Chapter 6

Custody rules
6.1 Application

This chapter (the custody rules) applies to a firm:

1. [deleted]
   a. [deleted]
   b. [deleted]

1A when it holds financial instruments belonging to a client in the course of its MiFID business;

1B when it is safeguarding and administering investments, in the course of business that is not MiFID business;

1C when it is acting as trustee or depositary of an AIF;

1D when it is acting as trustee or depositary of a UK UCITS; and

1E in respect of any arrangement for a client to transfer full ownership of a safe custody asset (or an asset which would be a safe custody asset but for the arrangement) to the firm which is:

a. in the course of, or in connection with, the firm's designated investment business; and

b. for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, and the application of the custody rules to a firm under this paragraph is set out in the rules and guidance in CASS 6.1.6 R to CASS 6.1.9 G; and

1F when it is a small AIFM carrying on excluded custody activities.

2. [deleted]

6.1.1A R

In applying the custody rules to a small AIFM's excluded custody activities, any reference to a firm carrying on the regulated activities of safeguarding and administering investments, safeguarding and administering assets (without arranging) or arranging safeguarding and administration of assets includes those excluded custody activities that would, but for the exclusion in article 72AA of the RAO, amount to whichever of those regulated activities is referred to.

6.1.1A G

The regulated activity of safeguarding and administering investments covers both the safeguarding and administration of assets (without arranging)
and arranging safeguarding and administration of assets, when those assets are either safe custody investments or custody assets. A safe custody investment is, in summary, a designated investment which a firm receives or holds on behalf of a client. Custody assets include designated investments, and any other assets that the firm holds or may hold in the same portfolio as a designated investment held for or on behalf of a client.

6.1.1B  
(1) Firms to which the custody rules apply by virtue of CASS 6.1.1R (1B) or (1E) must also apply the custody rules to those custody assets which are not safe custody investments in a manner appropriate to the nature and value of those custody assets.

(2) Firms to which the custody rules apply by virtue of CASS 6.1.1R (1C) must also apply the custody rules:
   (a) to those custody assets which are not AIF custodial assets but are safe custody investments; and
   (b) in a manner appropriate to the nature and value of those custody assets, to those custody assets which are neither AIF custodial assets nor safe custody investments.

(3) Firms to which the custody rules apply by virtue of CASS 6.1.1R(1D) must also apply them:
   (a) to those custody assets which are not UCITS custodial assets but are safe custody investments; and
   (b) in a manner appropriate to the nature and value of those custody assets, to those custody assets which are neither UCITS custodial assets nor safe custody investments.

6.1.1C  
In accordance with article 42 of the Regulated Activities Order, a firm (*I*) will not be arranging safeguarding and administration of assets if it introduces a client to another firm whose permitted activities include the safeguarding and administration of investments, or to an exempt person acting as such, with a view to that other firm or exempt person:

(1) providing a safe custody service in the United Kingdom; or

(2) arranging for the provision of a safe custody service in the United Kingdom by another person;

and the other firm, exempt person or other person who is to provide the safe custody service is not in the same group as I, and does not remunerate I.

6.1.2  
Firms are reminded that dividends (actual or payments in lieu), stock lending fees and other payments received for the benefit of a client, and which are due to the clients, should be held in accordance with the client money chapter where appropriate.

6.1.3  
[deleted]
Business in the name of the firm

6.1.4  R
The custody rules do not apply where a firm carries on business in its name but on behalf of the client where that is required by the very nature of the transaction and the client is in agreement.

[Note: recital 51 to MiFID]

6.1.5  G
For example, this chapter does not apply where a firm borrows safe custody assets from a client as principal under a stock lending agreement.

Title transfer collateral arrangements

6.1.6  R
(1) [deleted]

(2) [deleted]

A firm must not enter into a TTCA in respect of an asset belonging to a retail client.

Where a firm entered into a TTCA in respect of an asset belonging to a retail client (or one which would belong to a retail client but for the arrangement) before 3 January 2018, the firm must terminate that TTCA.

