



## CASS Forum Edinburgh

Where CASS best practice gets  
put into effect

Kindly hosted by **C/M/S**  
Law. Tax

# Blockchain in CASS: Hype vs Reality



Building a better  
working world

# Your Presenter

---



**Amarjit Singh**

Partner

EMEIA Assurance Blockchain Leader

What do you associate with  
Blockchain?

# Discover the Blockchain technology

# *Reporting*

Blockchain and the future of audit

# Why is blockchain a game changer ?

A single IT layer for connecting actors in a shared trusted ecosystem

**A shared environment...**



Blockchain is a distributed ledger shared between all stakeholders, based on a peer-to-peer network

**...which trust is ensured by data governance**

Public blockchain



Consensus mechanism based on economic incentives

Private blockchain



Proper governance defined following a consortium approach

A 3-steps transformative journey

1

POC, pilot and first live solutions

2

Universal business infrastructures

3

New societal & economic models

An unprecedented environment with transformative impacts



**Digitalization and automation of processes**



**A new model for digitally representing assets**



**Emergence of new economic models**

# Where are blockchains most useful?

## Our five point test is a quick guide to fit

---

**1** Are there multiple parties in this ecosystem? ▶ Blockchains get more secure with more parties in the network.  
▶ One participant networks are not especially secure.

**2** Is establishing trust between all the parties an issue? ▶ Blockchains improve trust between participants by having multiple points of verification.

**3** Are we securing the ownership or management of a finite resource? ▶ Core logic in the system is designed to prevent double counting of assets and record ownership and transfers.

**4** Do all the parties need to work with shared, complex business logic? ▶ Smart contracts can handle very complex logic and be customized for each relationship.

**5** Does the process depend on an extended business network? ▶ Most companies have cooperation established with direct partners, but struggle with multi-tier network visibility

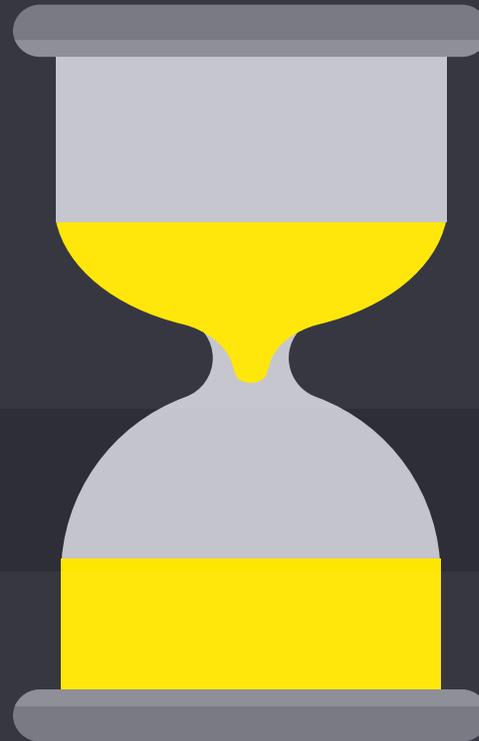
# Blockchain and CASS – Some thoughts of impact

## Record Keeping

What is the client money or custody asset record?

How does the firm comply with record keeping rules in CASS 6 and CASS 7?

How does the firm access the record?



## Reconciliations

What are you reconciling both from a money and custody asset perspective?

Who performs the reconciliation and when do you perform the reconciliations?

Can reconciling differences occur and how would you resolve these?

## Resolution Pack and Insolvency

What additional information would need to be included in the firm's resolution pack?

If one firm using the Blockchain goes insolvent what happens to the rest of the firms on the chain? What happens if the private chain provider goes insolvent?

## Role of CF10a and CASS Oversight Team

What changes would need to be made in relation to CASS oversight?

How would the CF10a and CASS oversight team oversee the Blockchain record?

Any Questions?





# External Custody Reconciliations

Held vs Traded

Shaid Moughal  
Head of CASS, CF10a  
UK Platforms

**Standard Life**  
There's a lot to look forward to

- The FCA has established rules for the protection of client assets within the CASS rulebook
- Chapter 6 sets out the Custody rules and deals specifically with regards to recording keeping and reconciliations.
- The following are key rules that relate to how firms should ensure they perform these activities for asset **held** by the firm on behalf of clients.

### CASS 6.6: Records, Accounts and Reconciliations

#### Record and Accounts

- CASS 6.6.2 R  
*A firm must keep such records and accounts as necessary to enable it at any time and without delay to distinguish safe custody assets **held** for one client from safe custody assets **held** for any other client, and from the firm's own applicable assets.*
- CASS 6.6.3 R  
*A firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the safe custody assets **held** for clients and that they may be used as an audit trail.*

#### External Custody Reconciliations

- CASS 6.6.33 G  
*The purpose of an external custody reconciliation is to ensure the completeness and accuracy of a firm's internal records and accounts of safe custody assets **held** by the firm for clients against those of relevant third parties.*
- CASS 6.6.34 R  
*A firm must conduct, on a regular basis, reconciliations between its internal records and accounts of safe custody assets **held** by the firm for clients and those of any third parties by whom those safe custody assets are **held**.*

Listed securities settled on organised settlement exchanges or central clearing systems

- Key features:
  - This is usually how listed securities (e.g. equities and bonds) will settle
  - Settlement occurs on a delivery versus payment basis
  - Settlement is usually irrevocable once cash is paid or received for an asset
  - A trade is not considered settled until the “actual settlement” is achieved and delivery versus payment occurs.
- Custody reconciliations are performed on settled positions, at the point they have reached ‘actual settlement’

