

Chapter 6

Custody rules

6.7 Treatment of custody assets after a failure

Application

6.7.1 **R** This section applies to a *firm* following its *failure*.

Disposal of safe custody assets

- 6.7.2 **R**
- (1) Before a *firm* takes any steps to dispose of a *safe custody asset* it must:
 - (a) (subject to paragraph (2)) attempt to return it to the relevant *client* or transfer it to another *person* for safekeeping on behalf of the *client* in accordance with ■ CASS 6.7.8R; and
 - (b) (subject to paragraph (3)) take reasonable steps to notify the *client* of the *firm's* proposed course of action for disposing of the *safe custody asset*.
 - (2) A *firm* is not required to attempt to return or transfer a *safe custody asset* under paragraph (1)(a) where the *client* to whom the *safe custody asset* belongs has confirmed to the *firm* that it disclaims all its interests in the *safe custody asset*.
 - (3) A *firm* is not required to notify a *client* under paragraph (1)(b) where:
 - (a) the *firm* is able to return the *safe custody asset* to the relevant *client* or transfer it to another *person* on behalf of the *client* in accordance with ■ CASS 6.7.8R; or
 - (b) the *client* to whom the *safe custody asset* belongs has confirmed to the *firm* that it disclaims all its interests in the *safe custody asset*.
- 6.7.3 **G**
- (1) The disposal of a *safe custody asset* referred to under ■ CASS 6.7.2R(1) includes cases where the *firm* is using the procedure under regulation 12B of the *IBSA Regulations* to set a 'hard bar date' by giving a 'hard bar date notice', or is using another similar procedure in accordance with the legal procedure for the *firm's failure*.
 - (2) In any case, a *firm* should consider whether its obligations under law or any agreement permit it to dispose of a *safe custody asset* in the way in which it proposes to do so.
- 6.7.4 **E**
- (1) Reasonable steps in ■ CASS 6.7.2R(1)(b) include the following course of conduct:

- (a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;
 - (b) for a *client* for whom the *firm* has evidence that it was a *professional client* for the purposes of the *custody rules* at the time of the *failure*:
 - (i) writing to the *client* at its last known address either by post or by electronic mail:
 - (A) to inform it of the *firm's* intention to dispose of the *safe custody asset*;
 - (B) to inform it of the consequences of the *firm's* proposed course of action in relation to the *client's* ability to assert a claim in respect of that *safe custody asset*; and
 - (C) to invite the *client* to submit a claim for that *safe custody asset*;
 - (ii) where the *client* has not responded within 28 *days* of the communication under sub-paragraph (i), attempting to communicate the information in (i) to the *client* on at least one further occasion by any means other than that used in sub-paragraph (i) including by post, electronic mail, telephone or media advertisement; and
 - (c) for any other *client*:
 - (i) the same steps as under sub-paragraphs (b)(i) and (b)(ii); and
 - (ii) where the *client* has not responded within 28 *days* of the second communication under sub-paragraph (b)(ii), attempting to communicate the information in sub-paragraph (b)(i) to the *client* on at least one further occasion by any means other than one in respect of which the *firm* has obtained positive confirmation that the *client* is not receiving such communications.
- (2) Compliance with paragraph (1) may be relied on as tending to establish compliance with ■ CASS 6.7.2R(1)(b).
- (3) Contravention of paragraph (1) may be relied on as tending to establish contravention of ■ CASS 6.7.2R(1)(b).

6.7.5 G For the purposes of ■ CASS 6.7.4E(1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including:

- (1) telephoning the *client*;
- (2) searching internal and/or public records;
- (3) media advertising;
- (4) mortality screening; and
- (5) using credit reference agencies or tracing agents.

6.7.6 R If the *firm* undertook a tracing exercise for the purposes of ■ CASS 6.2.10R(4) (Allocated but unclaimed safe custody assets) before its *failure* but had not

made the charity payment under that *rule* by the time of its *failure* then the findings of that exercise may be relied on for the purposes of ■ CASS 6.7.4E(1)(a).

6.7.7

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- (1) A *firm* must make a record of any *safe custody asset* disposed of in accordance with ■ CASS 6.7.2R at the time of the disposal.
- (2) The record under paragraph (1) must state:
 - (a) the *safe custody asset* that was disposed of;
 - (b) the value of the consideration received for the *safe custody asset* disposed of;
 - (c) the name and contact details of the *client* to whom the *safe custody asset* was allocated, according to the *firm's* records at the time of making the record under this *rule*; and
 - (d) either:
 - (i) the efforts applied by the *firm* to determine the *client's* correct contact details under ■ CASS 6.7.4E(1)(a); or
 - (ii) if being relied on under ■ CASS 6.7.6R, the efforts applied by the *firm* to determine the *client's* correct contact details for the purposes of ■ CASS 6.2.10R(4) (Allocated but unclaimed *safe custody assets*).
- (3) A *firm* must keep the record under paragraph (1) indefinitely.

Transfers of safe custody assets

6.7.8

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- (1) This *rule* applies where, instead of returning a *safe custody asset* to a *client*, a *firm* (Firm A) is able to transfer the *safe custody asset* to another *person* (Firm B) for safekeeping on behalf of the *client*.
- (2) Firm A may only effect such a transfer if, in advance of the transfer, it has obtained a contractual undertaking from Firm B that:
 - (a) where regulation 10C(3) of the *IBSA Regulations* does not apply, Firm B will return the *safe custody asset* to the *client* at the *client's* request; and
 - (b) Firm B will notify the *client*, within 14 *days* of the transfer of that *client's safe custody asset* having commenced:
 - (i) of the applicable regulatory regime under which the *safe custody asset* will be held by Firm B;
 - (ii) either:
 - (A) of any relevant compensation scheme limits that may apply in respect of Firm B's handling of the *safe custody asset*; or
 - (B) of the fact that Firm B does not participate in a relevant compensation scheme, if that is the case; and
 - (iii) where regulation 10C(3) of the *IBSA Regulations* does not apply, that the *client* has the option of having its *safe custody asset* returned to it by Firm B.

6.7.9

G Where regulation 10C(3) of the *IBSA Regulations* does apply, Firm A should, in advance of the transfer under ■ CASS 6.7.8R, obtain a contractual undertaking from Firm B that:

- (1) Firm B will comply with the *client's* request for a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*; and
- (2) Firm B will notify the *client*, within 14 days of the transfer of that *client's safe custody asset* having commenced, that the *client* can demand a 'reverse transfer' as defined in regulation 10C of the *IBSA Regulations*.