

Client Money Requirements under the Financial Services Rule Book 2009

15th December 2009

Shirley E Corlett
Senior Policy Adviser
Policy & Legal

shirley.corlett@fsc.gov.im

Michael Weldon
Head of
Supervision

michael.weldon@fsc.gov.im



Agenda

Client Money and Trust Money

- ◆ Rationale for changes to the different types of client bank account
- ◆ What the changes are including the different pooling arrangements
- ◆ Other changes to Part 3



Disclaimer

- ◆ The Commission cannot give legal advice
- ◆ The Rule Book is secondary legislation and subject to interpretation by the Courts



Rationale for changes

- ◆ Rolling review of legislation
- ◆ Attempt to reduce the number and simplify the types of client accounts
- ◆ Review pooling arrangements for different types of client accounts



Rationale for changes (2)

➤ Confusion between –

- a) XYZ Ltd - “designated client bank account”
- b) XYZ Ltd – clients’ account
- c) XYZ Ltd – client’s account re Mr A Smith



Rules relating to titles and pooling

Rule

- 3.4 Meaning of “client bank account” and related expressions (definitions)
- 3.10 Operation of client bank account (acceptable abbreviations)
- 3.16 Pooling arrangements
- 3.16A – C Default of bank for the various types of client accounts



General client bank accounts

- ◆ A client bank account other than a specified client bank account
- ◆ One or more clients
- ◆ Must have in its title “client account” or acceptable abbreviation (client a/c)
- ◆ Will be pooled with all other client bank accounts (regardless of bank or currency) except specified client bank accounts



Example General Client Accounts

- ◆ Client accounts held at 2 banks
- ◆ Each account holds £2,000 for 5 clients (£10,000 total in each of the 2 accounts)
- ◆ One bank defaults – total loss of £10,000
- ◆ Client accounts pooled
- ◆ £10,000 loss shared between 10 clients
- ◆ Each client has a loss of £1,000



Specified client bank accounts

- Previously titled “designated client bank accounts”
- Specific bank chosen by client(s) or *chosen by the licenceholder and notified to the client(s)* – evidence required on file
- Must have in its title “specified client account” or an acceptable abbreviation (spec client a/c, client a/c ref [xxx], client account re [xxx])



Specified client bank accounts (2)

- ◆ Will not be pooled with any other client account
- ◆ Any previously opened designated client bank account will be treated as a specified client bank account in the event of a default (Rule 3.16A(4))



Example Specified Client Accounts

- ◆ Specified client accounts held at 2 banks
- ◆ Each account holds £2,000 for 5 clients (£10,000 total in each of the 2 accounts)
- ◆ One bank defaults – total loss of £10,000

- ◆ Specified client accounts not pooled
- ◆ £10,000 loss shared between 5 clients
- ◆ Each client at defaulting bank loses £2,000



Client free money accounts

- ◆ Class 2 licenceholders only
- ◆ Specific bank chosen by the client(s) or chosen by the licenceholder and notified to the client(s)
- ◆ Must have in its title “client free money account” or an acceptable abbreviation (client free money a/c, client frmony a/c)



Client free money accounts (2)

- ◆ Only holds free money pending investment
- ◆ Not a specified client bank account
- ◆ Will be pooled but only with other client free money accounts (regardless of bank or currency)



Example Client Free Money Accounts

- ◆ Client free money accounts held at 2 banks
- ◆ Each account holds £2,000 for 5 clients (£10,000 total in each of the 2 accounts)
- ◆ One bank defaults – total loss of £10,000

- ◆ Client free money accounts pooled
- ◆ £10,000 loss shared between 10 clients
- ◆ Each client has a loss of £1,000



Client settlement accounts

- ◆ Class 2 licenceholders only
- ◆ Holds the net balance required for settlement of transactions for clients
- ◆ Must have in its title “client settlement account” or an acceptable abbreviation (client settlement a/c, client settlmt a/c)
- ◆ Will be pooled but only with other client settlement accounts (regardless of bank or currency)



Example Client Settlement Accounts

- ◆ Client settlement accounts held at 2 banks
- ◆ Each account holds £2,000 for 5 clients (£10,000 total in each of the 2 accounts)
- ◆ One bank defaults – total loss of £10,000

- ◆ Client settlement accounts pooled
- ◆ £10,000 loss shared between 10 clients
- ◆ Each client has a loss of £1,000