[Note: article 16(10) of MiFID and article 5(5) of the MiFID Delegated Directive]

Except for ■ CASS 6.1.6BR to ■ CASS 6.1.9G and provided that the TTCA is not with a retail client, the custody rules do not apply to a firm in respect of an asset which is subject to a TTCA and which would otherwise be a safe custody asset.

[Note: recital 52 to MiFID]

6.1.6A  R
[deleted]

6.1.6B  R
(1) A firm must ensure that any TTCA is the subject of a written agreement made on a durable medium between the firm and the client.

(2) Regardless of the form of the agreement in (1) (which may have additional commercial purposes), it must cover the client's agreement to:

(a) the terms for the arrangement relating to the transfer of the client's full ownership of the safe custody asset to the firm;

(b) any terms under which the ownership of the safe custody asset is to transfer from the firm back to the client; and

(c) (to the extent not covered by the terms under (b)), any terms for the termination of:

(i) the arrangement under (a); or

(ii) the overall agreement in (1).
(3) A firm must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.

6.1.6C

The terms referred to in CASS 6.1.6BR(2)(b) may include, for example, terms under which the arrangement relating to the transfer of full ownership of the safe custody asset to the firm is not in effect from time to time, or is contingent on some other condition.

6.1.6D

(1) A firm must properly consider and document the use of TTCAs in the context of:
   (a) the relationship between the client’s obligation to the firm; and
   (b) the safe custody assets subjected to TTCAs by the firm.

(2) A firm must be able to demonstrate that it has complied with the requirement under (1).

(3) When considering, and documenting, the appropriateness of the use of TTCAs, a firm must take into account the following factors:
   (a) whether there is only a very weak connection between the client’s obligation to the firm and the use of TTCAs, including whether the likelihood of a client’s liability to the firm is low or negligible;
   (b) the extent by which the amount of safe custody assets subject to a TTCA is in excess of the client’s obligations (including where the TTCA applies to all safe custody assets from the point of receipt by the firm) and whether the client might have no obligations at all to the firm; and
   (c) whether all the client’s safe custody assets are made subject to TTCAs, without consideration of what obligation the client has to the firm.

(4) Where a firm uses a TTCA, it must highlight to the client the risks involved and the effect of any TTCA on the client’s safe custody assets.

[Note: article 6 of the MiFID Delegated Directive]

6.1.6E

A firm may choose to combine its client communication under CASS 6.1.6DR(4) with any communication made in order to comply with article 15.1(a)(ii) of the SFTR or CASS 9.3.1R(2)(d).

6.1.7 [deleted]

6.1.8

Firms are reminded of the client’s best interests rule, which requires them to act honestly, fairly and professionally in accordance with the best interests of their clients when structuring their business particularly in respect of the effect of that structure on firms’ obligations under this chapter.
**Termination of title transfer collateral arrangements**

6.1.8A **R**

(1) If a client communicates to a firm that it wishes (whether pursuant to a contractual right or otherwise) to terminate a TTCA and the client's communication is not in writing, the firm must make a written record of the client's communication which also records the date the communication was received.

(2) A firm must keep a client's written communication, or a written record of the client's communication in (1), for five years, starting from the date the communication was received by the firm.

(3) (a) If a firm agrees to the termination of a TTCA, it must notify the client of its agreement in writing. The notification must state when the termination is to take effect and whether or not the client's safe custody asset will be held under the custody rules by the firm thereafter.

(b) If a firm does not agree to terminate a TTCA, it must notify the client of its disagreement in writing.

(4) A firm must keep a written record of any notification it makes to a client under (3) for a period of five years, starting from the date the notification was made.

6.1.8B **G**

■ CASS 6.1.8AR (3)(a) refers only to a firm's agreement to terminate an existing TTCA. Such agreement by a firm does not necessarily need to amount to the termination of its entire agreement with the client.