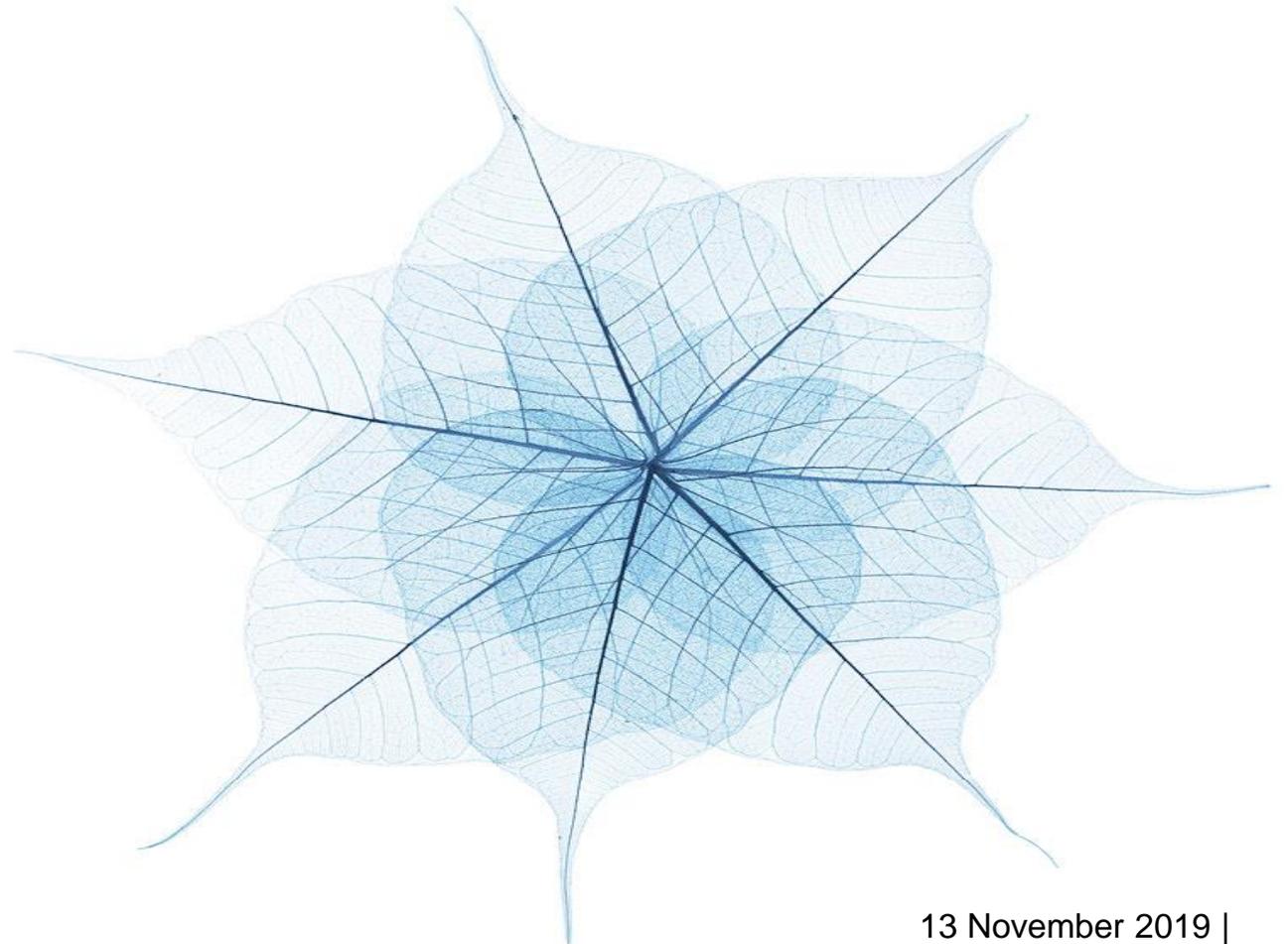
External Reconciliations for mutual funds

Mutual funds settled ‘over the counter’

- Key features:
  - These are funds of a collective investment scheme or similar
  - Settlement is usually defined in the fund prospectus or contract note of each trade
  - Cash is settled separately from the update of the unit registry
  - Most trading is considered settled on the ‘contractual settlement’ date
- Custody reconciliations are often performed on a trade date basis

# Legal challenges in CASS

Angela Greenough and Cassandra Heugh  
13 November 2019



## **Secondary pooling events and FSCS coverage – Cassandra Heugh**

---

## Secondary pooling events and FSCS coverage (1)

---

- What is a “secondary pooling event”?
  - Failure of bank with whom client money is deposited
  - Firm does not make good shortfall (though may have to if liable to do so, e.g. it failed to exercise its duty of care)
- Generally, any shortfall is borne by all clients of the firm rateably except clients who requested a “designated” account elsewhere
- Where there is a shortfall, clients may be able to look to FSCS – are they eligible and, if so, how much of the shortfall would be covered by the FSCS?

---

## Secondary pooling events and FSCS coverage (2)

---

- Do clients have FSCS coverage?
  - Chapter 6 of Depositor Protection Part of PRA Rulebook
  - Generally a “look-through approach” if a firm has deposited money belonging to multiple clients in a pooled account at a deposit-taker which subsequently became insolvent
  - Coverage still limited to the usual FSCS level (i.e. £85,000 in total)
- How can we be sure?
  - Rule 6.2 sets out situations in which a person other than the depositor (i.e. other than the firm) has a claim against deposit-taker

***“If another person (A) is absolutely entitled to the eligible deposit, A is the person entitled to compensation in respect of the deposit, and accordingly the FSCS must pay any compensation to A (or, where A (or a person who has authority to act on behalf of A) directs that any compensation be paid to another person, the FSCS may pay the compensation as directed by A (or a person who has authority to act on behalf of A)[)], provided that A has been identified or is identifiable before the compensation date”***

---

## Secondary pooling events and FSCS coverage (3)

---

- Is the client absolutely entitled to the deposit?
  - Rule 6.10 – ***“For the purposes of this Part, the cases in which A is absolutely entitled to the eligible deposit include where... A is a client in respect of money which the account holder is treating as client money of A in accordance with FCA rules, the SRA Accounts Rules 2011 or an equivalent regime”***
- Practical considerations
  - Pooled client money accounts excluded from single customer view (SCV) requirements – banks have no idea of number/type of beneficiaries
  - FSCS and special administrators of failed bank are wholly dependent on accurate records kept by firm
  - How quickly can you produce an accurate record of individual client shortfall at the time of secondary pooling event?

