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## PART 4

### CLIENT MONEY

#### 4.1 Application

Except where otherwise provided, and so far as applicable, this Part applies to all licenceholders authorised to carry on regulated activities falling within Class 2, Class 3, Class 4 or Class 5 in relation to such activities carried on in or from the Island..

#### 4.2 Interpretation: general

(1) In this Part —

"client" includes the trustee of a trust;

"client bank account", "designated client bank account", "general client bank account" and "separate client bank account" have the meanings given by rule 4.4;

"client money" has the meaning given by rule 4.3;

"money" means —

(a) legal tender in the Island or elsewhere, or

(b) anything which may be directly converted into legal tender,

and includes notes and coin, cheques, drafts and other bills of exchange, and funds held in electronic form;

"recognised bank" means an institution which is either —

(a) authorised to carry on an activity of Class 1; or

(b) carrying on business in a country or territory outside the Island the government of which has signified acceptance of the principles of the International Concordat on Banking Supervision issued by the Committee on Banking Regulation and Supervisory Practices, and authorised under the law of that country or territory to carry on activities corresponding to activities of Class 1;

except (in the case of an institution falling within (b) above) where the Commission has notified the licenceholder concerned that it has reason to believe that the principles referred to are not being applied;

"relevant agreement" means any agreement the making or performance of which by either party constitutes a regulated activity to which this Part applies;

"regulated activity to which this Part applies" means a regulated activity falling within Class 2, Class 4 or Class 5;

"trust money" means money, forming part or all of the assets of a trust, which, for the purpose or in the course of a regulated activity to which this Part applies, a licenceholder holds or receives as, or as agent or nominee of, the trustee of that trust.

### **4.3 Meaning of "client money"**

(1) In these Rules "client money" means money which, for the purpose or in the course of a regulated activity to which this Part applies, a licenceholder —

- (a) holds or receives on behalf of a client, or
- (b) owes to a client;

and includes trust money.

(2) Where, for the purpose or in the course of a regulated activity to which this Part applies and which is carried on or to be carried on for a client, a licenceholder holds or receives (in the Island or elsewhere) money which is not immediately due and payable to the licenceholder for its own account, for the purpose of this rule it holds or receives that money on behalf of the client.

(3) Without prejudice to paragraph (2), where —

- (a) a relevant agreement is in force between a licenceholder and a client, or
- (b) the licenceholder expects to enter into a relevant agreement with or for a client,

and the licenceholder, or an agent on its behalf, holds or receives (in the Island or elsewhere) any money —

- (i) which is not immediately due and payable on demand to the licenceholder for its own account; or
- (ii) which, although so due and payable, is held or received in respect of any obligation of the licenceholder under the agreement which has not yet been performed,

for the purpose of this rule the licenceholder holds or receives that money on behalf of the client.

(4) For the purpose of this rule a licenceholder owes money to a client where it is due and payable to the client by the licenceholder or an agent on its behalf, whether demanded or not.

(5) Subject to paragraph (6), money ceases to be, or never becomes, client money if it is paid —

- (a) to the client; or
- (b) into a bank or other account in the name of the client (not being an account which is also in the name of the licenceholder); or
- (c) otherwise at the direction of the client.

(6) Where a licenceholder is the trustee of a trust (whether alone or jointly with another person), trust money of that trust remains client money so long as it is held by the licenceholder (whether alone or jointly with another person).

### **4.4 Meaning of "client bank account" and related expressions**

In this Part —

"client bank account", in relation to a licenceholder, means an account held by the licenceholder at a recognised bank which is —

- (a) specially created by the licenceholder for the purpose of holding client money, and
- (b) segregated from any account holding money which is not client money;

"designated client bank account" means a client bank account which —

- (a) holds client money of one or more specified clients (and of no other client),
- (b) includes in its title the word "designated", and
- (c) in the event of the failure of the licenceholder, is not intended to be pooled with any other account or type of account;

"general client bank account" means a client bank account other than a separate client bank account;

"separate client bank account" means a client bank account which —

- (a) holds, and is intended to hold, client money of one particular client (and of no other client),
- (b) is segregated from any account holding money which is not client money of that client; and
- (b) includes in its title the name or designation of the client;

"trust bank account" means an account held by the trustee of a specified trust at a recognised bank which —

- (a) holds, and is intended to hold, trust money of that trust (and no other money), and
- (b) is segregated from any account holding money which is not trust money of that trust.