6.1.8C **G**

When a firm notifies a client under ■ CASS 6.1.8AR (3)(a) of when the termination of a TTCA is to take effect, it should take into account:

(1) any relevant terms relating to such a termination that have been agreed with the client; and

(2) the period of time it reasonably requires to return the safe custody asset to the client or to update the registration under (Holding of client assets) ■ CASS 6.2 and update its records under ■ CASS 6.6 (Records, accounts and reconciliations).

6.1.8D **R**

If a TTCA is terminated, then the exemption at ■ CASS 6.1.6R(4) no longer applies.

6.1.8E **G**

(1) Following the termination of a TTCA, where a firm does not immediately return the safe custody assets to the client the firm should consider whether the custody rules apply in respect of the safe custody assets pursuant to ■ CASS 6.1.1R.

(2) Where the custody rules apply to a firm for safe custody assets in these circumstances then the firm is required to comply with those rules and should, for example, update the registration under ■ CASS 6.2 (Holding of client assets), update its records under ■ CASS 6.6 (Records, accounts and reconciliations) and treat any shortfall in accordance with ■ CASS 6.6.54 R (in each case as appropriate).
Firms are reminded that, in certain cases, the collateral rules apply where a firm receives collateral from a client in order to secure the obligations of the client.

**Prime brokerage agreements**

A prime brokerage firm is reminded of the additional obligations in [CASS 9.3.1 R](#) which apply to prime brokerage agreements.

**Affiliated companies – MiFID business**

The fact that a client is an affiliated company in respect of MiFID business does not affect the operation of the custody rules in relation to that client.

**Affiliated companies – non-MiFID business**

In respect of a firm's business falling under [CASS 6.1.1R](#) (1B), the custody rules do not apply to the firm when it is safeguarding and administering investments on behalf of an affiliated company, unless:

1. the firm has been notified that the designated investment belongs to a client of the affiliated company; or
2. the affiliated company is a client dealt with at arm's length.

**Delivery versus payment transaction exemption**

Subject to (2) and [CASS 6.1.12B R](#) and with the written agreement of the relevant client, a firm need not treat this chapter as applying in respect of a delivery versus payment transaction through a commercial settlement system if:

(a) in respect of a client's purchase, the firm intends for the asset in question to be due to the client within one business day following the client's fulfilment of its payment obligation to the firm; or

(b) in respect of a client's sale, the firm intends for the asset in question to be due to the firm within one business day following the firm's fulfilment of its payment obligation to the client.

(2) If the payment or delivery by the firm to the client has not occurred by the close of business on the third business day following the date on which a firm makes use of the exemption under (1), the firm must stop using that exemption for the transaction.

(3) If the period referred to in [CASS 6.1.12R](#) (2) has expired before such a delivery versus payment transaction through a commercial settlement system has settled, a firm may, until settlement and provided that doing so is consistent with the firm's permissions and it complies with (4), segregate the firm's own money as client money (in accordance...
with the client money rules) of an amount equivalent to the value at which that safe custody asset is reasonably expected to settle instead of holding the client's safe custody assets (in accordance with the custody rules).

(4) Where a firm intends to segregate money as client money instead of the client's safe custody asset under (3) it must, before doing so, ensure that this would result in money being held for the relevant client in respect of the shortfall under CASS 7.17.2R (statutory trust).

(5) Where a firm segregates an amount of client money instead of the client's safe custody assets under (3) it must also:

(a) ensure the money is segregated under CASS 7.13 (Segregation of client money) and recorded as being held for the relevant client(s) under CASS 7.15 (Records, accounts and reconciliations);

(b) keep a record of the actions the firm has taken under this rule which includes a description of the safe custody asset in question, identifies the relevant affected client, and specifies the amount of money that the firm has appropriated as client money to cover the value of the safe custody asset; and

(c) update the record made under (5)(b) when the transaction in question has settled and the firm has re-appropriated the money.

