



CASS 5 audits – insights and hot topics

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Speakers



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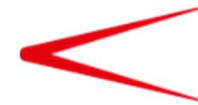
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Webinar overview

1. Current CASS 5 landscape – Ruby Bhavra, FCA
2. Top 10 findings – John Needham, PKF
3. RT / TOBA issues – George Williams, Deloitte
4. IT Systems – Nneka Crichlow, EY
5. CASS 8 Mandates – Holly Dwyer, Grant Thornton
6. Q&A





Current CASS 5 landscape



Ruby Bhavra, FCA

Current CASS 5 landscape

FCA Strategy

- Reducing and preventing serious harm
- Role of CASS audits

Common areas of non-compliance

- Firms understanding the applicability of CASS rules
- Credit writebacks
- Client money calculations

Audit quality

- Areas of poor audit quality
- FCA approach

Other areas

- CASS 5 audit exemption
- Firms nearing failure



Top 10 findings



John Needham, PKF

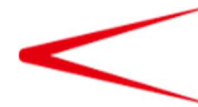
Top 10 findings

- Inappropriate clean audit opinion
- Errors in the CM reconciliation
- Weak TOBA register and consistency with TOBAs (covered later)
- Misunderstanding of importance of trust status and implications on moving money out of the trust (e.g. credit writebacks or closing trust accounts / variation of permissions)
- Lack of/or poor CASS 5 risk control matrix
- Mid-month transfers not supported by CMC
- Fee only transactions not withdrawn
- Funding from Statutory Trust and use of client by client reconciliation
- Handling of monies handled by Appointed Representatives
- Bank accounts (confirmation letters and account naming)



A deep dive into Insurer Terms of Business Agreements and Risk Transfer matters

George Williams, Deloitte



Introduction to agency and risk transfer

Money held in relation to insurance distribution activity can be treated in one of two ways:

- **Client money** (CASS 5); or
- **Risk transfer**

The treatment is dictated by the Insurer terms of business agreement (“TOBA”).

“**Client money** is money of any currency which, in the course of carrying on insurance distribution activity, a firm holds on behalf of a client or which a firm treats as client money in accordance with the client money rules” (Glossary, FCA Handbook)

Risk Transfer establishes an **agency** relationship between the broker and insurer (broker holds money on behalf of insurer).

Risk transfer money is:

- **Premiums / returned premiums** – The insurer owes the client the insurance policy as soon as the broker receives the premium from the client.
- **Claims** - The insurer owes the client the claim until the money is received by the client.

Risk transfer money ≠ Client money

Options for firms to hold risk transfer money

Two options for firms to hold risk transfer money:

- “**insurer money**” **bank accounts** (out of scope for CASS rules CASS 5.1.6R); or
- Elect to co-mingle in the **client money trust bank accounts** CASS 5.1.5AR.

Insurer money bank accounts

The type of bank accounts used for risk transfer money should be agreed in writing as part of the insurer TOBA.

Best practice - **non-statutory trust** insurer money bank accounts which involves:

- **a trust deed** detailing the purpose and terms money is held on; and
- **a bank acknowledgement letter** recognising that money held in the account is held as trustee, with no right of set-off or counterclaim.

Similar documents to establish a non-statutory trust in accordance with CASS 5.4.4R, but the terms and wording are different.