Subscription and redemption accounts

- ◆ Class 3 only
- ◆ Only holds money in respect of the sale or redemption of units in –
 - the scheme in question; or
 - another scheme managed or administered by the same person



Subscription and redemption accounts (2)

- ◆ Specified client bank account
- ◆ Will not be pooled with any other client account



Example Subscription and Redemption Accounts

- ◆ Subscription/Redemption account held for ABC Fund at Bank A and for XYZ Fund at Bank B
- ◆ Each account holds £2,000 for 5 investors
- ◆ Bank A defaults – total loss of £10,000
- ◆ Subscription/Redemption accounts not pooled
- ◆ £10,000 loss shared between 5 investors of ABC Fund (£2,000 each)
- ◆ Investors in XYZ Fund unaffected



Example Mixed Client Accounts

- ◆ Mixed client accounts held at 2 banks
- ◆ Each account holds £2,000 for 5 clients
- ◆ One bank defaults – total loss of £10,000

- ◆ General client accounts pooled
- ◆ Free money accounts and settlement accounts have their own separate pools
- ◆ Specified client accounts (incl. subscription and redemption accounts) not pooled



Pooling in the event of a default

Rule 3.16 – In determining the entitlement of clients to client money, all client money of any currency held in general client bank accounts will be treated as pooled in a single pool.

Where a profit or a loss is made in the conversion of foreign currency, the profit or loss shall be attributed to the pool not the individual clients affected.



Compensation Schemes/Liquidators

Where monies are received from any compensation scheme in relation to a default, those monies must be treated in accordance with any entitlement of the compensation scheme in force at that time.

Where monies are received from a liquidator in relation to a default, those monies must be treated as pooled and applied to the benefit of all clients affected by the default.



Other changes

- ◆ “separate client bank account” deleted
- ◆ New definition of “recognised bank” (Rule 3.2)
- ◆ Clarification that trust money held in a client bank account is client money (Rule 3.3(1)(c))



Other changes (2)

- ◆ Client Money Information Sheet (Rule 3.7)
- ◆ New client money requirement rules for Stockbrokers (Rules 3.21A – 3.21E)
- ◆ Clarification of account titles for trust money accounts (Rule 3.27)
- ◆ “immediate” notification changed to 5 business days throughout Part 3





Where are the other major changes?



Regulated Activities Order 2009

- ◆ Class 6 has been split into two –
 - e-money remains in Class 6
 - money transmission services moving to a new Class 8 (with a slightly amended definition of transmission of money)



Part 6 – Conduct of Business

- ◆ Rule 6.14 – shorter rubric but existing, compliant stocks of stationery may be used
- ◆ Rule 6.18A – new rule for execution-only and limited advice which are defined in Schedule 1.1 – Interpretation (Class 2 only)
- ◆ Rule 6.38 – terms of business to be signed (Class 2 only)



Part 7 - Administration

- ◆ Rule 7.3 – increasing issued share capital now a notification rather than consent
- ◆ Rule 7.7A – new rule for notification of options over capital of a licenceholder
- ◆ Rule 7.8 – new requirement to notify on formation or winding up of nominee company, corporate officer, corporate trustee, protector or enforcer



Part 7 – Administration (2)

- Rule 7.14 – notice of surrender extended to 30 business days and if required notice is not provided, the surrender will not take effect until that 30 business day period has elapsed



Part 8 – Risk Management & Internal Control

- ◆ Rule 8.17 new notification requirement for loss of consumer or other data and any licenceholder's appeals against any Commission decisions or action
- ◆ Rule 8.18 – Compliance Officer to be IOM resident and MLRO (or deputy) must have unfettered access to the Board and sufficient time/resources for the role



Part 8 – Risk Management & Internal Control (2)

Rule 8.54 - Professional Indemnity Insurance

- ◆ New basic levels and new cap
- ◆ Run-off PII required
- ◆ Cover must include libel & slander, loss of documents, breach of duty, dishonest or fraudulent acts or omissions
- ◆ Must be in place by 1 May 2010



Part 8 – Risk Management & Internal Control (3)

New Rule 8.57A (Class 3 only)

- ◆ Requirement to notify the Commission of the suspension or liquidation of a scheme
- ◆ Must be made as soon as the licenceholder becomes aware of the suspension or liquidation



Forms and Compliance Support

Website contains various tables on –

- ◆ Policies
- ◆ Registers
- ◆ Notification and consent
- ◆ Shuttle annual compliance return checklist



Questions?