6.1.12A

The amount of client money a firm segregates for the purposes of CASS 6.1.12R (3) may be determined by the previous day’s closing mark to market valuation of the relevant safe custody asset or, if in relation to a particular safe custody asset none is available, the most recent available valuation.

(2) Where a firm is segregating money for the purposes of CASS 6.1.12R (3) it should, as regularly as necessary, and having regard to Principle 10:

(a) review the value of the safe custody asset in question in line with (1); and

(b) where the firm has found that the value of the safe custody asset has changed, adjust the amount of money it has appropriated to ensure that these monies are sufficient to cover the latest value of the safe custody asset.

6.1.12B

A firm cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under CASS 6.1.12R in either or both of the following circumstances:

(1) it is not a direct member or participant of the relevant commercial settlement system, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that commercial settlement system;

(2) the transaction in question is being settled by another person on behalf of the firm through an account held at the relevant commercial settlement system by that other person.
Where a firm does not meet the requirements in CASS 6.1.12 R or CASS 6.1.12B R for use of the exemption in CASS 6.1.12 R, the firm is subject to the custody rules in respect of any safe custody asset it holds in connection with the delivery versus payment transaction in question.

(1) In line with CASS 6.1.12 R, where a firm receives a safe custody asset from a client in respect of a delivery versus payment transaction the firm is carrying out through a commercial settlement system in respect of a client's sale, and the firm has not fulfilled its payment obligation to the client by close of business on the third business day following the date of the client's fulfilment of its delivery obligation to the firm, the firm should consider whether the custody rules apply in respect of the safe custody asset pursuant to CASS 6.1.1 R (1A) to CASS 6.1.1 R (1D).

(2) Upon settlement of a delivery versus payment transaction a firm is carrying out through a commercial settlement system (including when it is settled within the three business day period referred to in CASS 6.1.12 R), in respect of:

(a) a client's purchase, the custody rules apply to the relevant safe custody asset the firm receives upon settlement; and

(b) a client's sale, the client money rules will apply to the relevant money received on settlement.

(1) If a firm makes use of the exemption under CASS 6.1.12 R, it must obtain the client's written agreement to the firm's use of this exemption.

(2) In respect of each client, the written agreement in (1) must be retained during the time that the firm makes use, or intends to make use, of the exemption under CASS 6.1.12 R in respect of that client's safe custody assets.

The custody rules do not apply if a firm temporarily handles a safe custody asset belonging to a client. A firm should temporarily handle a safe custody asset for no longer than is reasonably necessary. In most transactions this would be no longer than one business day, but it may be longer or shorter depending upon the transaction in question. For example, when a firm executes an order to sell shares which have not been registered on a dematerialised exchange, handling documents for longer periods may be reasonably necessary. However, in the case of safe custody assets in bearer form, the firm is expected to handle them for less than one business day. When a firm temporarily handles safe custody assets, it is still obliged to comply with Principle 10 (Clients' assets).
6.1.16 When a firm temporarily handles a safe custody asset, in order to comply with its obligation to act in accordance with Principle 10 (Clients' assets), the following are guides to good practice:

(1) a firm should keep the safe custody asset secure, record it as belonging to that client, and forward it to the client or in accordance with the client's instructions as soon as practicable after receiving it; and

(2) a firm should make and retain a record of the fact that the firm has handled that safe custody asset and of the details of the client concerned and of any action the firm has taken.

Exemptions which do not apply to MiFID business

6.1.16A The exemptions in CASS 6.1.16B R to CASS 6.1.16D G do not apply to a MiFID investment firm which holds financial instruments belonging to a client in the course of MiFID business.

Managers of AIFs and UCITS

6.1.16BA (1) The custody rules do not apply to a firm that is managing an AIF or managing a UK UCITS in relation to excluded custody activities, except where the firm is a small AIFM.