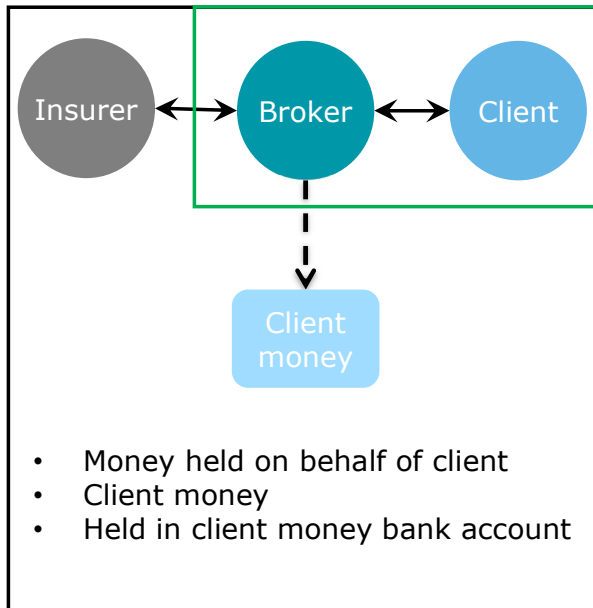
Firms segregating both client money and risk transfer (insurer) money must have adequate systems and controls to ensure appropriate segregation and protection in each environment.

Co-mingling

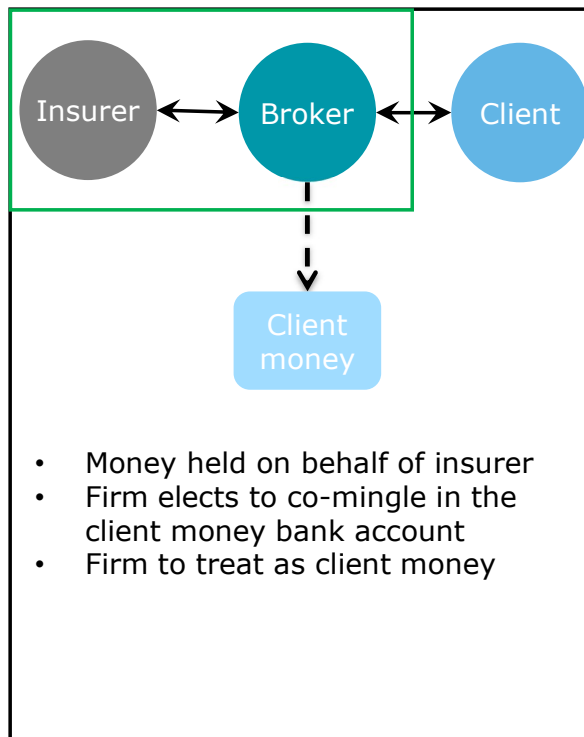
- Where firms **elect to co-mingle** risk transfer money, it **must be treated as client money** in accordance with the CASS rules.
- **Co-mingling must be expressly permitted by the insurer AND the insurer must agree to sub-ordinate its claims.**
- Co-mingled money is included in the client money calculation as it is held in the client money bank accounts.

Introduction to agency and risk transfer (continued)

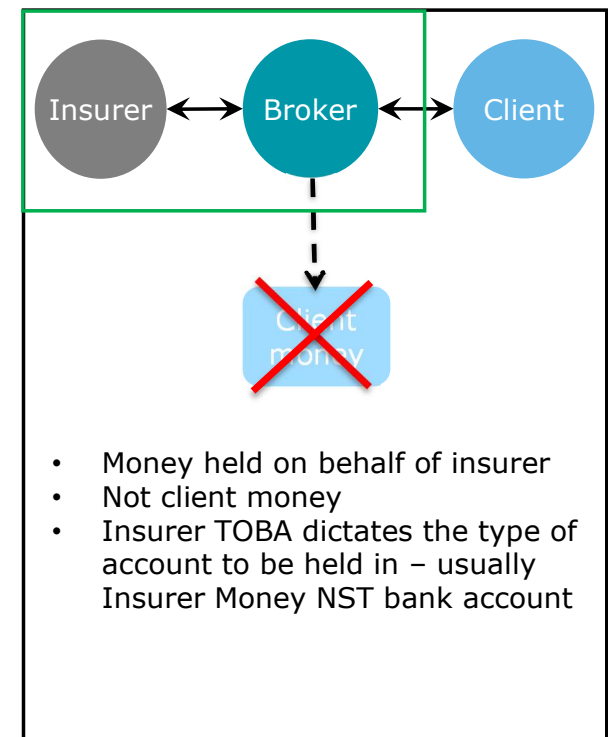
Position **when no risk transfer**




Position **with risk transfer agreement and co-mingling**



Position **with risk transfer agreement**



Key

 Indicates who the broker is holding money on behalf of



Key terms in an insurer TOBA for CASS compliance

Insurer TOBAs are often the source of CASS breaches for firms and have been highlighted by the FCA in the “Dear CEO” letters in [September 2020](#) and [July 2021](#).