#### **4.5 General restriction on holding client money**

(1) A licenceholder must not hold or receive client money except in accordance with the following provisions of this Part.

(2) This rule applies to a branch of a licenceholder in a country or territory outside the Island except —

- (a) the United Kingdom, or
- (b) a country or territory which the Commission has notified to the licenceholder for the purpose of this rule as a country offering equivalent protection,

as it applies to an establishment of the licenceholder within the Island.

#### **4.6 Duty to hold client money separately**

(1) Subject to paragraphs (3) and (4), a licenceholder must pay all client money into either —

- (a) a client bank account, or
- (b) a bank account in the name of the client.

(2) Subject to paragraph (3), if a licenceholder is requested by a client to do so, it must pay client money of that client into a separate client bank account.

(3) A licenceholder must pay trust money into either —

(a) a trust bank account, or

(b) if, and only if, circumstances make it impractical to set up a separate account for the trust in question, a client bank account.

(4) If a licenceholder is requested by a client to do so, it must pay client money of that client into a bank account in the name of the client.

(5) Client money must be held on trust for the client entitled to it.

(6) Paragraphs (1) to (5) do not apply where the licenceholder pays client money to, or by the written direction of, the client entitled to it.

(7) Paragraphs (1), (2) and (5) do not apply where client money is held or received in respect of a *relevant agreement* which is governed by a law other than the law of the Island, in which case the licenceholder must warn the client in writing that his money may not be protected as effectively as it would be if those paragraphs applied.

(8) Subject to paragraphs (1) to (4) and to rule 4.15, a licenceholder may operate as many client bank accounts as it wishes.

#### **4.7 Designated accounts**

A licenceholder may, with the specific written consent of the client concerned, pay client money into a designated client bank account.

#### **4.8 Notification of receipt of client money in certain cases**

(1) A licenceholder who receives client money in circumstances in which it is not authorised by the terms of its licence to receive such money must immediately pay the money into a client bank account.

(2) The licenceholder must also, on the date of receipt or the next working day, notify the Commission of the facts, including —

(a) the reason for the receipt of the money,

(b) the action taken, and

(c) the arrangements for paying the client money out of the client bank account.

#### **4.9 Account to be specified in cheques etc.**

(1) This rule applies where money —

(a) is or is to be paid to a licenceholder, and

(b) on receipt by the licenceholder is or will be client money.

(2) The licenceholder must advise any person by whom the money is or is to be paid to make the relevant cheque or other instrument payable to either —

(a) the client entitled to the money, or

(b) a payee designated as follows —

- (i) "[licenceholder] – client account";
  - (ii) "[licenceholder] – designated client account"; or
  - (iii) "[licenceholder] – client account re [name of client]",
- as the case may be;
- (c) in the case of an account at an institution in a country or territory outside the Island, a payee designated by such description in an official language of that country or territory as is equivalent to the appropriate wording in sub-paragraph (b)..

#### **4.10 Operation of client bank account**

(1) A licenceholder must comply with the following requirements of this rule in relation to a client bank account.

- (2) The title of the client bank account must include —
  - (a) the words "client account" or "designated client account" (as the case may be), or
  - (b) in the case of an account at an institution in a country or territory outside the Island, such description in an official language of that country or territory as is equivalent to those words.

(3) Subject to paragraph (4), the institution at which the account is held must acknowledge to the licenceholder in writing that —

- (a) it understands that all money standing to the credit of all client bank accounts maintained by the licenceholder is held by it as trustee and that the institution is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the licenceholder;
- (b) interest earned on each such account will be credited to the account or to an account of the same type;
- (c) the title of each such account —
  - (i) is in the form requested by the licenceholder, and
  - (ii) sufficiently distinguishes the account from any other account containing money belonging to the licenceholder; and

and the licenceholder must supply the Commission with a copy of the acknowledgement.