---

## Secondary pooling events and FSCS coverage (4)

---

- Requirements under CASS 7A
- From the time of the secondary pooling event, CASS 7A.3.8R requires firms to:
  - Calculate a new client money entitlement for each affected client, applying any shortfall in client money held by deposit-taker rateably to each of their entitlements; and
  - Make and retain a record of each client's share in shortfall until repaid
- No distinction between firms using one client money bank vs. firms using multiple client money bank accounts
  - Have to calculate exposure each client has to bank that failed to determine shortfall

---

## Secondary pooling events and FSCS coverage (5)

---

– Impact on FSCS coverage

- CASS 7A does not specifically deal with payment of compensation under FSCS and its effect on a client's share in the client money shortfall
- Firm will need to supply information to FSCS detailing each eligible claimant's entitlement/shortfall from failed bank – must be done promptly to facilitate a quick pay-out
- Practically, in order to claim compensation from FSCS, claimants will usually subrogate their claims against failed deposit-taker to FSCS (Rule 28.2)
- As soon as clients have subrogated their claim and received compensation, firm no longer needs to keep a record of the client's share in the shortfall to extent covered by FSCS compensation

**Your World First**



## **Outsourcing – Angela Greenough**

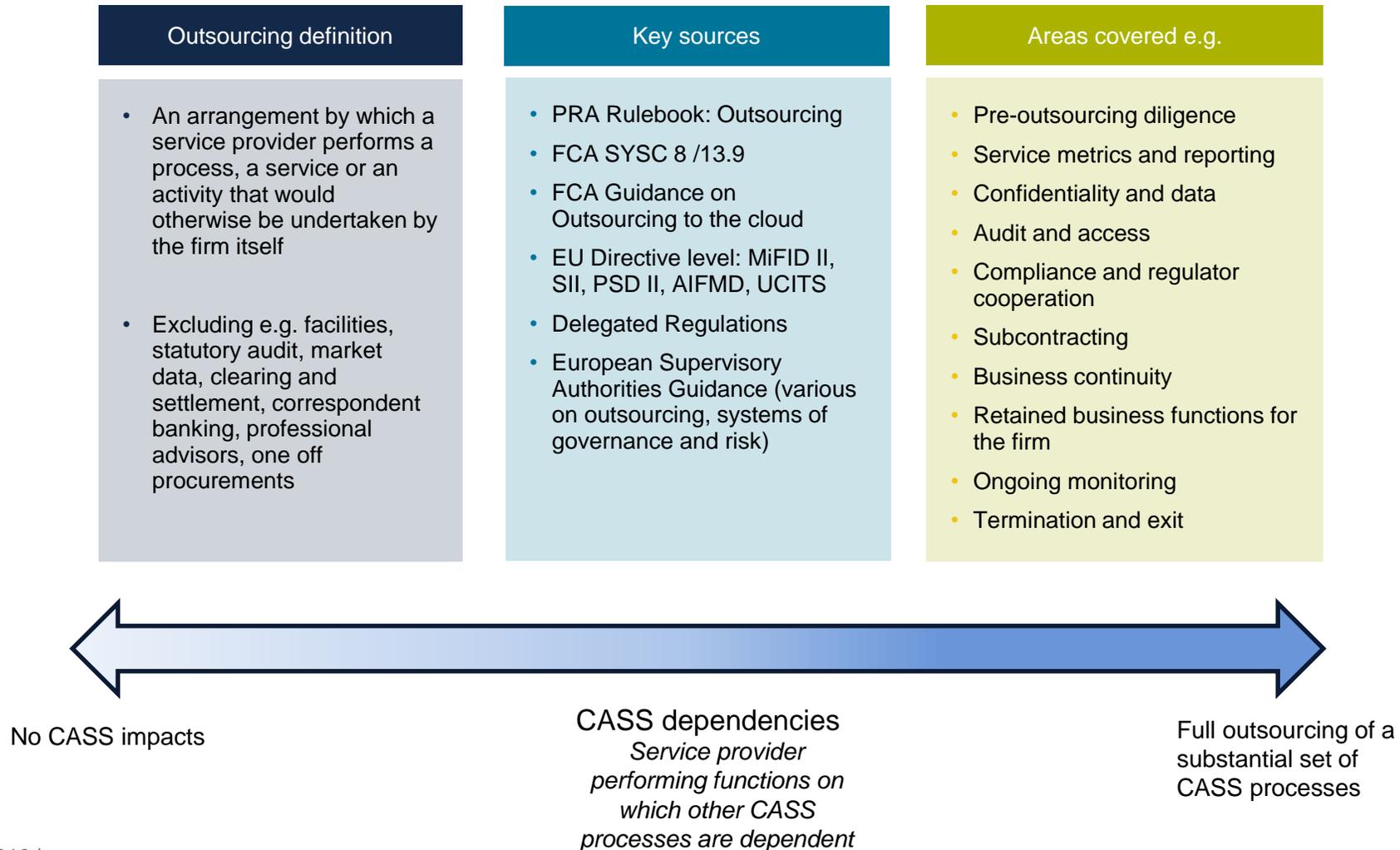
---

# Outsourcing

---



# Outsourcing a “CASS function”



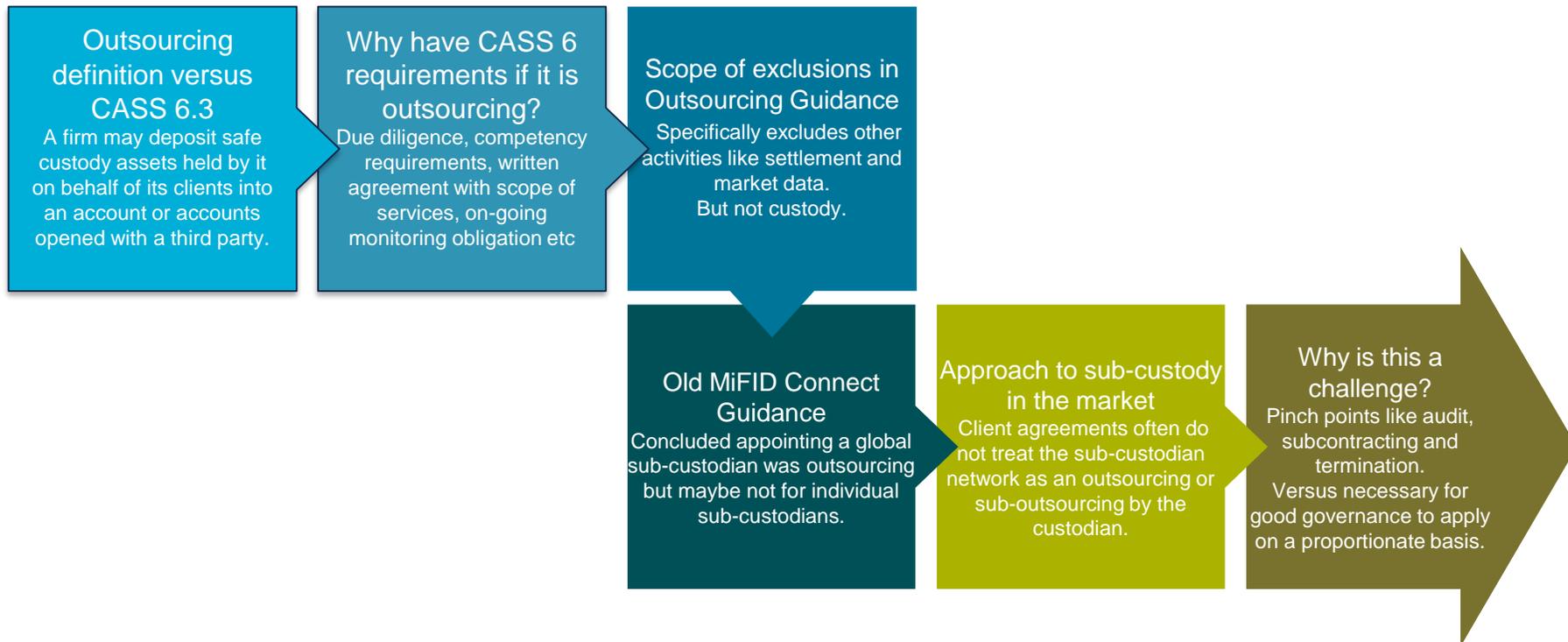
---

# Outsourcing: appointing sub-custodians

---

## Issue:

CASS 6 permits the delegation of safeguarding of client assets with conditions. Does this mean it is additional to or alternative to an outsourcing?



**Any questions?**



**Angela Greenough**  
**Partner**

Financial Services Regulatory  
E [Angela.Greenough@cms-cmno.com](mailto:Angela.Greenough@cms-cmno.com)  