Common breaches often seen are:

- No signed TOBA in place
- TOBA does not reflect the firm’s operations (e.g. incorrect type of bank account or timing of commission extraction)

Insurer TOBAs

- Holding money as agent of insurer (if risk transfer applies) 5.2.3
- Subordination of interest in client money (if risk transfer applies) 5.1.5A
- Co-mingling (if risk transfer applies and it is co-mingled) 5.1.5A
- **How the broker’s commission is withdrawn 5.5.16**
- **Whether client money will be held in a statutory or non-statutory trust**

Key:
Risk transfer agreements
All insurer TOBAs

Insurer TOBA database - important **tool** for a Firm - summarises key terms of insurer TOBAs - Management use to ensure alignment of systems, processes and cash flows - helpful for audit purposes for sample selection to test compliance.

Insurer TOBA checklist - important **control** - ensures new TOBAs are aligned with operations prior to placing business and handling money.



Key terms in a client TOBA for CASS compliance

Client TOBAs are important as they disclose to the client how the firm will be holding and protecting their money.

Client TOBAs

- Holding money as agent of insurer (if risk transfer applies) 5.2.3
- How the broker's commission is withdrawn? 5.5.16
- Whether client money will be held in a statutory or non-statutory trust 5.4.4
- Disclosure if client money is held at a bank within the same group as the broker 5.5.47
- Disclosure if non-approved banks are used 5.5.41
- Disclosure if using designated client accounts 5.5.39
- What happens to interest earned on client money (>£20/transaction)? 5.5.30
- Disclosure if banks or brokers outside the UK are being used 5.5.53 – 5.5.55; 5.5.58 to 5.5.60
- Disclosure if client money will be passed to another intermediary 5.5.34
- Disclosure if using designated investments 5.5.14

Key:

