



CLIENT ASSETS MODULE

MODULE:	CL (Client Assets)
Table of Contents	

		Current Issue Date
CL-A	Introduction	
	CL-A.1 Purpose	04/2006
	CL-A.2 Module History	04/2006
CL-B	Scope of Application	
	CL-B.1 License Categories	04/2006
	CL-B.2 Overseas Subsidiaries and Branches	04/2006
CL-1	Client Asset Protection	
	CL-1.1 Client Asset Protection Rules	04/2006
	CL-1.2 Stock Lending Rules	04/2006
	CL-1.3 Client Notification	04/2006
	CL-1.4 Record Keeping	04/2006
	CL-1.5 Auditor Reports	04/2006
CL-2	Custody Services	
	CL-2.1 General Requirements	04/2006
	CL-2.2 Segregation	04/2006
	CL-2.3 Reconciliation	04/2006
	CL-2.4 Client Statements	04/2006
	CL-2.5 Third Party Custodians	04/2006
	CL-2.6 Record Keeping	04/2006
CL-3	Collateral	
	CL-3.1 General Requirements	04/2006
	CL-3.2 Third Parties	04/2006
	CL-3.3 Record Keeping	04/2006
CL-4	Mandates	
	CL-4.1 Mandates	04/2006
CL-5	Client Money Distribution	
	CL-5.1 General Requirements	04/2006
	CL-5.2 Third Party Related Distribution	04/2006
CL-6	Appendix	
	CL-6.1 Appendix	04/2006

MODULE	CL: Client Assets
CHAPTER	CL-A: Introduction

CL-A.1 Purpose

- CL-A.1.1 This Module presents requirements that have to be met by investment firm licensees with regards to safeguarding and administering financial instruments or when they hold or control assets of clients for which they are responsible.
- CL-A.1.2 The rules contained in this Module are aimed at ensuring proper protection of client assets to minimise the risk of client assets being used by investment firm licensees without the client's written consent (except to the extent permitted by the rules) and to restrict the commingling of client assets with investment firm licensee assets. This Module builds upon Principle 6 – Customer Assets (see Module PB (Principles of Business)). Principle 6 requires investment firm licensees to take reasonable care to safeguard the assets of customers for which they are responsible.
- CL-A.1.3 The rules contained in this Module are largely principles-based and focus on desired outputs rather than on prescribing detailed processes. This gives investment firm licensees flexibility in how to implement the basic standards prescribed in this Module.

MODULE	CL: Client Assets
CHAPTER	CL-A: Introduction

CL-A.2 Module History

Evolution of Module

CL-A.2.1 This Module was first issued in April 2006, as part of the first phase of Volume 4 (Investment Business) to be released. It is dated April 2006. All subsequent changes to this Module are annotated with the end-calendar quarter date in which the change was made: Chapter UG-3 provides further details on Rulebook maintenance and version control.

CL-A.2.2 A list of recent changes made to this Module is provided below:

Module Ref.	Change Date	Description of Changes

Superseded Requirements

CL-A.2.3 This Module does not replace any regulations or circulars in force prior to April 2006.

CL-A.2.4 Further guidance on the implementation and transition to Volume 4 (Investment Business) is given in Module ES (Executive Summary).

MODULE	CL: Client Assets
CHAPTER	CL-B: Scope of Application

CL-B.1 License Categories

CL-B.1.1 This Module applies to every investment firm licensee that undertakes the activity of safeguarding clients' financial instruments; or holds or controls client assets.

CL-B.1.2 Since Category 1 and Category 2 investment firms only are permitted to undertake the activity specified in Rule CL-B.1.1, the requirements contained in this Module do not apply to Category 3 investment firm licensees.

CL-B.1.3 Client assets comprise money or financial instruments belonging to clients of an investment firm licensee, which are held or controlled by the investment firm licensee in connection with the conduct of regulated investment services.

CL-B.1.4 Client assets are held or controlled by an investment firm licensee on behalf of a client if they are:

- (a) directly held by the investment firm licensee;
- (b) held in an account in the name of the investment firm licensee;
- (c) held by a person, or in an account in the name of a person, controlled by the investment firm licensee; or
- (d) held in an account with another person, controlled by the investment firm licensee.

