



THE TA FORUM

TA Forum CASS Seminar held on 24th May 2016 Questions & Responses

Question 1 - Prudent Segregation

Does settlement -1 day BACs prefunding (where the BACs payments are funded a day in advance) constitute 'prudent segregation.' (Our auditors appear to hold a view that where corporate money is used to fund a client money account, then it is always prudent segregation). If this is prudent segregation, how would the policy reflect that this was funding for a business process that would fluctuate daily.

Response

CASS provides that if it is prudent to do so to prevent a shortfall in client money on the occurrence of a primary pooling event, a firm may pay money of its own into a client bank account and subsequently retain that money in the client bank account (prudent segregation). Money that the firm retains in a client bank account under this rule is client money for the purposes of the client money rules and the client money distribution rules. This is a broad provision and it should accommodate a - 1 day BACs prefunding the key point being that, in the event of the firm's insolvency, any shortfall that would otherwise have arisen is taken care of. As to the policy, the wording would need to make it clear that the amount paid by way of prudent segregation could fluctuate in a manner that corresponds with the amount of any shortfall.

Question 2 – Prudent Segregation

When prudently segregating an amount for a specific risk, if the risk outweighed the amount prudently segregated then would the expectation be that a breach should be raised based on the exposure that has exceeded the amount segregated?

Response

Whether or not this will be a breach depends on a number of factors, including the nature of the prudential segregation policy, and is likely to be judgemental. For example, if this is a commonly occurring risk that only exceptionally results in under-segregation by a small amount, then this may not be considered to be a breach on rare occasions that this happens; on the other hand, if such under-segregation occurs frequently, or the divergence is significant then this may be considered to indicate shortcomings in the prudential segregation policy and therefore be considered to be a breach.

The prudent segregation rules sit within CASS 7.13 and are specifically designed to mitigate the risk that the firm receives client money into a non-client money account. There are rules elsewhere – such as in CASS 7.12 around organisational arrangements, the requirement to be able to determine what money is held for each client at any time and without delay at CASS 7.15.2R and the need to investigate the reason for any shortfall at CASS 7.15.30G – that combine to illustrate why firms need to have the right amount protected at all times.

This document has been compiled for the use of TA Forum members only and is for guidance purposes. The views portrayed above are those of the panel member who provided the response at the time of the seminar and are not necessarily representative of the TA Forum. Where any firms require further clarification of the rules, guidance should be sought from the FCA.

Question 3 – Technical Interpretation / Application

There are a number of areas within the post PS 14/9 rules that require firms to update processes and procedures to meet the new rule requirements. In some cases there is limited guidance provided in the rules (e.g. around Internal System Evaluation Method, prudent segregation). Do you believe that there is a need for further CASS guidance which will assist firms to assess whether their revised processes in place are adequate and fully compliant?

Response

There is a balance between legal certainty, which further guidance would bring but which could prejudge matters, and leaving it to firms to decide. Our view is that further general guidance is unnecessary but that instead firms should seek individual guidance.

Question 4 – ISEM – Interpretation/Application

What would a firm expect their requirements to be in relation to the ISEM where they use a third party TA?

Response 1:-

Transfer agents will normally provide firms with information to support their ISEM process. It is however important to remember that the responsibility for carrying out the ISEM evaluation remains with the firm and the information that the firm uses to carry out the ISEM assessment is likely to include additional information other than the core information provided by the transfer agent. Accordingly, the firm must ensure it has a robust governance process in place and has suitable information available to provide evidence that it is, for example, able to identify discrepancies within the custody records.

Response 2:

Assuming a ‘model A’ arrangement, then the third party TA (‘TPA’) is considered to be the ‘back office’ of the firm. This means that the rules in the CASS sourcebook – in this instance CASS 6.6.18G-6.6.20G – continue to impose an obligation upon the firm itself, irrespective of the location and/or identity of the party that actually carries out the operational processes. The firm, presumably with the assistance and input of its TPA, has to demonstrate that it is undertaking an evaluation of systems and controls for maintaining accurate records in a way that can detect, as a minimum, the five error types set out at CASS 6.6.20G. The firm also has to be able to evidence that this evaluation is taking place to the required frequency, which is at least once per month (as required by CASS 6.6.11R).

It is important to note that the rules require the firm to undertake an evaluation at the required frequency. Therefore the firm, presumably with assistance from the TA, will not only need to consider the original system configuration but also to demonstrate the evaluation process on a monthly basis.

For clarity, under a model B arrangement, the TPA (and not the firm) is solely responsible for ISEM compliance where it is the custodian.

This document has been compiled for the use of TA Forum members only and is for guidance purposes. The views portrayed above are those of the panel member who provided the response at the time of the seminar and are not necessarily representative of the TA Forum. Where any firms require further clarification of the rules, guidance should be sought from the FCA.



Question 5 - Technical Interpretation / Application

Often with large scale change e.g. MiFID, the regulator has applied forbearance as firm's bed in new regulations. Is a similar approach being taken on CASS PS14/9?

Response:

The FCA built transition arrangements into the implementation of PS14/9 with staggered implementation dates (i.e. 1 July 2014, 1 December 2014, 1 June 2015).

On an individual basis a firm may approach the FCA to request a waiver, modification or individual firm guidance which the FCA may or may not grant. A CASS auditor will consider any such waivers, modifications or items of individual firm guidance, should they have been granted, as part of their assurance work. In the absence of any such additional considerations, the rules (which include the Transitional Provisions appended to CASS) apply as written in the CASS sourcebook.

Question 6 - Technical Interpretation / Application – change question

Following 1st June, have there been any conflicts identified between COLL and CASS? What advice would you give a client in this situation?

In the opinion of our legal counsel, none of the conflicts have been irreconcilable.

This document has been compiled for the use of TA Forum members only and is for guidance purposes. The views portrayed above are those of the panel member who provided the response at the time of the seminar and are not necessarily representative of the TA Forum. Where any firms require further clarification of the rules, guidance should be sought from the FCA.