All clients

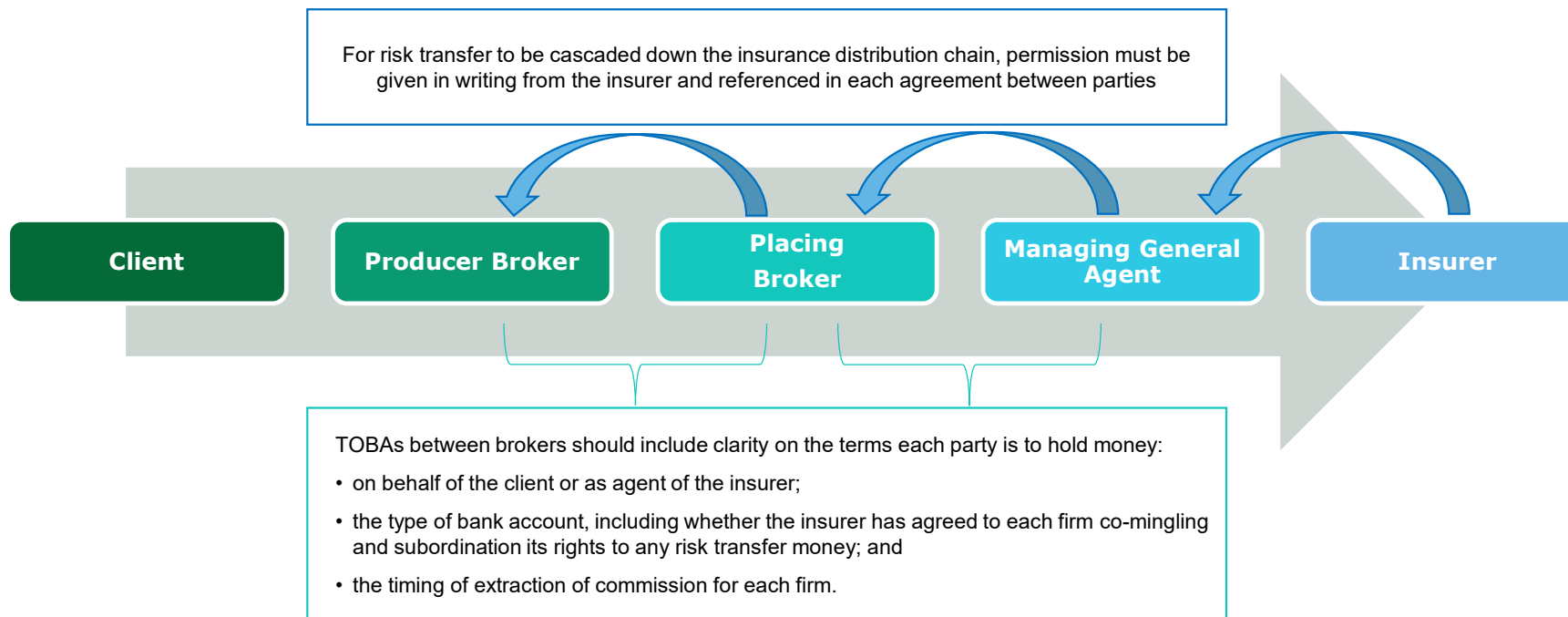
Consumers (retail clients) only

Client TOBA template reviews - important **control** - ensures the firm is providing clients all relevant information in on how money will be held.

To be compliant, client TOBAs need to be provided prior to the firm receiving money. Firms should have a control in place to ensure that client's receive TOBAs on a timely basis and that this can be evidenced for audit purposes.



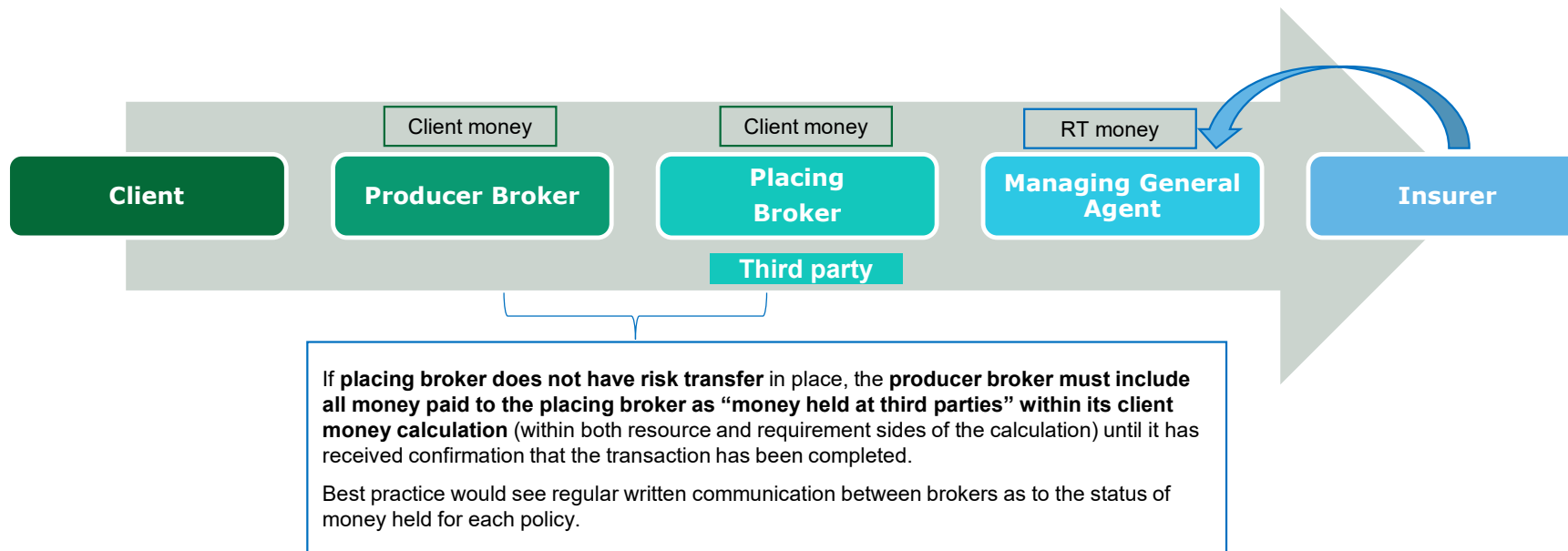
Cascaded risk transfer and Broker to Broker TOBAs



