

## Determination of Client Money Entitlement: MCA (pre MiFID and post MiFID)

This paper summarises the approach taken with respect to potential Client Money entitlements of parties (each, a potential "Client Money Claimant") with whom LBIE had, prior to 07.56am 15 September, 2008, entered into an agreement on terms which are identical to, or sharing the same characteristics as, the Financial Contract. It assumes that sums paid to LBIE by the Client Money Claimant were paid pursuant to the terms of the Financial Contract.

### Definitions

Financial Contract:	LBIE's standard form Master Custody Agreement (pre MiFID and post MiFID versions)
Financial Contract Terms:	Financial Contract entered into on standard form terms pursuant to which LBIE acts as custodian for the Client Money Claimant in relation to Securities and other acceptable forms of Property (all as defined within the Financial Contract).
Obligations:	LBIE's obligations to return/account for net sums owing to the Client Money Claimant under the Financial Contract and held by LBIE in its capacity as Custodian under the Financial Contract.
Client Money:	Money which was client money as defined in the FSA rules (at the Administration Time).
Client Money Claim:	Any claim by the Client Money Claimant that it has an entitlement to a distribution from the pre-administration Client Money pool constituted under the FSA rules, on the basis that it had a "client money entitlement" as at the Administration Time. This is a "contractual entitlement" and does not depend upon actual segregation of funds. In LBIE's view this means an individual client balance falling within paragraph 7 of CASS 7 Annex 1G ("ICB") and/or a client equity balance as defined in the FSA Rules ("CEB") which, in each case, fell within the scope of CASS 7.
Administration Time:	07.56am, London time, on 15 September, 2008.

### Assessment of Client Money Claim

This paper summarises LBIE's view as to whether parties who have entered into a Financial Contract on the Financial Contract Terms have a Client Money Claim against LBIE pursuant to that contract.

Client Money Claim:	Yes, to the extent of the net cash balance of the Custody Account. It is LBIE's view that a Client Money Claim generally also arises in relation to sums specifically segregated on behalf of a client by LBIE prior to the Administration Time and which remained so segregated at that time. There may however be some limited instances where a
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Client Money Claim is determined by LBIE not to arise notwithstanding segregation of sums. In such cases, the relevant clients will be contacted directly by LBIE to explain the rationale for such a determination.

Rationale: Court Judgment; FSA Rules; Contract Terms/Facts.

Court Judgment: The judgment given by the Supreme Court does not specifically address whether Obligations arising under the Financial Contract give rise to a Client Money Claim. The Court has confirmed that distribution of the client money pool is based on client money entitlement under Chapter 7 of the CASS Rules construed in accordance with the judgment. LBIE considers that this means that the client money entitlement is equal to ICB plus CEB (as defined above) (see paragraph 153 of the judgment).

Although not specifically addressed in the judgment, it is consistent with the judgment and it is LBIE's view that ICB and CEB only cover balances which were within the scope of the client money rules and hence would exclude any balances which were not client money, for example, due to the operation of title transfer collateral arrangements or to which the client money rules otherwise did not apply.

FSA Rules: The majority of the Supreme Court held that the existence of a client money entitlement is not dependant upon an actual segregation of funds but upon whether the relevant sums are to be treated as Client Money by virtue of the terms of the CASS Rules (as to which, see Item A of paragraph 7 of CASS 7 Annex 1G).

Contract Terms/Facts: The Financial Contract Terms, principally clause 5, refer to Property (as defined) being held within the Custody Account and, except as otherwise provided in the Financial Contract, to be separately identified by LBIE in its capacity as Custodian.

The post MiFID form of the Financial Contract expressly provides in clause that all cash amounts held by LBIE pursuant to the Financial Contract will be held "subject to the protections conferred by the client money rules set out in the FSA Rules" (clause 2). LBIE is however authorised by clause 2 of the Financial Contract to place cash funds received into qualifying money market funds and such sums will thereafter not be held in accordance with the FSA Rules relating to client money, although units in such funds thereby purchased will be held by LBIE in accordance with the FSA Rules relating to client non-cash assets. This treatment extends to income and capital sums deriving from the Property held in the Custody Account which is credited by LBIE to the Custody Account pursuant

to clauses 6(a)(ii)(aa) and 6(a)(iii)(aa) of the Financial Contract (both versions).