



CASS 8 - Mandates

Application

The CASS 8 mandate rules apply in the situation where a Firm receives and retains a “means” by which it can issue instructions that affect assets of a Client (or the indebtedness of the Client) that the Firm itself does not hold.

For example, if the Firm directly instructs a collection from a bank account in the name of the Client, CASS 8 rules apply to the “means” that enables that collection (i.e. the bank account details retained by the Firm) and the control / use of that “means” by the Firm, while CASS 7 would apply as normal once the Firm has received that money. Importantly, the CASS 8 rules are not applicable where a Firm is making outbound payments, as such activity would be subject to CASS 7. For example, CASS 8 is not applicable where the Firm uses the Client’s bank account details in order to effect payments to the Client.

Similarly, if the Firm holds an authority that enables it to re-register or transfer some asset held for the Client outside of the Firm’s own accounts, the CASS 8 rules apply to the “means” by which the Firm could issue such instructions – with CASS 6 rules applying as normal from any point at which the asset is received into the Firm’s safe custody service.

It must therefore be noted that the primary risks that CASS 8 appears designed to mitigate are those where the Client provides some active operational mandate to one Firm, enabling it to instruct the movement and transfer of assets between accounts of the Client – effectively enabling the Firm to transact on behalf of the Client without bringing Client Assets within the Firm’s own segregated accounts.

However, Firms recognise that the drafting of the rules means that simpler processes – such as the periodic collections of cash sums from the Investor’s bank account under the Direct Debit mechanism – can also be subject to the CASS 8 rules.

When does a CASS 8 Mandate exist?

CASS 8.2.1R records five conditions that must be satisfied if the “means” obtained by the Firm are to constitute a CASS 8 Mandate. Note that if the Firm’s arrangements are such that any of these five conditions are not met, the “means” in question will not be defined as a CASS 8 Mandate (even if it is sufficient to enable the Firm to complete some operational process).

Condition	Implication
1	The “means” is obtained from the Client, and with the Client’s consent. (i.e. if the Client is unaware that the Firm has the “means”, that “means” would not constitute a CASS 8 mandate).
2	If the Firm is performing insurance mediation activity, the “means” must be in written form. Note: for other forms of designated investment business a CASS 8 Mandate may be in non-written form. (i.e. even if an insurance mediation firm collects a “means” in non-written media, that “means” would not constitute a CASS 8 Mandate).
3	The “means” must be retained by the Firm.



	(i.e. if the Firm arranges its affairs and records so that it does not make an enduring record of the “means” once the relevant instruction has been issued, there would be no CASS 8 Mandate created).
4	The “means” must enable the Firm to issue an instruction to another Person, the result of which instruction would be to transfer or move an asset held by that Person on behalf of the Firm’s Client. (i.e. any “means” that does not enable any of these types of outcome would not be a CASS 8 mandate).
5	The Person receiving the Firm’s instruction (from condition 4), would act on that instruction without referring to the Client. (i.e. if the third party would obtain confirmation from the Client of any instructions issued, that “means” does not constitute a CASS 8 Mandate).

Note that the Guidance in CASS 8.2.2G states that a CASS 8 Mandate can take any form and does not need to explicitly state that it is a CASS 8 Mandate. The guidance also indicates that the mandate will usually be expressed in terms of a document granting authority to control assets, or a specific provision within some broader document, or an oral authority for the Firm to act.

Guidance in CASS 8.2.3G(1) confirms that if the Firm performs a transaction immediately upon receiving the “means” from the Client, and having done so deletes or destroys the “means” (rather than retaining the specific information), condition 3 is not satisfied and consequently no CASS 8 Mandate exists.

Consequences of holding CASS 8 Mandates

The List of CASS 8 Mandates

Every CASS 8 Mandate that the Firm retains must be included in an “up-to-date list of each Mandate that the Firm has obtained” (CASS 8.3.2R(1)). This list will be used by Auditors when performing a CASS Assurance review. Each new CASS 8 Mandate (i.e. each “means” that satisfies the five conditions noted in the table above) should be a discrete line in “the List”.

For each CASS 8 Mandate, “the List” should record any conditions on the use of that Mandate, whether determined by the Client or the Firm’s management. Note that CASS 8 uses the word “condition” in two distinct ways: firstly to refer to those conditions listed in the table above (that define whether a “means” received by the Firm constitutes a CASS 8 Mandate); and separately to describe any limitations on the ways in which that “means” should be used by the Firm. For example, applying the CASS 8 rules to the Direct Debit Instructions that a Client might provide to enable regular investments in a fund:

- The Bank Account details are the “means” giving rise to the CASS 8 mandate;
- The amount to be collected is a “condition” imposed by the Client on the use of the “means”;
- The frequency and/or next/first collection date is similarly a “condition”;
- The investment purpose to which the money will be put is outside the scope of CASS 8 (as the asset purchase occurs within the Firm’s care, and CASS 8 relates only to the control of assets held by an external party – such as the Client’s bank).