As a custodian, Brokers have a duty of care to protect client money at all times



Cascaded risk transfer and Broker to Broker TOBAs (continued)



As a custodian, Brokers have a duty of care to protect client money at all times



Appointed representative agreements and risk transfer

- **Appointed Representative (“AR”)** - a separate legal entity that the broker takes regulatory responsibility for.
- ARs will be included in the FCA register, and there should be an agreement between the broker and the AR setting out whether the AR can handle money and the terms that the broker extends to the AR.
- For a broker to be able to cascade risk transfer to its AR, permission must have been obtained from the insurer as part of the insurer TOBA.

Where an AR receives money, the broker is deemed to have received it.

- If the broker has cascaded risk transfer to the AR, money is not client money
- If the broker cannot cascade risk transfer to the AR, [money held by AR is client money](#)

An **Introducer AR** (“IAR”) does **not** hold client money:

- Effects introductions to the broker.
- Instructs clients to pay the broker directly.
- The broker accepts responsibility for the activities of the IAR as defined in a written agreement between the broker and IAR.

The FCA issued a [Policy Statement \(PS22/11\) in August 2022](#) that outlines the responsibilities of principal firms and the regulatory expectations of oversight to be in place where firms have AR and IAR arrangements.



Appointed representative - segregation

If an AR is holding client money then the broker has a choice of two methods to ensure it is appropriately segregating the client money held by ARs:

Immediate segregation

CASS 5.5.19-5.5.22

- 3 business days to get the cash into the broker's client money account:
 - AR receives money on day 1
 - AR sends money to a client bank account or the broker's address by end of day 2
 - Received and banked by broker by end of day 3
- Broker has responsibility to keep record of compliance

Periodic segregation

CASS 5.5.23-5.5.25

- The broker must include additional money in its client money bank account to protect the value of client money that is held by the AR
- The broker must include the value of client money that is held by the AR in its client money requirement within its CMC, this may be an estimate
- If the broker uses an estimate, it must confirm the actual amount held at the date of its CMC within 10 business days and settle the balance



IT Systems

Nneka Crichlow, EY

The Role of IT in CASS audits

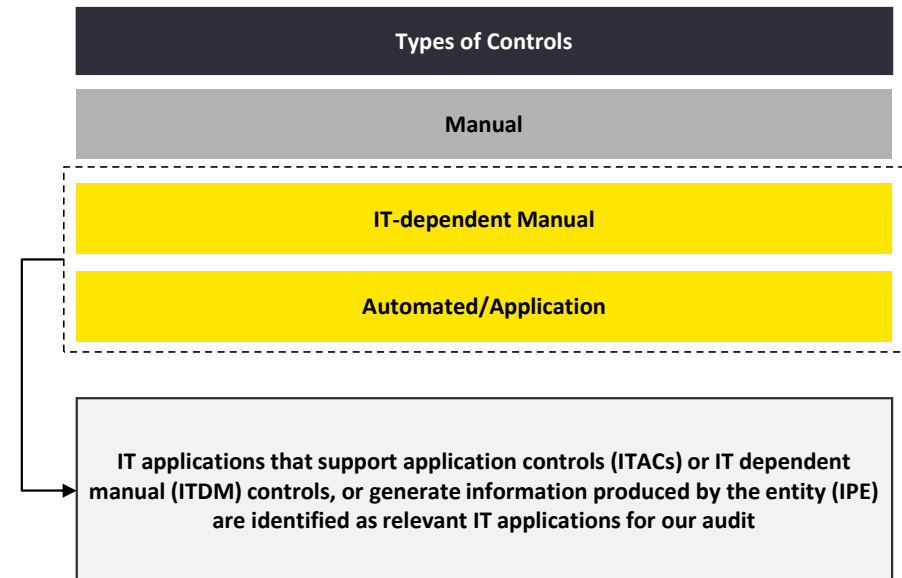
What are the requirements in relation to Information Technology?