(4) In the case of an account at an institution in a country or territory outside the Island, the licenceholder must either —

- (a) ensure that the account is protected by segregation under trust or otherwise by statutory or other regulation, as effectively as it would be if held in a client bank account in the Island, or
- (b) warn the client in writing that his money may not be protected as effectively as it would be if it were so held;

- (5) Except in the case of an account referred to in rule 4.16, the licenceholder must not allow a client bank account to become overdrawn.
- (6) The licenceholder must not pay money which is not client money, or permit such money to be paid, into a client bank account unless it is required —
- (a) to open or maintain the account; or
  - (b) to restore an amount withdrawn in error from the account.
- (7) If money paid to the licenceholder contains both client money and money which is not client money, the licenceholder must —
- (a) pay the money into a client bank account, and
  - (b) as soon as the funds are cleared and the amount which is not client money is ascertained, withdraw that amount from the account.
- (8) The licenceholder must not withdraw money from a client bank account unless —
- (a) it is not client money;
  - (b) it is properly required for payment to or on behalf of a client; or
  - (c) it is properly transferred to another client bank account or into a bank account in the client's own name.
- (9) The licenceholder must not withdraw for its own account any interest earned on a client bank account which is due to a client under rule 4.14.
- (10) The licenceholder must not withdraw money for or towards payment of its own fees or commission unless —
- (a) the withdrawal is in accordance with the terms of a relevant agreement; or
  - (b) the amount is agreed by the client or finally determined by a court or arbitrator.

#### **4.11 Records to be kept by licenceholder**

- (1) The licenceholder must keep proper records of client money received, paid or held by it.
- (2) The records must in particular contain —
- (a) a record of all receipts and payments, explaining their nature;
  - (b) entries from day to day of all receipts and payments, including interest if applicable;
  - (c) an up-to-date record of the balances on —
    - (i) all client bank accounts,
    - (ii) all accounts of the licenceholder with brokers and other persons (other than recognised banks) in which money is held which, if it were held by the licenceholder, would be client money; and
    - (ii) the licenceholder's ledger accounts relating to client money received, paid or held by it; and

- (d) such further details as are reasonably necessary to demonstrate compliance with the requirements of this Part.
- (3) The records must identify the client on behalf of whom any client money is received, paid or held.
- (4) Where appropriate, the records must also —
  - (a) disclose with reasonable accuracy, at any time, the details of transactions in respect of which client money is received, paid or held; and
  - (b) permit the tracing of money in and out of accounts referred to in paragraph (2)(c)(i) and (ii).
- (5) A licenceholder must preserve any records referred to in this rule for not less than 6 years.

#### **4.12 Accounting for and use of client money**

- (1) A licenceholder must account properly and promptly for client money.
- (2) In particular, the licenceholder must ensure that —
  - (a) client money and other money do not become intermingled (except in accordance with rule 4.10(6));
  - (b) it can at all times be sure how much client money stands to the credit of each client; and
  - (c) money belonging to one client is not used for another (except in the case of an account maintained under rule 4.15(2)).

#### **4.13 Reconciliation requirements**

- (1) A licenceholder must, at least once a month —
  - (a) reconcile the balance on each client bank account, as recorded by the licenceholder, with the balance on that account as set out in the statement issued by the institution at which the account is held; and
  - (b) as at the same date used under sub-paragraph (a), reconcile the total of the balances on all client bank accounts (as recorded by the licenceholder) with the total of the corresponding credit balances in respect of each of its clients (as recorded by the licenceholder).
- (2) All client bank accounts must be reconciled to the same date.
- (3) A reconciliation under paragraph (1) must be checked by an individual other than the person by whom it was carried out.
- (4) The licenceholder must keep a record of every reconciliation under paragraph (1) and every check under paragraph (3).
- (5) The licenceholder must correct immediately any discrepancies discovered on a reconciliation under paragraph (1) unless, in the case of paragraph (1)(a), they arise solely as a result of normal timing differences.
- (6) The licenceholder must immediately notify the Commission in writing, with details, where —



- (a) it has not carried out or is not able to carry out the reconciliation required by paragraph (1), or
- (b) it has completed the reconciliation but —
  - (i) is not able to correct any discrepancy, or
  - (ii) more than one month after completion, a discrepancy has not been corrected.

#### **4.14 Interest on client money**

(1) The licenceholder must pay interest on client money in accordance with the terms set out in the *client agreement* referred to in rule [7.??].

(2) If no interest on client money is to be paid to the client this must be clearly set out in the client agreement.

(3) In the absence of a client agreement a licenceholder must nevertheless disclose to a client how interest earned on client money is to be treated.