CL-B.1.5 The Agency would consider a person to be controlled by an investment firm licensee if that person is inclined to act in accordance with the instructions of the investment firm licensee.

CL-B.1.6 The Agency would consider an account to be controlled by an investment firm licensee if that account is operated in accordance with the instructions of the investment firm licensee.

MODULE	CL: Client Assets
CHAPTER	CL-1: Scope of Application

CL-B.2 Overseas Subsidiaries and Branches

CL-B.2.1 Investment firm licensees must ensure that their branches and subsidiaries operating in foreign jurisdictions comply, at a minimum, with local client asset rules (where applicable).

CL-B.2.2 Where client asset rules applied by overseas branches and subsidiaries of an investment firm licensee fall below the standards set out in this Module, the investment firm licensee must notify the BMA of the fact.

CL-B.2.3 BMA encourages its investment firm licensees to apply – with respect to its overseas branches and subsidiaries – client asset rules at least equivalent to those set out in this Module. Where this is not the case, then BMA will consider any potential risk to the investment firm licensee that may arise through adverse reputational or other consequences.



MODULE	CL: Client Assets
CHAPTER	CL-1: Scope of Application

CL-1.1 Client Asset Protection Rules

Segregation of Client Assets

CL-1.1.1

Except to the extent permitted by these rules (see Section CL-1.2), an investment firm licensee must hold client assets separate from its own.

CL-1.1.2

An investment firm licensee may only use a client's assets for its own account, and/or for the account of any of its other clients if:

- (a) that client has given his express consent in writing;
- (b) the use of the client assets is restricted to the terms agreed by him; and
- (c) the document in which that client's consent is requested by the investment firm licensee gives clear information to him on:
 - (i) the obligations and responsibilities of the investment firm licensee and/or of the clients for whose account the investment firm licensee has been allowed to use the client's financial instruments, with respect to the use of the financial instruments (including the terms for the restitution of the financial instruments); and
 - (ii) the risks involved.

CL-1.1.3

An investment firm licensee should communicate to its clients in writing, at a minimum, the information specified in Guidance Paragraph CL-6.1.2, regarding client assets held. This information must be reported as soon as practicable, but no later than 10 business days from the initial transaction date. Subsequent statements must be provided in accordance with client reporting requirements under Section CL-1.3.

CL-1.1.4

If an investment firm licensee holds or controls client assets which are not subject to the client asset provisions in an arrangement with a market counterparty, it must disclose to that market counterparty in writing that:

- (a) the protections conferred by the client asset protection rules do not apply to such client money;
- (b) as a consequence of (a), such client assets may be mixed with money belonging to the investment firm licensee, and may be used by the investment firm licensee in the course of the investment firm licensee's business; and

MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.1 Client Asset Protection Rules (Continued)

Segregation of Client Assets (continued)

- (c) in the event of insolvency, winding up of the investment firm licensee or other distribution event stipulated by the BMA:
 - (i) in the case of a Bahrain investment firm licensee, such client assets will be subject to and distributed in accordance with the BMA client money distribution rules; and
 - (ii) in the case of overseas investment firm licensees, such client assets will be subject to a regime which may differ from the regime applicable by the BMA.

CL-1.1.5 An investment firm licensee may agree with a market counterparty to opt out from applying these client asset protection rules, to minimise its regulatory compliance burden and to allow sufficient flexibility when dealing with money or assets (for example, so as to be allowed to commingle funds).

Client Money

CL-1.1.6 An investment firm licensee must hold client money in a client bank account.

CL-1.1.7 For the purposes of CL-1.1.5, a client bank account is an account holding client money of one or more clients in a bank account designated as such in accordance with the terms of agreement with the client/clients.

CL-1.1.8 Client bank accounts may only be opened with licensed banks, after being subject to due diligence by the investment firm licensee. Islamic investment firms may only hold client bank accounts with licensed Islamic banks.

CL-1.1.9 For the purposes of CL-1.1.8, when undertaking due diligence, the investment firm licensee should take reasonable steps to establish that the bank is appropriate considering, among other factors, the following:

- (a) whether it is a duly licensed bank in good regulatory standing;
- (b) the capital adequacy of the bank;
- (c) the amount of client money to be placed, as a proportion of the bank's capital and deposits; and
- (d) the credit rating of the bank, if available.

MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.1 Client Asset Protection Rules (Continued)

Transfer of money to eligible third parties

CL-1.1.10 An investment firm licensee may only pay, or permit to be paid, client money into an account with a person who is not a client bank account if that person is an eligible third party.

CL-1.1.11 Eligible third parties are recognised exchanges, clearing houses and third party intermediaries (such as brokers), that are duly authorised or licensed by the appropriate regulatory oversight body to conduct investment activities.

CL-1.1.12 An investment firm licensee may allow an eligible third party, such as an exchange, a clearing house or an intermediate broker, to hold or control client money, only if:

- (a) the investment firm licensee transfers the client money
 - (i) for the purpose of a transaction for a client through or with that eligible third party; or
 - (ii) to meet a client's obligations to provide collateral for a transaction;
- (b) in the case of a retail client, that client has been notified in writing that the client money may be transferred to the other person.

CL-1.1.13 For the purposes of CL-1.1.10, an investment firm licensee must assess the suitability of an eligible third party before allowing it to hold or control client money. This assessment must include, at a minimum, the information included in Paragraph CL-6.1.1.

CL-1.1.14 An investment firm licensee must not hold money other than client money in a client bank account unless it is:

- (a) a minimum sum required to open the account or to keep it open;
- (b) money temporarily held in the account in accordance with the mixed remittance rule stated in CL-1.1.16;
- (c) interest credited to the account which exceeds the amount due to clients as interest and which has not yet been withdrawn by the investment firm licensee.



MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.1 Client Asset Protection Rules (Continued)

CL-1.1.15

If it is prudent to do so to ensure that client money is protected, an investment firm licensee may pay into a client bank account money of its own, and that money will then become client money for the purposes of the client money protection rules until the licensee retrieves it.

CL-1.1.16

If an investment firm licensee receives a mixed remittance (that is part client money and part other money), it must:

- (a) pay the full sum into a client bank account; and
- (b) pay the money that is not client money out of the client bank account within one business day.

CL-1.1.17

An investment firm licensee should not hold excess client money in its client transaction accounts with intermediate brokers, settlement agencies and over the counter (OTC) counterparties; it should be held in a client bank account.

Reconciliation

CL-1.1.18

An investment firm licensee must ensure that a system is implemented to perform reconciliations of both client bank accounts and eligible third party accounts in which client money is held. These reconciliations must be carried out on a regular basis, sufficient to ensure the accuracy of its records (but at a minimum, on a monthly basis as at the last business day of each calendar month).

CL-1.1.19

An investment firm licensee must perform the reconciliations required under Rule CL-1.1.16 within 10 business days of the date to which the reconciliation relates.

CL-1.1.20

An investment firm licensee must perform reconciliations, in respect of individual ledger balances, client bank accounts, third party balances and eligible third party balances.

CL-1.1.21

In respect of reconciliation, the investment firm licensee must ensure that unresolved differences, shortfalls and excess balances are investigated and, where applicable, corrective action is taken as soon as is practicable.

MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.2 Stock Lending Rules

CL-1.2.1 An investment firm licensee must not undertake or otherwise engage in stock lending activity with or for a client unless the investment firm licensee has obtained the consent of the BMA and the client.

CL-1.2.2 If a safe custody investment belonging to a retail client is used for stock lending activity, the investment firm licensee must ensure that:

- relevant collateral is provided by the borrower in favour of the client;
- the current realisable value of the safe custody financial instrument and of the relevant collateral is monitored daily; and
- the investment firm licensee provides relevant collateral to make up the difference where the current realisable value of the collateral falls below that of the safe custody financial instrument, unless otherwise agreed in writing by the client.

CL-1.2.3 If safe custody financial instruments of more than one client are held together, none of those safe custody financial instruments may be used for a stock lending activity unless:

- all of those clients have consented to their safe custody financial instrument being used for that activity; or
- the investment firm licensee has adequate systems and procedures in place to ensure that only safe custody financial instruments belonging to clients who have given their consent are used for stock lending activity.

MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.3 Client Reporting

CL-1.3.1 An investment firm licensee that holds client assets for a client must send a statement of all client assets held by the investment firm licensee to its client at least once a year or as often as agreed with that client.