Where a CASS 8 Mandate is received in non-written form, CASS 8.3.2C R specifies certain fields that must be included in “the List” (though it is acceptable for the Firm to include such data for all CASS 8 Mandates held):

- The nature of the mandate (i.e. what type of information the “means” is, though not reproducing that actual data)
- The purpose of the mandate (why it would be used)
- How the mandate was obtained (type of media / interaction)
- The name of the relevant client
- The date on which the Mandate was obtained.

It should be noted that “the List” would *not* contain the actual “means” information held by the Firm (i.e. the bank account details being used to effect a cash collection would not be reproduced in “the List”). However, guidance in CASS 8.3.2F G(3) does require the Firm to identify for each Mandate on “the List” every location in which that “means” information has been retained by the Firm.

The Firm must have a mechanism by which amendments or corrections to “the List” can be identified and demonstrated. This might include building functionality into “the List” itself, or might be achieved by retaining periodic copies of “the List” which can be compared to identify change (which the Firm would then substantiate against its business records).

Other records and internal controls

“The List” is a specific mechanism required by CASS 8.3 – but the Firm must also ensure that it maintains the following (note: these items exist *outside* of “the List”):

- An internal record of each transaction entered into under each Mandate
(Note: the transaction under the Mandate is the movement of money or asset occurring outside of the Firm’s own accounts. Where a DDI is used to collect money into the Firm’s records so an asset transaction can be settled, the transaction relevant to the CASS 8 Mandate is only the collection of money and not the asset transaction settled by the Firm’s CASS 7 activity).
- Internal controls to ensure that the Mandate is used in line with the applicable conditions.
- Procedures and internal controls around the making of instructions under the Mandates held.
- Controls over the security of any physical tokens / passbooks held by the Firm in respect of a Mandate.



Record Retention

CASS 8 includes a specific record retention obligation (CASS 8.3.2G R), which relates to the records that the Firm is required to maintain in respect of its use and control of the CASS 8 mandate held. CASS 8 does **not** include any specific record retention obligation in respect of the “means” that constitutes the CASS 8 Mandate itself.

In respect of the “means”, the Firm must only retain that information for as long as it has a valid business purpose to do so (per data protection rules). i.e. at any point the Firm may conclude that it is no longer appropriate to retain a given “means”. Each Firm will reach its own decision as to the circumstances in which “means” data will be deleted – and having deleted the “means” data, the CASS 8 Mandate ceases.

Where the Firm was using the CASS 8 Mandate in respect of MiFID business, CASS 8.3.2G R requires the Firm to retain records of the control and use of that CASS 8 Mandate for a minimum of five years after the Firm ceases to hold that CASS 8 Mandate. For non-MiFID business (such as a Firm acting as AFM) this minimum period is one year after the Firm ceases to hold that CASS 8 Mandate. The Firm’s documentation of “Other records and internal controls” noted above must be retained for the relevant period after the Firm no longer holds a “means” that satisfies the conditions listed in the table above.

The “up to date List” need no longer include a “means” that the Firm no longer holds (as that “means” is no longer a CASS 8 Mandate). However, CASS does permit the Firm to continue to include such items on its “List” until the expiry of applicable record retention periods – provided the Firm clearly distinguishes ceased mandates within “the List”.

As noted above, the Firm might generate and retain its “List” periodically – in which case the fact that the CASS 8 Mandate was previously held would simply be demonstrated with reference to those prior “List” files. Where this approach is employed the frequency the list is generated is likely needed to be daily where the list is derived from underlying records which are maintained independently of the list.

Breaches

It is important to note that CASS 8 is focussed upon the establishment of controls, rather than the individual errors that could arise. Breaches are therefore considered most likely to arise under the following thematic areas:

- CASS 8.3.2R(1) Failure to maintain an “up to date List of Mandates”
- CASS 8.3.2R(2) Failure to maintain records of the transactions entered into under each mandate
- CASS 8.3.2R(3) Failure to establish internal controls to ensure transactions are only carried out in line with the conditions specified.
- CASS 8.3.2R(4) Failure to maintain internal procedures and controls re giving instructions under a Mandate.



- CASS 8.3.2R(5) Failure to establish internal controls over the safeguarding of physical items held in respect of Mandates.
- CASS 8.3.2G R Failure to retain records confirming the control and management of Mandates for the required period.

Important Information

This document has been compiled for the use of TA Forum members only and is for guidance purposes. This document has been written from the view point of TA's and the administration activities that they perform for regulated firms. Where any firms require further clarification of the rules, guidance should be sought from the FCA. It is the regulated firm's responsibility to comply with the client money rules and ensure that they receive all required information in order that they can perform adequate oversight regularly. Firms are responsible for ensuring they have the relevant permissions to undertake such activity as they may outsource to TA Forum members. It is assumed that firms will have all relevant CASS permissions.

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