T 020 7367 2198

Angela's practice focuses on regulated financial services outsourcing, complex commercial contracts and the operational aspects of financial services regulation.

For fifteen years, Angela has advised insurers, banks and asset managers on all aspects of financial services regulation. Angela is known for her combination of commercial expertise that is delivered through expansive knowledge of the regulatory environment in which financial institutions operate, their products and their customers.

Most recently Angela has been advising banks and asset managers on the EBA Guidelines on Outsourcing.



**Cassandra Heugh**  
**Associate**

Financial Services Regulatory  
E [Cassandra.Heugh@cms-cmno.com](mailto:Cassandra.Heugh@cms-cmno.com)  
T 020 7367 2062

Cassandra trained at CMS and qualified in 2015. Cassandra advises banks, insurers, asset managers, brokers, trading venues and other financial services firms on a range of complex regulatory issues. In particular, Cassandra regularly advises on authorisation, compliance and regulatory change, capital and governance, product design and distribution, cross border business, insider dealing and market abuse, and the regulatory aspects of outsourcings. Cassandra recently spent eight months on client secondment to Pension Insurance Corporation, a specialist UK insurer.



**Your free online legal information service.**

A subscription service for legal articles  
on a variety of topics delivered by email.  
[cms-lawnow.com](http://cms-lawnow.com)

**Your expert legal publications online.**

In-depth international legal research  
and insights that can be personalised.  
[eguides.cmslegal.com](http://eguides.cmslegal.com)

---

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

**CMS locations:**

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Monaco, Moscow, Munich, Muscat, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

---

[cms.law](http://cms.law)