CL-1.3.2 The statement of client assets referred to in CL-1.2.1 must:

- (a) identify any clients' assets which have been provided as collateral;
- (b) identify any client assets which have been lent; and
- (c) show any movement of client assets based on either trade date or settlement date clearly and consistently.

CL-1.3.3 An investment firm may include the information required in CL-1.2.1 in any periodic statement provided by the investment firm licensee to the client, or by other separate documents, as long as all sets of information :

- (a) are prepared in relation to the same date and period;
- (b) are delivered to the client within a reasonable period of one another.

MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.4 Record Keeping

CL-1.4.1 Investment firm licensees must ensure that proper records, sufficient to show and explain the investment firm licensee's transactions and commitments in respect of its client assets, are made and which demonstrate compliance with the provisions of this Module. These records must be retained for a period of a minimum of five years after they were made, unless otherwise required by law.

CL-1.4.2 An investment firm licensee that holds client assets must:

- (a) check its record-keeping and client asset procedures regularly;
- (b) subject its record-keeping and client asset procedures to an appropriate independent review.

CL-1.4.3 Detailed record keeping requirements are contained in Module GR (General Requirements) and Module FC (Financial Crime).

MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.5 Auditor Reports

CL-1.5.1 Investment firm licensees that hold or control client assets (including where it pools financial instruments held for more than one client) must arrange for their external auditors to report on the licensees' compliance with the requirements contained in this Module.

CL-1.5.2 The report must be in the form agreed by BMA, and must be submitted to the BMA within four months of the licensee's financial year end.

CL-1.5.3 The report is based on an agreed-upon-procedures review, the contents of which are agreed between BMA and the audit firm concerned.

MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.1 General Requirements

CL-2.1.1 The rules in this section apply to investment firm licensees that undertake safeguarding of client financial instruments.

CL-2.1.2 An investment firm licensee which holds or controls safe custody financial instruments must have systems and controls in place to:

- (a) ensure the proper safeguarding of such safe custody financial instruments;
- (b) ensure that such safe custody financial instruments are identifiable and secure at all times;
- (c) be able to evidence compliance with the requirements in Section CL-2 to its external auditors and the BMA.

CL-2.1.3 As part of these protections, the custody rules require an investment firm licensee to take appropriate steps to protect safe custody financial instruments for which it is responsible. These rules are designed primarily to restrict the commingling of client and investment firm licensee assets and minimise the risk of the client's safe custody financial instruments being used by the firm without the client's agreement or contrary to the client's wishes, or being treated as the investment firm's assets in the event of insolvency.

MODULE	CL:	Client Assets
CHAPTER	CL-2:	Custody Services

CL-2.2 Segregation

CL-2.2.1	<p>An <u>investment firm licensee</u> must segregate safe custody <u>financial instruments</u> from its own <u>financial instruments</u> except to the extent required by law or permitted by this module.</p>
----------	--

MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.3 Reconciliation

CL-2.3.1

An investment firm licensee must, as often as is necessary, but at a minimum on a monthly basis, perform a reconciliation of its record of safe custody financial instruments for which it is accountable but which it does not physically hold, with statements obtained from custodians. In the case of dematerialised safe custody financial instruments not held through a custodian, this reconciliation must be performed with statements obtained from the person who maintains the record of legal entitlement.

CL-2.3.2

An investment firm licensee must, as often as is necessary, but no less than every six months (or twice in a period of twelve months but at least five months apart), carry out:

- (a) a count of all safe custody financial instruments it physically holds on behalf of clients and reconcile the result of that count with its record of safe custody financial instruments that it physically holds on behalf of its clients;
- (b) a reconciliation between the investment firm licensee's record of client holdings, and the firm's record of the location of safe custody financial instruments.

CL-2.3.3

Wherever possible, an investment firm licensee should ensure that the reconciliations are carried out by a person (for example an employee of the investment firm licensee) who is independent of the production or maintenance of the records to be reconciled.

MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.4 Client Statements

CL-2.4.1

Before investment firm licensees provide safe custody services to a client, they must notify the client as to the appropriate terms and conditions which apply to this service. These must cover, at a minimum, the following matters, wherever applicable:

- (a) the registration of the safe custody financial instruments, if these are not registered in the investment firm licensee clients' name;
- (b) the extent of the investment firm licensees' liability in the event of default by a custodian, except that the investment firm licensee must accept the same level of responsibility to its client for any nominee company controlled by the investment firm licensee or its affiliated company as for itself and may not disclaim responsibility for losses arising from the fraud, wilful default or negligence of the firm;
- (c) the circumstances in which the investment firm licensee may realise a safe custody financial instrument held as collateral to meet the client's liabilities;
- (d) the claiming and receiving of dividends, interest payments and other entitlements accruing to the client;
- (e) dealing with takeovers, other offers or capital reorganisations and exercising voting, conversion and subscription rights;
- (f) arrangements for the distribution of entitlements to shares and any other benefits arising from corporate events, where client balances have been pooled;
- (g) arrangements for the provision of information to the client relating to the safe custody financial instruments which the investment firm licensee, or its nominee company, holds on behalf of the client;
- (h) how often a statement of custody assets will be sent to the client and the basis on which the assets shown on the statement are valued;
- (i) fees and costs for safe custody services to the extent that they are not notified to the client elsewhere;
- (j) if the firm intends to pool a safe custody financial instrument with that of one or more other clients, notification of its intention; in addition, if the client is a retail client, an explanation of the effects of pooling to that retail client.

MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.4 Client Statements (Continued)

CL-2.4.2

All statements produced by or on behalf of an investment firm licensee must list all safe custody assets held for the client and for which the investment firm licensee is accountable and:

- (a) identify any safe custody financial instruments registered in the clients' own name separately from those registered in any other name;
- (b) identify any safe custody assets which are being used as collateral or have been pledged to third parties, separately from any custody assets;
- (c) show the market value of any collateral held, as at the date of the statement;
- (d) for a retail client, base the statement on either trade date or settlement date information for cash balances and safe custody investment and notify the basis to the retail client;
- (e) details of movements of each client asset.



MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.5 Third Party Custodians

CL-2.5.1

An investment firm licensee must require that if a safe custody financial instrument is recorded in an account with a custodian, the custodian makes it clear in the title of the account that the safe custody financial instrument belongs to one or more clients of the investment firm licensee.

CL-2.5.2

Before an investment firm licensee recommends a third party custodian to a retail client it must undertake an appropriate risk assessment of that custodian.

CL-2.5.3

An investment firm licensee that holds safe custody financial instruments with a custodian or recommends custodians to retail clients, is expected to establish and maintain a system for assessing the appropriateness of its selection of the custodian and to assess the continued appointment of that custodian periodically as often as is reasonable in the relevant market. The investment firm licensee is also expected to make and retain a record of the grounds on which it satisfies itself as to the appropriateness of its selection or, following a periodic assessment, continued appropriateness of the custodian.

CL-2.5.4

In undertaking an appropriate risk assessment of the custodian in accordance with CL-2.4.4, investment firm licensees may take into account any or all of the following:

- the expertise and market reputation of the custodian, and once a safe custody financial instrument has been lodged by the firm with the custodian, the custodian's performance of its services to the investment firm licensee;
- the arrangements for holding and safeguarding financial instruments;
- an appropriate legal opinion as to the protection of custody assets in the event of insolvency of the custodian;
- current industry standard reports;
- whether the custodian is regulated and by whom;
- the capital or financial resources of the custodian;
- the credit rating of the custodian;
- any other activities undertaken by the custodian and, if relevant, any affiliated company.

MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.6 Record Keeping

CL-2.6.1 An investment firm licensee must ensure that proper records of the custody assets which it holds or receives, or arranges for another to hold or receive, on behalf of the client, are made and retained for a period of five years after the account is closed.

CL-2.6.2 For the purposed specified in CL-2.5.1, an investment firm licensee must maintain proper records in relation to a client account, and would include at a minimum the following details:

- (a) the name of the account;
- (b) the account number;
- (c) type of account;
- (d) type of asset;
- (e) the location of the account;
- (f) whether the account is currently open or closed;
- (g) details of assets held and movements in each account;
- (h) the date of opening and where applicable, closure.

CL-2.6.3 Detailed record keeping requirements are contained in Module GR (General Requirements) and Module FC (Financial Crime).

