

Determination of Client Money Entitlement: Standard MIFCA

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 Institutional Futures Customer Agreement.
Financial Contract Terms:	Financial Contract entered into on standard form terms with the addition of supplements authorising third party trading and applicable exchange rules for futures and options trading.
Obligations:	LBIE's obligations to return/account for net sums characterised as excess margin 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, but only where the balance of the Client Money Claimant's account with LBIE at the Administration Time exceeded the Client Money Claimant's aggregate obligation to deliver margin to LBIE at that time. 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 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: There is a provision in the client money rules which provides that money received on a title transfer collateral arrangement basis is not regarded as Client Money (CASS 7.2.3R). CASS 7 Annex 1G contemplates the segregation of the CEB. The net balance of the Client Money Claimant's account would fall within the CEB and the express agreement to segregate it indicates that the title transfer collateral arrangement is not intended to apply to that net balance.

Contract Terms/Facts: There are references both to "client money" and the FSA Rules with respect to Client Money within the Financial Contract Terms, principally in clause 2. Clause 2 provides that "[a]ll right, title and interest in and to all cash or property delivered to LBIE pursuant to the Margin Requirement [including by virtue of permitted appropriation by LBIE] shall pass to LBIE upon receipt (or appropriation) of such cash or property by LBIE ..." which for the reasons discussed above would indicate that a Client Money Claim to such sums does not arise.

Clause 2 also however provides that the net balance of the Client Money Claimant's account after taking account of the value of margin delivered to LBIE and the "Contracts" purchased or sold by LBIE for the Client Money Claimant's account shall be segregated as client money "in accordance with the [FSA] Rules". This indicates an

intention that such net balances (but not any other amounts) are to be treated as Client Money.