# **CASS Decisions Made Easy**

November 2019

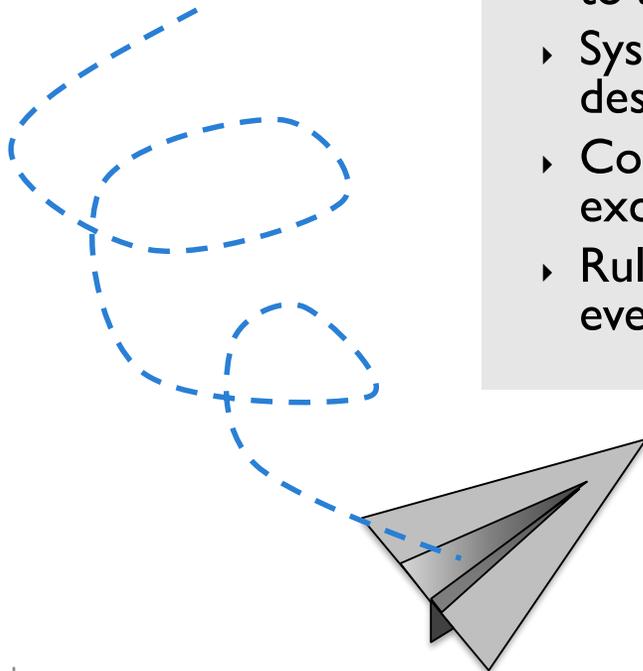


# CASS Compliance – Why Is It So Difficult?

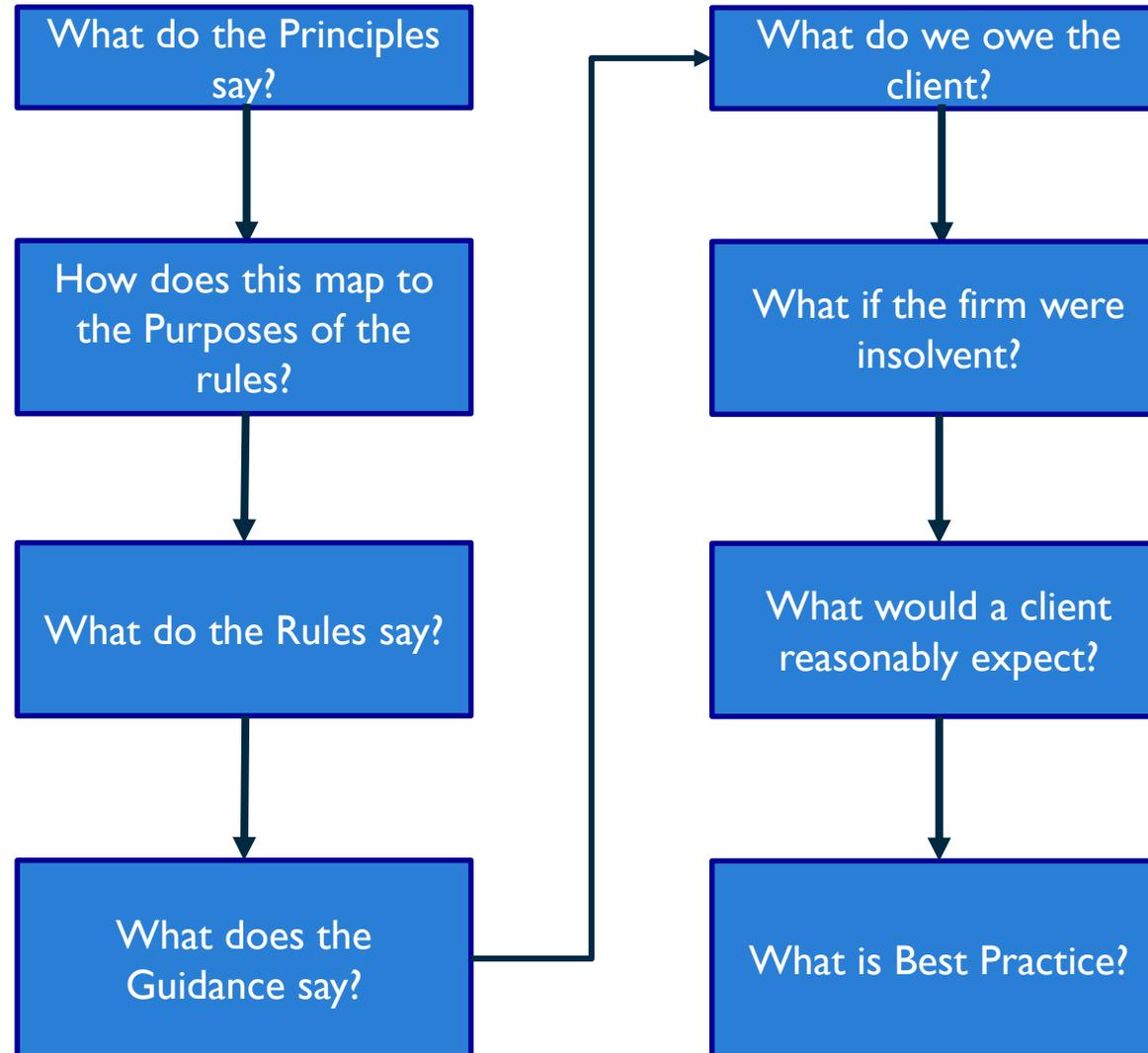
Most firms are working hard to achieve compliance with CASS requirements. However, applying the rules to specific scenarios can be difficult

## Why?

- The rules are very prescriptive, but not always easy to apply to real life
- Systems and processes are/were not always designed for CASS
- Complexity and number of different scenarios and exceptions
- Rules cannot cover all business models and eventualities



# A Map...



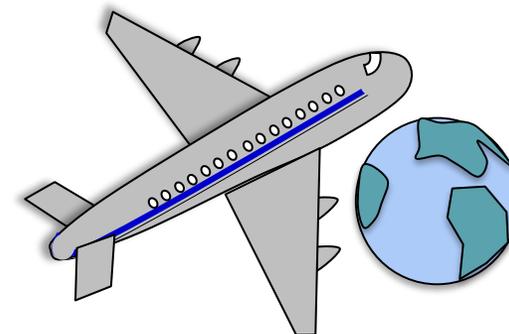
# Principles for Business

## Principle for Business 10:

“ A firm must arrange adequate protection for clients' assets when it is responsible for them ”

## Principle for Business 3:

“ A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems ”

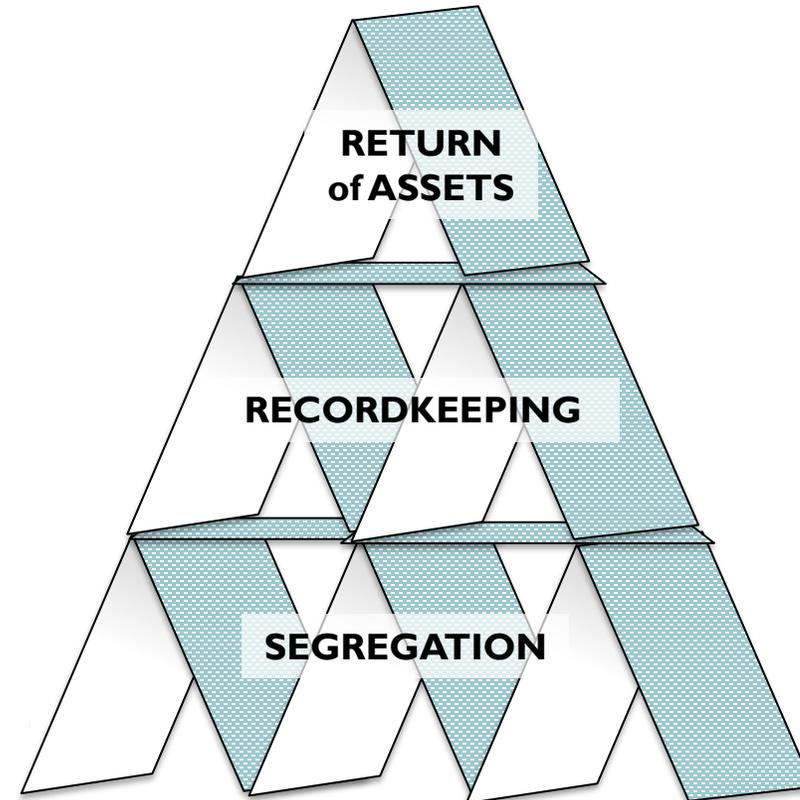


# The Purposes

The purpose of **Client Money & Assets Rules (CASS)** is to regulate:

- ▶ The **segregation** of client money and assets from the firm's money and assets
- ▶ Proper **recordkeeping** and reconciliation to ensure that client money and assets remain separate from the firm's in case of default by the firm
- ▶ The speedy, accurate and complete **return of assets** in the event of the firm's insolvency