MODULE	CL: Client Assets
CHAPTER	CL-3: Collateral

CL-3.1 General Requirements

CL-3.1.1 An investment firm licensee must take care to establish and maintain appropriate systems and controls when it receives or holds assets as collateral in connection with securing a client obligation to it.

CL-3.1.2 The purpose of this section is to ensure that an appropriate level of protection is provided for those client assets over which a client gives an investment firm licensee the right to use, subject only to an obligation to return equivalent assets to the client upon satisfaction of the client's obligation to the investment firm licensee.

CL-3.1.3 This section does not apply to an investment firm licensee that has only a bare security interest (without rights to hypothecate) in the client asset. In such circumstances, the investment firm licensee should comply with the custody rules or client asset protection rules as appropriate.

CL-3.1.4 For the purpose of this section only, a bare security interest in the client's asset gives an investment firm licensee the right to realise the assets only on a client's default and without the right to use those assets other than in default.

CL-3.1.5 Differing level of regulatory protection to the assets forms the basis of the two different types of arrangement described in CL-3.1.2 and CL-3.1.3. Under the bare security interest arrangement, the asset continues to belong to the client until the investment firm licensee's right to realise that asset crystallises. But under a “right to use arrangement”, the client has transferred to the investment firm licensee the legal title and associated rights to the asset, so that when the firm exercises its right to treat the asset as its own, the asset ceases to belong to the client and in effect becomes the investment firm licensee's asset and is no longer in need of the full range of client asset protection.

MODULE	CL: Client Assets
CHAPTER	CL-3: Collateral

CL-3.2 Third Parties

CL-3.2.1 An investment firm licensee may only permit a client's collateral to be held by a third party where:

- (a) it has reasonable grounds to believe that the third party is suitable to hold that collateral; and
- (b) the investment firm licensee is able to demonstrate to the BMA's satisfaction the grounds upon which it considers the third party to be suitable to hold clients' collateral.

CL-3.2.2 Before an investment firm licensee deposits client assets with a third party it must notify the third party that:

- (a) the collateral does not belong to the investment firm licensee; and
- (b) the third party is not entitled to claim any lien or right of retention or sale over the collateral except to cover the obligations of the client which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the collateral.

MODULE	CL: Client Assets
CHAPTER	CL-3: Collateral

CL-3.3 Record Keeping

CL-3.3.1 An investment firm licensee that receives or holds client assets under an arrangement in this Section and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the client.

CL-3.3.2 Detailed record keeping requirements are contained in Module GR (General Requirements) and Module FC (Financial Crime).

Client Reports

CL-3.3.3 An investment firm licensee which holds assets under an arrangement described in this section must (at least every six months or at other intervals as agreed in writing with the client) send to the client a statement listing those assets and their market value as at the date of reporting.

CL-3.3.4 The statement sent to the client must be prepared and despatched to the client within one calendar month of the date of reporting.

MODULE	CL: Client Assets
CHAPTER	CL-4: Mandates

CL-4.1 Mandates

CL-4.1.1 This section applies to an investment firm licensee in respect of any written mandate from a client under which the investment firm licensee may control a client's assets or liabilities in the course of, or in connection with, the investment firm licensee's regulated investment services.

Systems and Controls

CL-4.1.2 An investment firm licensee that holds mandates of the sort described in CL-4.1.1 must establish and maintain adequate records and internal controls in respect of its use of the mandates, which should include:

- an up-to-date list of the mandates and any conditions placed by the client or the investment firm licensee's management on their use;
- a record of all transactions entered into using the mandates, and internal controls to ensure that they are within the scope of authority of the person and the investment firm licensee entering into the transaction;
- the details of the procedures for the giving and receiving of instructions under the authority;
- where the investment firm licensee holds a passbook or similar documents belonging to the client, internal controls, for the safeguarding (including against loss, unauthorized destruction, theft, fraud or misuse) of any passbook or similar document belonging to the client held by the investment firm licensee.

MODULE	CL: Client Assets
CHAPTER	CL-5: Third Party Related Distribution

CL-5.1 General Requirements

CL-5.1.1 The third party related distribution rules under CL-5 apply to investment firm licensees that hold client money with a third party who becomes insolvent (“third party related distribution event”).

