



## Dormant Asset Scheme now covers investment assets and client money

**The FCA has published final rules for expanding the Dormant Asset Scheme to include investment assets and client money**

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On 2 August 2024, the FCA published [PS24/10](#), “Expansion of the Dormant Asset Scheme – second phase” (the PS).

The PS contains final rules and guidance to enable dormant investment assets and client money to be available to the Dormant Assets Scheme (DAS).

### What is the Dormant Asset Scheme?

The principal aim of the DAS is to return financial assets to their owner but, where this isn't possible, the dormant money is paid to an authorised reclaim fund (ARF), which then puts this money towards funding good causes across the UK.

Participation in the DAS is voluntary and the DAS does not apply to unregulated collective investment schemes (CIS), such as hedge funds or other AIFs.

In the context of a CIS, a ‘dormant asset’ is one where the firm regards the person to whom the proceeds are payable as having been gone-away for the preceding 12 years (in respect of share or unit conversion proceeds) or 6 years (in respect of other amounts).

### Expanding the DAS

As [we reported at the time](#), the [Dormant Assets Act 2022](#) (the Act) expanded the DAS to include the insurance, pensions, investment and wealth management, and securities sectors.

The expansion was in two phases

- the first covered insurance, pensions and securities assets and has been effective since 1 August 2022
- the second concerns investment assets and client money.

The FCA consulted on rules for the second phase in CP23/12 – see our summary [here](#) – with changes proposed principally to the COLL and CASS sourcebooks.

The final rules will primarily affect

- Reclaim Fund Limited (RFL), the administrator of the scheme
- managers and depositaries of authorised CIS and
- firms which hold client money.

## **What are the key rules in PS24/10?**

### **COLL**

#### **(a) Cancellation of redeemed units:**

The FCA consulted on a proposal to require units that were being redeemed prior to transferring the money to RFL to be compulsorily cancelled.

However, in the light of responses received, it agrees that the added complexity for firms is not justified by the minimal risk and size of harm that the rule was intended to resolve and this proposal has not been taken forward - under the final rules, redeemed units will not need to be compulsorily cancelled.

#### **(b) Unwanted assets**

The new rules allow firms that participate in the DAS to transfer dormant investment assets and client money, including unwanted assets.

An unwanted asset is an asset where the customer to which it belongs has authorised that it can be transferred to an ARF, such as the RFL.

In order to align with existing CASS rules on payments of unwanted assets to charity, COLL 6.8.4R(4)(b) (i) has been amended so the AFM and the depositary can choose whether to transfer an unclaimed distribution to a dormant asset fund operator in accordance with the instrument constituting the fund and the prospectus, or not.

#### **(c) Orphan monies**

COLL 6.6.6R(5) is amended to require the AFM to maintain records if either it or the depositary transfers money to the DAS – this includes dormant assets which are orphan monies (as defined in s.9(6) of the Act).

Where a fund has been wound up with a residual amount of assets, the AFM must ask each contactable unitholder to renounce their residual interest in the fund under the unwanted assets provisions, an action which the FCA accepts may not be practicable for AFMs.

Similarly, where records of all past unitholders no longer exist, the orphan monies do not meet the criteria for transfer to the DAS. Under COLL, such monies must be paid into court, which is burdensome where the amounts involved are very small and an alternative option would be desirable.

The FCA will consider whether an alternative could be developed under its rules and will consult as applicable in the future.

#### **(d) Significant change**

Following feedback to CP23/12, the FCA has decided not to proceed with its proposal that participation in the DAS should be regarded as a significant change. This is logical - by definition, those investors whose

dormant assets could be transferred to DAS will not be able to be contacted directly to advise them of the change, so notice to them is effectively irrelevant.

## **CASS**

The proposed CASS rules on which the FCA consulted in CP23/12 have been adopted very largely without change.

As a result:

- under the final rules, money will cease to be client money for the purposes of CASS if paid to an ARF (which then puts the money towards funding good causes). Until now, a firm has been able to discharge its client money responsibilities when it has returned the client money either to the client or to another party in accordance with the client's instructions
- firms participating in the DAS must attempt to reunite dormant clients with their assets before a transfer can be made to an ARF and the arrangements between the firm and the ARF must include provisions on tracing and verifying the identity of the asset owner.
- firms must take reasonable steps to trace a client prior to transferring client money balances to the ARF, with evidential provisions introduced setting out what reasonable steps the firm could take in order to comply with the rule.

The FCA has, though, decided not to impose a requirement that firms grant priority to the DAS over the existing provision that allows an investment firm to pay away allocated but unclaimed client money to a registered charity. Instead, it has amended the proposed rules so participant firm can make its own choice between the two options, expecting firms to consider the impact on their clients, including the benefit offered by DAS in terms of allowing clients to reclaim their assets in perpetuity.

## **What happens next?**

The new rules come into force immediately and RFL will now be able to accept contributions from the investment assets and client money sectors.

Before any transfers can be made, though, RFL will have to establish contracting agreements with participant firms and announce a start date for the expanded sectors.