**Don't forget the insolvency mindset!**



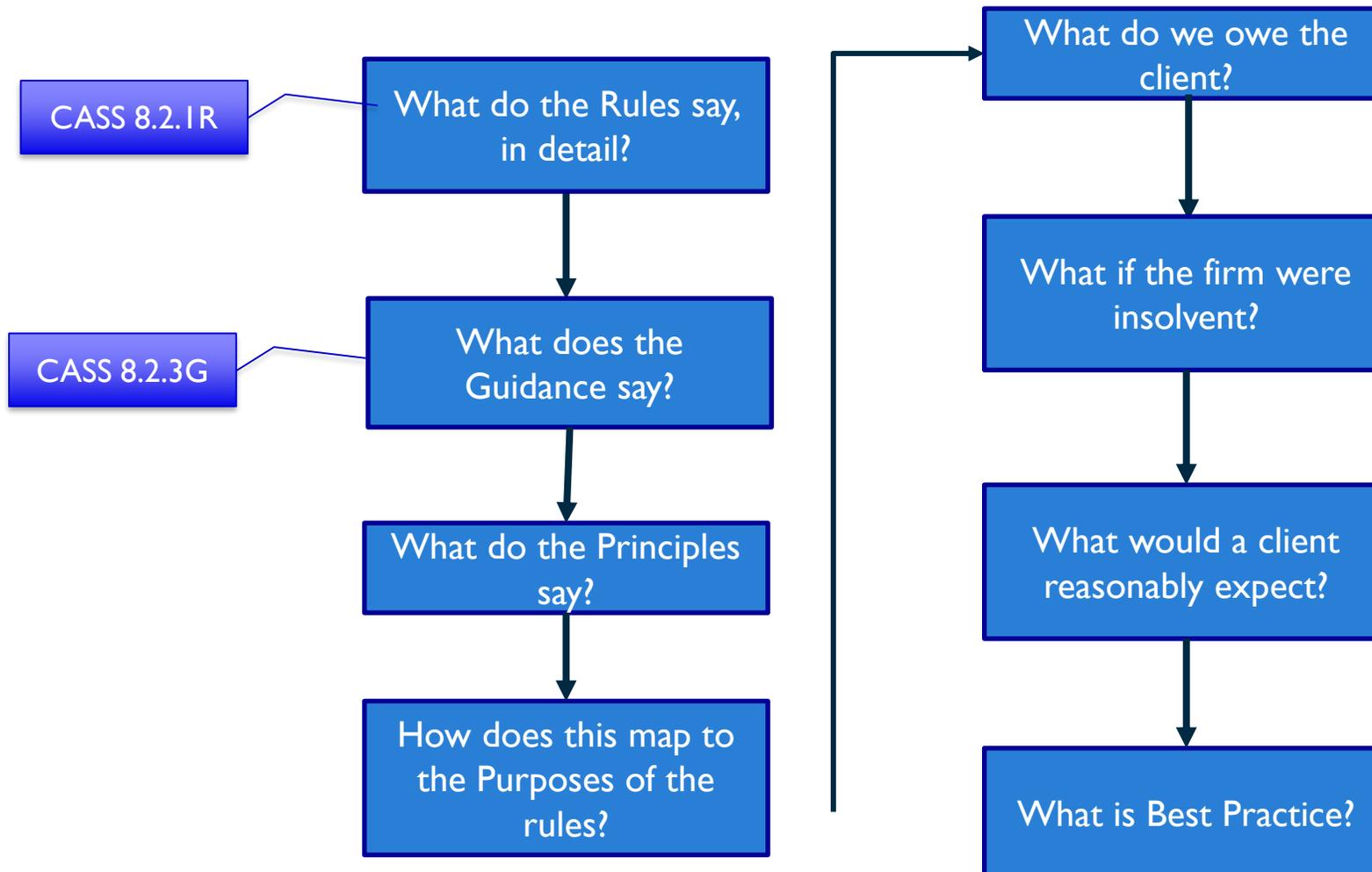
# Mandates

## A Typical Question

“ We keep a record of the clients’ debit card instructions. The data stored includes all of the information required to take a one-off payment from the client, in accordance with their specific instructions. Do these instructions constitute a mandate?

”

# A Map...



# The Rules

## 8.2.1

**R**

A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):

- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
- (2) where those means are obtained in the course of, or in connection with, the *firm's insurance distribution activity*, they are in written form at the time they are obtained from the *client*;
- (3) they are retained by the *firm*;
- (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
  - (a) instructions to another *person* in relation to the *client's money* that is credited to an account maintained by that other *person* for the *client*;
  - (b) instructions to another *person* in relation to any *money* to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client money* for the *client* in accordance with ■ CASS 5 or ■ CASS 7);
  - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments, acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS*);
  - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
- (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