CL-5.1.2 The third party related distribution rules in this Module are subject to any applicable rules of law to the contrary.

MODULE	CL: Client Assets
CHAPTER	CL-5: Third Party Related Distribution

CL-5.2 Third Party Related Distribution

CL-5.2.1

Upon the insolvency of a third party to which client money has been transferred or is held, the investment firm licensee continues to be accountable to the client in a fiduciary capacity. However, consistent with a fiduciary's responsibility (whether as an agent or trustee) for third parties under law, an investment firm licensee will not be held responsible for a shortfall in client money unless the general laws in the Kingdom of Bahrain or in the relevant jurisdiction requires otherwise, for instance, due to non-compliance with the terms of business in any respect.

CL-5.2.2

To comply with its duties, the investment firm licensee must show proper care:

- (a) in the selection of a third party;
- (b) when monitoring the performance of the third party.
- (c) when notifying clients in its terms of business the distribution rules applicable in the event of a third party distribution event.

CL-5.2.3

Following the occurrence of a third party-related distribution event in relation to a designated bank or eligible third party:

- (a) the investment firm licensee must, as soon as is practicable, make and retain a record of each such client's share of the shortfall and must promptly notify the amount of the shortfall to the affected clients (except where the investment firm licensee chooses to make good the shortfall);
- (b) unless the investment firm licensee chooses to make good any shortfalls in the client money balances held (or which should have been held) in the client bank accounts, or third party accounts held by an investment firm licensee with the relevant designated bank or eligible third party, such shortfalls shall be borne by clients, in proportion to the respective value of their client money balances;
- (c) client money received after the third party-related distribution event:
 - (i) must not be transferred to the designated bank or eligible third party which has suffered the third party-related distribution event unless this is on the specific instructions of the client (given after the occurrence of the third party-related distribution event) in order to settle an obligation of that client to that designated bank or eligible third party;

MODULE	CL: Client Assets
CHAPTER	CL-5: Third Party Related Distribution

CL-5.2 Third Party Related Distribution (Continued)

- (ii) must, subject to (i), be placed in a separate client bank account that has been opened with a different designated bank after the third party related distribution event has occurred.

MODULE	CL: Client Assets
CHAPTER	CL-6: Appendix

CL-6.1 Appendix

- CL-6.1.1 The minimum information that should be assessed by an investment firm licensee to determine the suitability of an eligible third party should include but not be limited to the following information:
- the eligible third party's credit rating, capital and financial resources;
 - the regulatory and insolvency regimes of the jurisdiction in which the eligible third party is located;
 - the eligible third party's reputation;
 - its regulatory status and history; and
 - the other members of the eligible third party's group and their activities.
- CL-6.1.2 The minimum information that should be notified by the investment firm licensee to its client in respect of its holdings of that clients' assets includes but is not limited to the following:
- the basis and terms governing the way in which the client assets will be held;
 - that the client is subject to the protection conferred by the client asset protection rules and as a consequence:
 - the client assets will be held separately from assets belonging to the investment firm licensee; and
 - in the event of an investment firm licensees' insolvency, winding-up or other similar event, the client's assets will be subject to the client asset distribution rules.
 - whether interest is payable to the client and, if so, the terms and frequency of such payments;
 - that, notwithstanding that the client assets will benefit from the protections conferred by the client asset protection rules, the client will still be taking unsecured credit risk on any bank or third party with whom the investment firm licensee places the client assets that it holds;
 - if applicable, that the client assets may be held in a jurisdiction outside the remit of the BMA and that the market practises, insolvency and legal regimes applicable in that jurisdiction may differ from the regime applicable in the BMA;
 - if applicable, that the investment firm licensee holds or intends to hold the client money in a client bank account with a designated bank or in a third party account with an eligible third party which is in the same group as the investment firm licensee and the identity of the designated bank or eligible third party concerned;
 - if applicable, details about how any client money arising out of Islamic financial business is to be held; and
 - details of any claims or set offs which the investment firm licensee may have in client assets held on behalf of the client in satisfaction of a default by the client or otherwise, and any rights which the investment firm licensee may have to closeout or liquidate contracts or positions in respect of any of the client assets, without the client's prior instruction or consent.