Firms:

- The firm is required to assess the role of IT as part of their CASS risks, rules and controls mapping.
- The firm may rely on IT systems to reconcile client money or to calculate certain inputs of the client money calculation.

Auditors:

- The CASS auditor is required to express an opinion on the adequacy of the systems and controls maintained by the firm to enable it to comply with the relevant CASS rules throughout the period since the last date at which a report was made and the firm's compliance with the relevant CASS rules at the period end date.
- *FRC CASS Assurance Guidance: Para 70. To assess the risk of a firm failing to comply with the CASS rules, the CASS auditor shall obtain an understanding of the firm's organisational structure, operating environment, use of information technology to support the application of the CASS rules.*
- *FRC CASS Assurance Guidance: Para 85. The CASS auditor shall obtain an understanding of the major activities, including information technology and automated procedures that the firm uses to monitor internal control relevant to its compliance with the CASS rules and how the firm initiates remedial actions in response to deficiencies in its controls.*
- We design and execute tests of the relevant controls and conclude on whether they are properly designed and operated effectively throughout the audit period.



The Role of IT in CASS audits (cont'd)

IT General Controls Testing

- ▶ Relevant IT processes typically relate to how the entity:
 - ▶ Manages changes to IT applications, data used by IT applications made at the database level and supporting IT environment components such as operating systems and network software (**Manage Change**)
 - ▶ Manages access to IT applications, data and other IT environment components (**Manage Access**)
 - ▶ Manages the operations of the IT environment components (e.g., monitors processing, defines what to backup and how frequently) (**Manage IT Operations**)
- ▶ ITGC testing covers the above 3 areas to conclude on the operation of ITGCs in the period.
- ▶ When one or more ITGCs are evaluated as Ineffective and the related IT process are evaluated as **Ineffective**, we attempt to identify other ITGCs that address the risks within the IT process related to the Ineffective ITGCs (referred to as compensating ITGCs).
- ▶ If an ITGC is ineffective, we consider the impact on our CASS audit opinion and may raise a breach.
- ▶ When testing larger complex firms, the auditors may use IT specialists to test IT General Controls.
- ▶ Audit firms may leverage the testing performed for the statutory audit.



CASS 8 Mandates



Holly Dwyer, Grant Thornton

CASS 5: What is a mandate?

Definition: *Any means that give a firm the ability to control a client's assets or liabilities, which meet the conditions in CASS 8.2.1R.*

- Permission from a client under which the firm may control a client's money
- Payment information obtained by the firm from the client and retained, in the form of a written document
- Holding direct debit instructions over clients' bank accounts, for example;
 - Debit or credit card details recorded for collecting premiums

CASS 5 and 8 Assurance Approach

Documents	Common considerations
MANDATES POLICY / PROCEDURE	<p>Does the policy/procedure:</p> <ul style="list-style-type: none"> • Cover the identification of mandates and explain how they may arise in the business? • Document how often mandates records should be reviewed for accuracy? • Cover what to do when exceptions occur? <p>Is the policy/procedure:</p> <ul style="list-style-type: none"> • Available to all relevant staff? • Periodically reviewed and updated? • Approved by an appropriate level of management?
MANDATES LIST	<p>Is the mandates list:</p> <ul style="list-style-type: none"> • Kept up-to-date? (i.e., does the list match what is on the client files?) • Complete, and does it contain all the required details, including how the information was obtained and where it is retained, and any conditions placed by the client or the firm’s management on the use of the mandate? • Periodically reviewed? (i.e., is version control appropriately documented, so that any corrections and amendments, and the list prior to such corrections and amendments, can be easily ascertained?) • Maintained and stored in a form that is accessible for the auditor and/or the FCA?