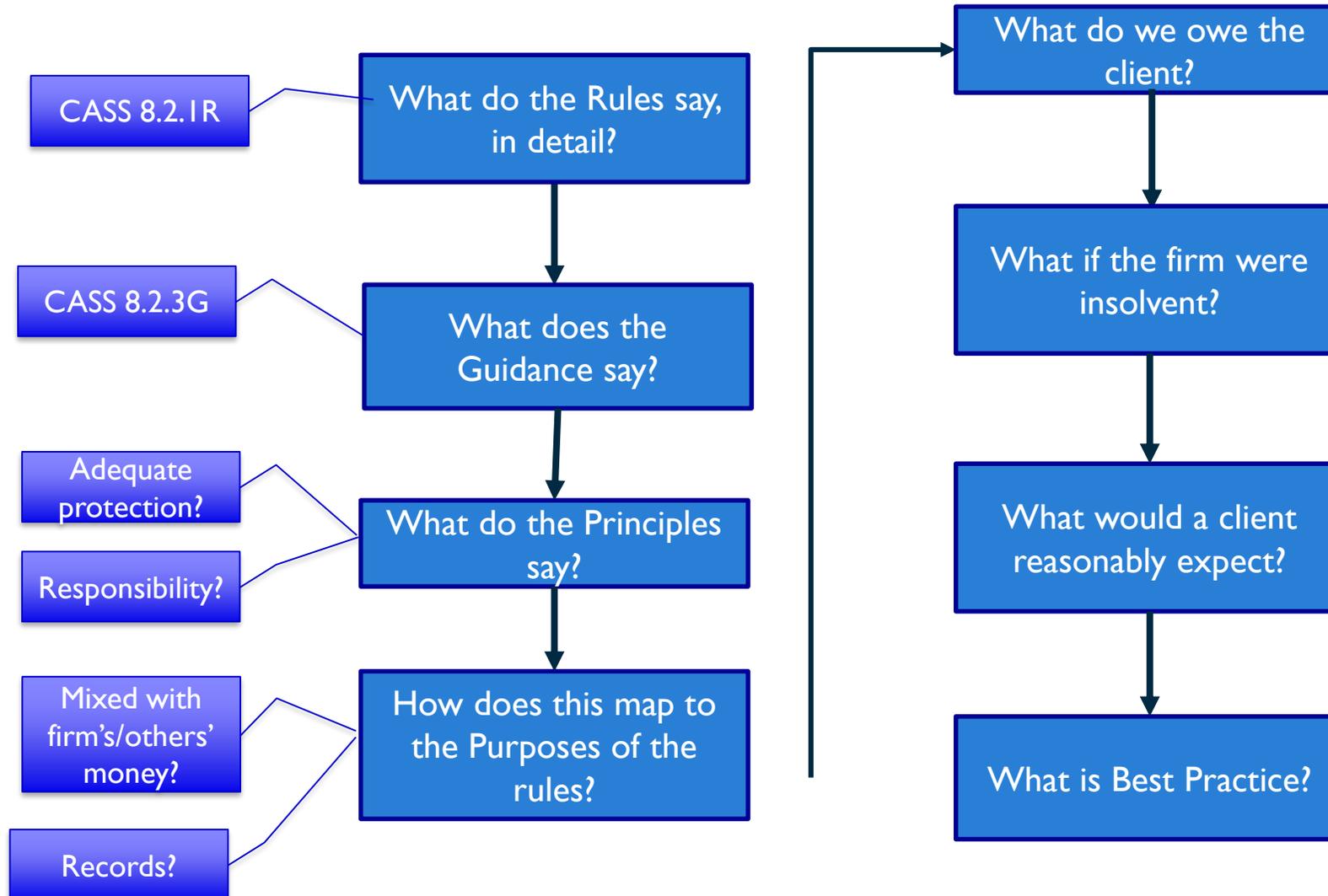
## 8.2.3

G

### Retention by the firm

- (1) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retained it (for example by not destroying the relevant document, electronic record or telephone recording):
  - (a) after it uses it to effect those immediate transactions; or
  - (b) because those transactions are not, for whatever reason, effected immediately.
- (2) If a *firm* receives information that puts it in the position described in ■ CASS 8.2.1 R (4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

# A Map...



# TISA Best Practice - Extract

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.
3	The “means” must be retained by the Firm.
4	The “means” must enable the Firm to control a client’s assets or liabilities e.g. through issuing an instruction to another Person, the result of which instruction would be to transfer, move, sell and/ or purchase an asset/ liability 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 (for 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).



**Just because they may be  
hard to decipher,  
compliance with the rules is  
not necessarily difficult**

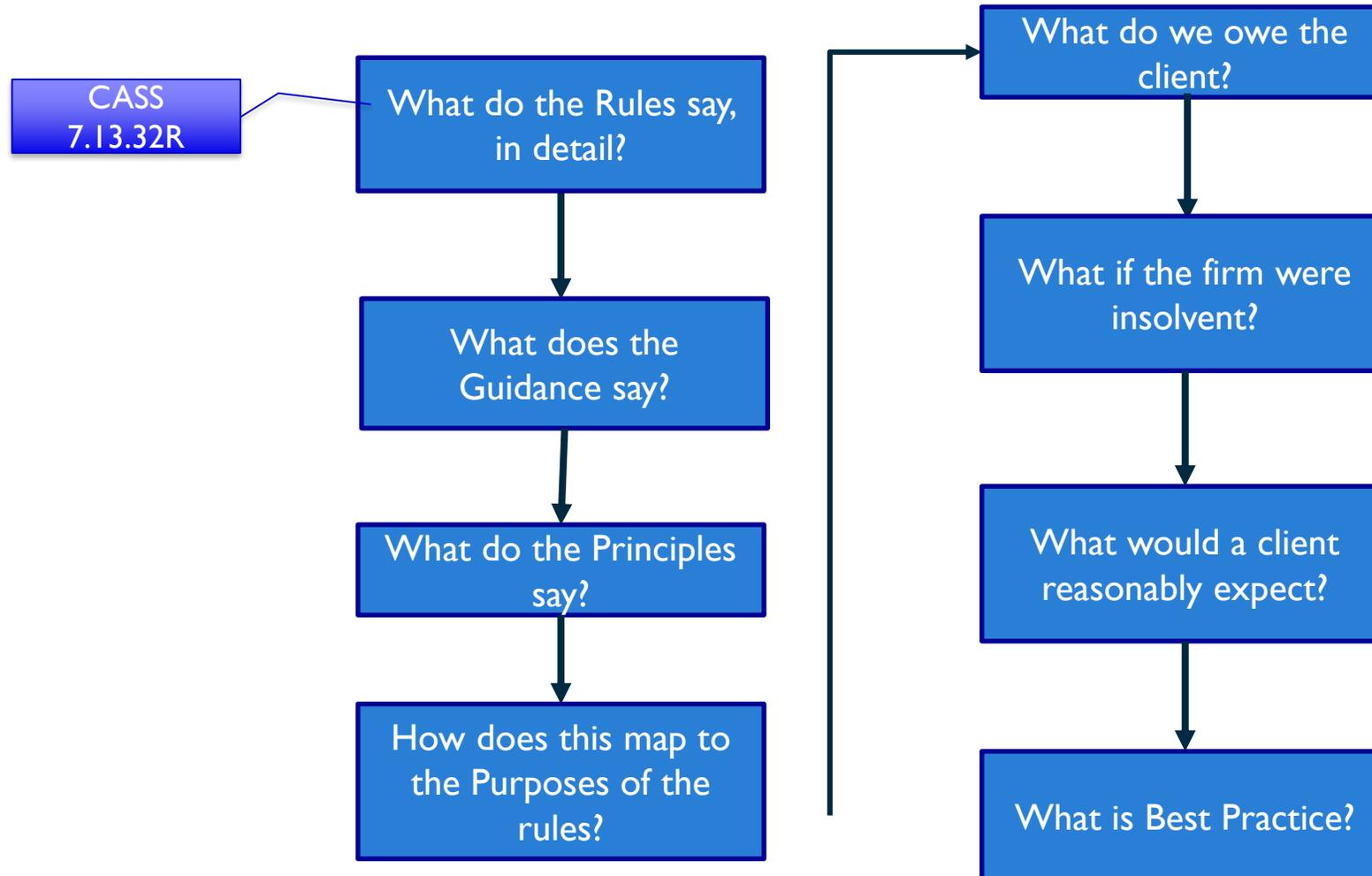
# Cheque Receipts

## A Typical Question

“ My clients sometimes send cheques to a branch office of the firm, though they have been instructed to send to my outsource provider. The branch has no banking arrangements, so I send the cheque to the provider. They always bank by close of business of day following their receipt of the cheque. Is this a breach?