#### **4.15 Accounts for margined transactions**

(1) This rule applies only to licenceholders authorised to carry on regulated activities falling within Class 2; and the foregoing provisions of this Part are subject to the provisions of this rule.

(2) A licenceholder must maintain a client bank account or accounts —

- (a) specially created for the purpose of holding margined client money, and
- (b) segregated from any account holding any other client money.

(3) Subject to paragraph (4), a licenceholder must hold any margined client money in a client bank account referred to in paragraph (2), and no other money may be held in such an account.

(4) When a licenceholder undertakes margined transactions with or for a client under the rules of an exchange and in the types of contracts traded on that exchange, the licenceholder may, instead of paying margined client money into a client bank account, pay it to the exchange or an intermediate broker to be credited to the licenceholder's client account with the exchange and to be dealt with in accordance with its rules and regulations.

(5) The licenceholder may withdraw money from a client bank account referred to in paragraph (2) where it is properly payable to an exchange, an intermediate broker or the licenceholder's client account with an exchange.

(6) A licenceholder must hold in such an account initial margins calculated in accordance with paragraph (7) on each client's positions (not on the overall net position across all clients).

(7) For the purpose of paragraph (6) the initial margin to be held for any client at any time is the total amount which, under the rules of the relevant exchange, the licenceholder or intermediate broker would be required to deposit in cash or approved collateral as a fidelity deposit in respect of all that client's open positions in margined transactions at that time, irrespective of any unrealised profit or loss on such positions.

- (8) Where —
- (a) margins required by an exchange or intermediate broker in respect of any one client have not been received from the client, and
  - (b) the licenceholder does not pay the required amount direct to the exchange or broker,

the licenceholder must itself pay the required amount into the relevant client bank account.

(9) A licenceholder must ensure that, on each business day, A is not less than B where —

A = the total, as at the close of business on the immediately preceding business day, of —

- (a) the aggregate of the balances on all the licenceholder's client bank accounts referred to in paragraph (2);
- (b) the net aggregate of the licenceholder's equity balances with exchanges and with intermediate brokers; and
- (c) the value of approved collateral deposited with the licenceholder, whether held by it or by an intermediate broker;

B = the aggregate of the required contributions of all the licenceholder's clients as at the close of business on the immediately preceding business day.

(11) In this rule —

a client's "equity balance" with a licenceholder at any time is the amount which —

- (a) the licenceholder would be liable to pay to the client, or
- (b) the client would be liable to pay to the licenceholder,

in respect of his margined transactions if each of his open positions were liquidated at the closing or settlement prices, and a licenceholder's "equity balance" with an exchange or with an intermediate broker has a corresponding meaning;

"margined client money" means client money held or received for the purpose or in the course of a margined transaction;

"margined transaction" means a transaction effected by a licenceholder with or for a client relating to an option, future or contract for differences under the terms of which the client will or may be liable to make deposits in cash or collateral to secure the performance of obligations which he may have to perform when the transaction falls to be completed or upon the earlier closing out of his position;

"option", "future" and "contract for differences" mean investments falling within paragraphs (g), (h) and (i) respectively of the definition of "investment" in Schedule 2 to the Regulated Activities Order 2008;

a client's "required contribution" is the greater of —

- (a) the amount of the client's initial margin at that time, calculated in accordance with paragraph (7); and
- (b) the aggregate of the client's equity balance at that time and the amount of the value of the approved collateral which the client has provided to the licenceholder.

#### **4.16 Accounts for client settlement money**

(1) This rule applies only to licenceholders authorised to carry on regulated activities falling within Class 2.

(2) A licenceholder may not operate a separate bank account in which is held at any time the net balance required for the settlement of transactions ("clients' settlement money") —

- (a) without the consent of the Commission, or
- (b) otherwise than in accordance with such conditions as the Commission may impose.

#### **4.17 Subscription and redemption accounts**

(1) This rule applies only to licenceholders authorised to carry on regulated activities falling within Class 3.

(2) Where a licenceholder holds money in respect of the sale or redemption of units in a scheme, the money must be held in a subscription account or a redemption account, as the case may be.

(3) In this rule "subscription account" and "redemption account" mean a client bank account which is segregated from any account holding money which is not held in respect of the sale or redemption, as the case may be, of units in —

- (a) the scheme in question, or
- (b) another scheme managed or administered by the same person.