(2) The custody rules can apply to a firm that is managing an AIF or managing a UK UCITS in relation to activities that are not excluded custody activities. For example, where the firm:

(a) holds financial instruments belonging to a client in the course of its MiFID business (see CASS 6.1.1R (1A)); or

(b) is safeguarding and administering investments, in the course of business that is not MiFID business (see CASS 6.1.1R (1B)).

Personal investment firms

6.1.16C The custody rules do not apply to a personal investment firm when it temporarily holds a designated investment, other than in bearer form, belonging to a client, if the firm:

(1) keeps it secure, records it as belonging to that client, and forwards it to the client or in accordance with the client's instructions, as soon as practicable after receiving it;

(2) retains the designated investment for no longer than the firm has taken reasonable steps to determine is necessary to check for errors and to receive the final document in connection with any series of transactions to which the documents relate; and

(3) makes a record, which must then be retained for a period of 5 years after the record is made, of all the designated investments handled in accordance with (1) and (2) together with the details of the clients concerned and of any action the firm has taken.
Administrative convenience alone should not lead a personal investment firm to rely on [CASS 6.1.16C R. Personal investment firms should consider what is in the client's interest and not rely on [CASS 6.1.16C R as a matter of course.

Trustees and depositaries (except depositaries of AIFs and UCITS)

The specialist regime in [CASS 6.1.16F R to [CASS 6.1.16I G does not apply to a MiFID investment firm which holds financial instruments belonging to a client in the course of MiFID business.

When a trustee firm or depositary acts as a custodian for a trust or collective investment scheme, (except for a firm acting as trustee or depositary of an AIF and a firm acting as trustee or depositary of a UK UCITS), and:

1. the trust or scheme is established by written instrument; and
2. the trustee firm or depositary has taken reasonable steps to determine that the relevant law and provisions of the trust instrument or scheme constitution will provide protections at least equivalent to the custody rules for the trust property or scheme property;

the trustee firm or depositary need comply only with the custody rules listed in the table below.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16C R</td>
<td>Application</td>
</tr>
<tr>
<td>CASS 6.1.16E R to CASS 6.1.16I G</td>
<td>Trustees and depositaries</td>
</tr>
<tr>
<td>CASS 6.1.22 G to CASS 6.1.24 G</td>
<td>General purpose</td>
</tr>
<tr>
<td>CASS 6.2.1 R and CASS 6.2.2 R</td>
<td>Protection of clients' safe custody assets</td>
</tr>
<tr>
<td>CASS 6.2.3 R and CASS 6.2.3B G</td>
<td>Registration and recording of legal title</td>
</tr>
<tr>
<td>CASS 6.2.7 R</td>
<td>Holding</td>
</tr>
<tr>
<td>CASS 6.3.1 R to CASS 6.3.4B G</td>
<td>Depositing safe custody assets with third parties</td>
</tr>
<tr>
<td>CASS 6.4.1 R and CASS 6.4.2 G</td>
<td>Use of safe custody assets</td>
</tr>
<tr>
<td>CASS 6.6</td>
<td>Records, accounts and reconciliations</td>
</tr>
</tbody>
</table>

The reasonable steps referred in [CASS 6.1.16FR (2) could include obtaining an appropriate legal opinion to that effect.

[deleted]

A trustee firm or depositary that just arranges safeguarding and administration of assets may also take advantage of the exemption in [CASS 6.1.16J R (Arrangers).
Depositaries of AIFs

(1) Subject to (2), when a firm is acting as trustee or depositary of an AIF the firm need comply only with the custody rules in the table below:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.1.1 R, CASS 6.1.9 G, CASS 6.1.9A G and CASS 6.1.16IB G</td>
<td>Application</td>
</tr>
<tr>
<td>CASS 6.1.22 G to CASS 6.1.24 G</td>
<td>General purpose</td>
</tr>
<tr>
<td>CASS 6.2.3 R and CASS 6.2.3B G to CASS 6.2.6 G</td>
<td>Registration and recording of legal title</td>
</tr>
<tr>
<td>CASS 6.2.7 R</td>
<td>Holding</td>
</tr>
<tr>
<td>CASS 6.6.2 R, CASS 6.6.4 R, CASS 6.6.6 R, CASS 6.6.7 R, CASS 6.6.57R (2) and CASS 6.6.58 G</td>
<td>Records, accounts and reconciliations</td>
</tr>
</tbody>
</table>

