sourcebook:(1) Custody liens (2) Title transfer collateral arrangements

The CP proposes the following on matters relating to the lien rules in CASS - interim relief from the effect of the existing rules from 1 October 2011 to 31 March 2012; changes in the rules to provide for the taking of certain liens or rights over omnibus clients accounts; and changes in the rules in relation to liens or rights over assets held in overseas jurisdictions. In addition, FSA proposes to prohibit the use of TTCA in relation to rolling spot forex contracts offered to retail clients. Responses are required by 29 August 2011 for issues around the interim relief to the application of CASS 6.3.5 and the prohibition on the use of TTCA in relation to rolling spot forex contracts and 28 October 2011 for comments regarding certain custody liens over omnibus client accounts and custody liens in overseas jurisdictions. (29/07/11)
http://www.fsa.gov.uk/pubs/cp/cp11_15.pdf (NB: over 40 pages long)

Living wills

FMLC: Issue 108 - Set-off and administration expenses in the administration regime

FMLC has published the text of a letter it has sent to the Insolvency Service which refers to an August 2011 paper on this topic, which proposes an amendment to the cut-off date under Rule 2.85 of the Insolvency Rules 1986. FMLC is now responding to the Insolvency Service's comments in an email sent to them on this paper. (30/01/12)
<http://www.fmlc.org/papers/Ltr2InsolvencyRe108.pdf>

FSA: MF Global UK Limited

FSA has confirmed that this firm has entered the Special Administration Regime, the first time it has been initiated. Richard Fleming, Richard Heis and Mike Pink of KPMG LLP have been appointed as joint special administrators. (1/11/11) [MF Global UK enters Special Administration Regime](http://www.fsa.gov.uk/pubs/press/2011/11/01/mf_global_uk_enters_special_administration_regime.pdf)

CP11/16***: Recovery and resolution plans

FSA has published the above combined CP/DP, which covers proposals for recovery and resolution plans (RRP), policy proposals aimed at reducing the impact of firms' failure in relation to their investment business client money and custody assets holdings. The CP covers the requirement for banks and large investment firms in the UK to prepare and maintain RRP and the DP explores matters relevant to the resolution of financial services firms. The CP also sets out proposed requirements relating to investment business client money and custody assets, known as the CASS Resolution Pack (CASS RP). The CASS RP aims to promote the speedier return of CMA to clients, once a firm has failed, by ensuring that vital CMA information would be readily accessible to the Insolvency Practitioner appointed to that failed firm. The CASS RP proposals apply to all firms subject to CASS 6 or 7 due to their holding of (investment business only). The DP explores different approaches to removing barriers to resolution and enhancing resolvability including the resolution of trading books, enhancing the resolution toolkit and bail-ins. Responses are required by 9 November 2011. FSA plans to issue a PS at the end of 2011 and notes that it expects some firms to have RRP in place by 30 June 2012 (policy work on the CASS RP proposals may follow different timings). (9/08/11) [FSA publishes Recovery and Resolution Plans consultation](http://www.fsa.gov.uk/pubs/cp/cp11_16.pdf) http://www.fsa.gov.uk/pubs/cp/cp11_16.pdf (NB: over 70 pages long)
http://www.fsa.gov.uk/pubs/cp/cp11_16_dp_annexes.pdf (Annexes – NB: over 50 pages long)
http://www.fsa.gov.uk/pubs/cp/cp11_16_rrp_guidance_pack.pdf (RRP guidance pack for firms – NB: over 50 pages long)
http://www.fsa.gov.uk/pubs/cp/cp11_16_draft_handbook.pdf

FSB: Effective resolution of systemically important financial institutions - recommendations and timelines

This consultation contains a comprehensive package of proposed policy measures intended to improve the capacity of authorities to resolve systemically important financial institutions (SIFIs) without systemic disruption and without exposing the taxpayer to the risk of loss, and a timeline for their implementation. Responses are required by 2 September 2011. (20/07/11) http://www.financialstabilityboard.org/publications/r_110719.pdf (NB: over 70 pages long)

BIS: Resolution policies and frameworks – progress so far

The report reflects the progress being made in the area of cross-border bank resolution since BIS published a set of ten recommendations in March 2010. The report also responds to the FSB November 2010 recommendations on systemically important financial institutions for an assessment of the legislative and other changes to national regimes and policies needed to accomplish effective resolution of systemically important financial institutions. It criticises some jurisdictions for continuing to rely on general corporate insolvency procedures and notes that further work is required on cross-border resolution as complications continue to arise from discrepancies among national regimes. (6/07/11) <http://www.bis.org/publ/bcbs200.pdf> (NB: over 60 pages long)

Archived material on the sector is available via the following links: [January-June 2009](#), [July-December 2009](#), [January-December 2010](#) and [January-July 2011](#).

Updated 30/01/12

Regzone materials are intended for clients and professional contacts of CMS Cameron McKenna LLP. They are intended to simplify and summarise the issues covered and must not be relied upon as giving definitive advice.

Further information, including a list of our offices, can be found at www.cms-cmck.com

© CMS Cameron McKenna LLP 2011-2012. All rights reserved.