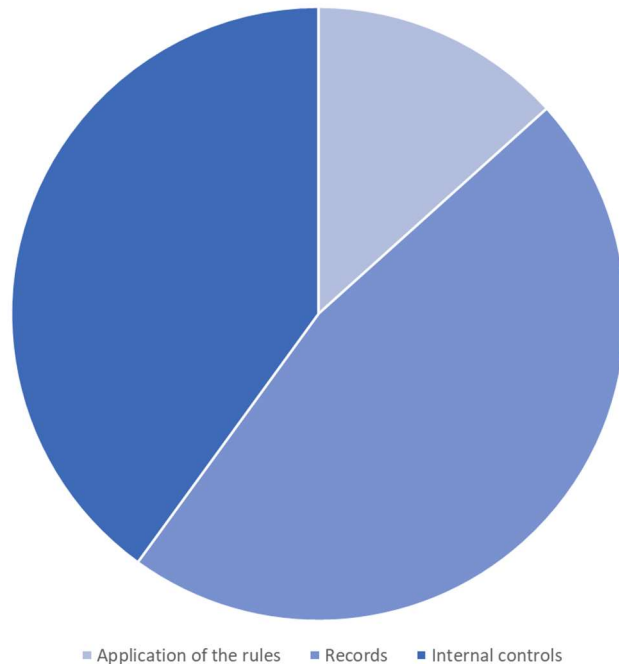
Approach – Continued

Controls	Common considerations
BREACH ESCALATION POLICY / PROCEDURE	<p>Does the policy/procedure:</p> <ul style="list-style-type: none">• Clarify if and what mandates breaches should be reported to management or to those charged with governance?• Detail the steps to take in identifying and remediating the underlying causes of breaches and/or exceptions?
INTERNAL CONTROLS	<p>Are internal controls adequate to monitor:</p> <ul style="list-style-type: none">• Systems access?• Authorisation of transactions?• When transactions are processed, and whether they are processed within the required timeframe?• When exceptions occur? (e.g., when transactions fail to process);• Queries and issues raised by clients?
RECORDS	<ul style="list-style-type: none">• Are all transactions entered into under each mandate recorded? (including the date of the transaction, the name of the client, details of the transaction, and who checked that the transaction agreed with any conditions placed on the use of the mandate, and who authorised the transaction?)• Are records are kept up-to-date?• Are mandate records kept for a minimum of one year?

Approach – Continued

Controls	Common considerations
ORGANISATIONAL ARRANGEMENTS	<ul style="list-style-type: none">• Are staff sufficiently trained on mandates and is there an adequate level of board/senior management awareness of mandates held?• Is appropriate authorisation obtained for all mandates (so that before a transaction is entered into under each mandate, the transaction is in accordance with any conditions placed by the client or the firm's management on the use of the mandate)?

Common mandates breaches



- No formal assessment of the applicability of mandate rules - CASS 8
- Inadequate or no documented mandates policy
- Incomplete or inaccurate mandates list
- Failure to set up a mandate following a client request
- Mandate details for policyholder being applied to another policy
- Premiums not being debited on the correct due and payable date
- Failure to cancel mandates

Key things to look out for

- Is CASS 8 compliance neglected? Where does it feature on the CASS assurance plan?
- Does the firm properly monitor and have oversight of CASS 8 compliance?
- Has the firm identified all the mandates it has?
- How is the risk to misuse of mandates information managed?



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