(2) When a firm is acting as trustee or depositary of an AIF that is an authorised AIF the firm must, in addition to the custody rules in (1), also comply with the custody rules in the table below:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.1.1BR (2)</td>
<td>Application</td>
</tr>
</tbody>
</table>

Firms acting as trustee or depositary of an AIF are reminded of the obligations in FUND 3.11 (Depositaries) and Chapter IV (Depositary) of the AIFMD level 2 regulation which apply in addition to those in CASS 6.

A firm (Firm A) to which another firm acting as trustee or depositary of an AIF (Firm B) has delegated safekeeping functions in accordance with FUND 3.11.28 R (Delegation: safekeeping) will not itself be acting as trustee or depositary of an AIF for that AIF. CASS 6.1.16IA R will not apply to Firm A in respect of that AIF. However, Firm A may be safeguarding and administering investments in respect of that AIF.

Depositaries of UCITS

When a firm is acting as trustee or depositary of a UK UCITS, the firm need comply only with the custody rules in the table below:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.1.1R, CASS 6.1.1BR(3), CASS 6.1.9G, CASS 6.1.16IEG</td>
<td>Application</td>
</tr>
<tr>
<td>CASS 6.1.22G to CASS 6.1.24G</td>
<td>General purpose</td>
</tr>
<tr>
<td>CASS 6.2.3R, CASS 6.2.3AR, CASS 6.2.3BG, CASS 6.2.7R</td>
<td>Holding of client assets</td>
</tr>
</tbody>
</table>
Firms acting as trustee or depositary of a UK UCITS are reminded of the obligations in COLL 6.6B (UCITS depositaries) which apply as well as those in CASS 6.

A firm (Firm A) to which another firm acting as trustee or depositary of a UK UCITS (Firm B) has delegated safekeeping functions under COLL 6.6B.25R (Delegation: safekeeping) will not itself be acting as trustee or depositary of a UK UCITS for that UCITS scheme.

CASS 6.1.16IDR will not apply to Firm A for that UCITS scheme.

However, Firm A may be safeguarding and administering investments in respect of that UCITS scheme.

Arrangers

Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.1.1 R to CASS 6.1.9 G and CASS 6.1.15 G to CASS 6.1.16B R</td>
<td>Application</td>
</tr>
<tr>
<td>CASS 6.1.16J R</td>
<td>Arrangers</td>
</tr>
<tr>
<td>CASS 6.1.16K R</td>
<td>Records</td>
</tr>
<tr>
<td>CASS 6.2.22 G to CASS 6.2.24 G</td>
<td>General purpose</td>
</tr>
<tr>
<td>CASS 6.3.4A R and CASS 6.3.4B G</td>
<td>Third-party custody agreements</td>
</tr>
</tbody>
</table>

When a firm arranges safeguarding and administration of assets, it must ensure that proper records of the arrangements are made and retained for a period of 5 years after they are made.

(1) [deleted]

(1A) [deleted]

(2) [deleted]

(3) [deleted]
General purpose

6.1.22 | Principle 10 (Clients' assets) requires a firm to arrange adequate protection for clients' assets when it is responsible for them. As part of these protections, the custody rules require a firm to take appropriate steps to protect safe custody assets for which it is responsible.

6.1.23 | The rules in this chapter are designed primarily to restrict the commingling of client and the firm's assets and minimise the risk of the client's safe custody assets being used by the firm without the client's agreement or contrary to the client's wishes, or being treated as the firm's assets in the event of its insolvency.

6.1.24 | The custody rules also, where relevant, implemented the provisions of MiFID which regulated the obligations of a firm when it held financial instruments belonging to a client in the course of its MiFID business.