”

# A Map...



# The Rules

7.13.32

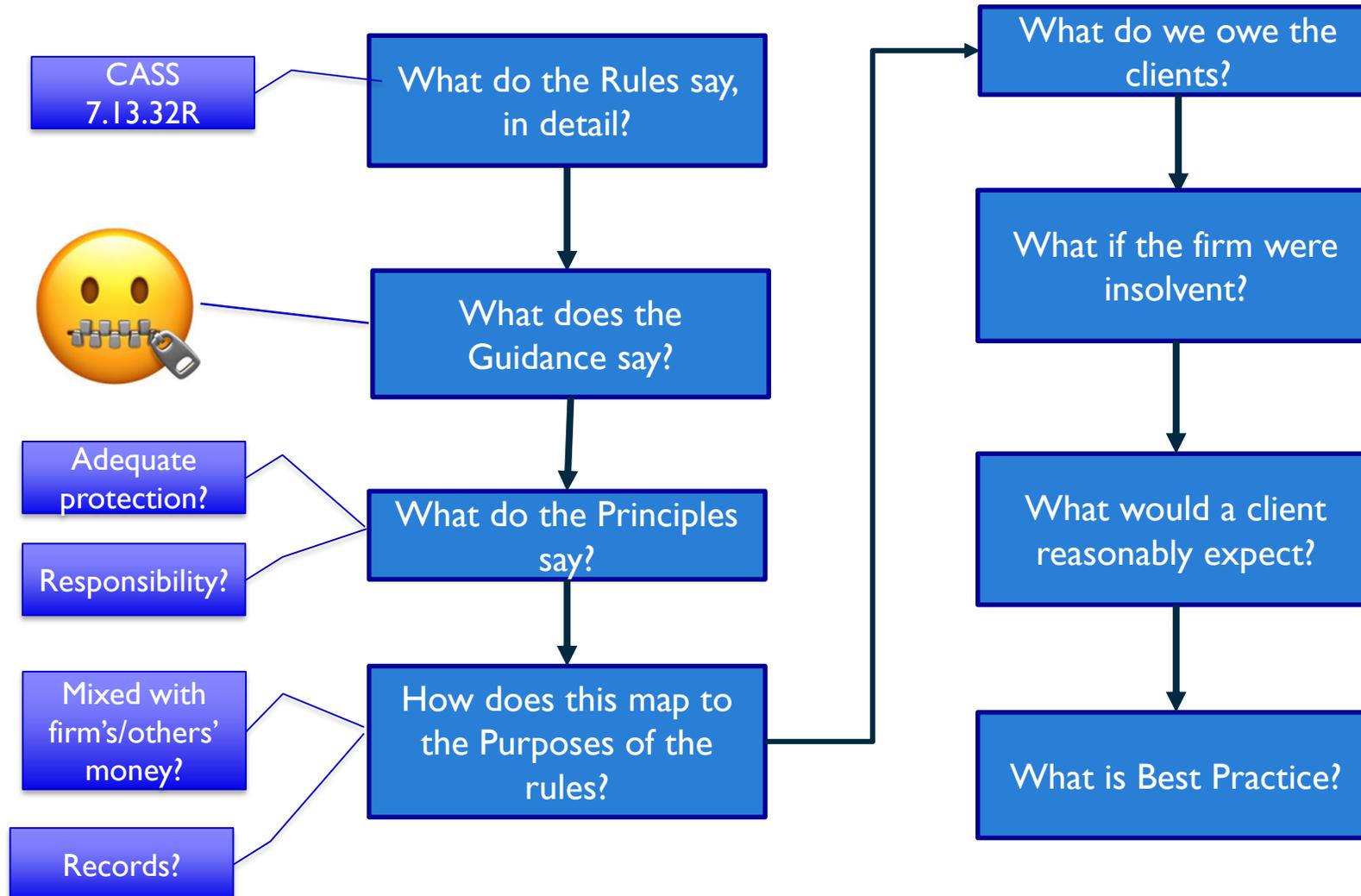
**R**

## Physical receipts of client money

Where a *firm* receives *client money* in the form of cash, a cheque or other payable order, it must:

- (1) pay the *money* in accordance with ■ CASS 7.13.6 R, promptly, and no later than on the *business day* after it receives the *money* into a *client bank account*, unless either:
  - (a) the *money* is received by a business line for which the *firm* uses the alternative approach, in which case the *money* must be paid into the *firm's* own bank account promptly, and no later than on the *business day* after it receives the *money*; or
  - (b) the *firm* is unable to meet the requirement in (1) because of restrictions under the *regulatory system* or law regarding the receipt and processing of *money*, in which case the *money* must be paid in accordance with ■ CASS 7.13.6 R as soon as possible;
- (2) if the *firm* holds the *money* in the meantime before paying it in accordance with ■ CASS 7.13.6 R (or in the case of (1)(a), into its own bank account), hold it in a secure location in line with *Principle 10*; and
- (3) in any case, record the receipt of the *money* in the *firm's* books and records in line with ■ CASS 7.15 (Records, accounts and reconciliations).

# A Map...



# TISA Best Practice

TISA recommends that cheques are deemed to be paid in 'on acceptance' at the bank. 'On acceptance' is defined as successful delivery to and acceptance by or receipt by the account holding bank within the required timeline of 'no later than one business day after [the firm] receives the money' as per CASS 7.13.32R. Examples of when a cheque is deemed to be banked are as follows:

- cheques deposited to the account holding bank via a bank branch,
- a cheque clearing service provided by the account holding bank, or
- cheques passed to a courier of the bank.

Cheques received by a firm into the incorrect location must still be banked by the end of the following business day or a breach recorded, therefore it is important to ensure the firm has defined processes and controls in respect of the receipt and handling of client money cheques.

The Banking Industry is currently working on cheque imaging technology which enables images of cheques to be exchanged between banks through the image clearing system for clearing and payment. Firms may be offered a scanning facility by their bank so that the firm can scan large numbers of cheques to create images which the firm will then be able to upload to their bank for processing.



**Just because the answer is  
possible to decipher,  
compliance with the rules is  
not necessarily easy!**

# Contact Details

**Karen Bond | Director**

Mobile: +44(0)7801 706192

[kebond@walbrookpartners.co.uk](mailto:kebond@walbrookpartners.co.uk)

**Mark Lester | Director**

Mobile: +44(0)7702 340 470

[mblester@walbrookpartners.co.uk](mailto:mblester@walbrookpartners.co.uk)

[www.walbrookpartners.co.uk](http://www.walbrookpartners.co.uk)

Follow [@WalbrookFS](https://twitter.com/WalbrookFS) on Twitter





**THANK YOU**

**TISA**

Dakota House, 25 Falcon Court  
Preston Farm Business Park  
STOCKTON-ON-TEES  
TS18 3TX

[www.tisa.uk.com](http://www.tisa.uk.com)  
01642 666999  
[enquiries@tisa.uk.com](mailto:enquiries@tisa.uk.com)