

What You Need to Know

Who is Affected?

This information is important if you:

- are a responsible entity (**RE**) or IDPS operator who holds scheme assets (an **asset holder**)
- provide custody services as a core part of your business (a **custodian**)
- are an incidental provider of custodial or depository services (whether retail or wholesale) (an **incidental provider**), or
- appoint an external custodian.

This information is particularly relevant if you obtained your financial services licence *before* 1 July 2013.

What is Happening?

- The grace period for custodians and asset holders to comply with ASIC's increased financial requirements is ending on **1 July 2014**.
- The key changes include:
 - the doubling of the minimum net tangible asset (**NTA**) requirement for custodians and asset holders (without an external custodian) from AU\$5 million to AU\$10 million, and
 - a new requirement for wholesale fund managers to hold at least AU\$150,000 in liquid assets if they are an incidental provider.
- A snapshot of the new minimum NTA requirements is set out below:

Minimum NTA Requirement	
1. Asset holders	The greater of AU\$10 million or 10% of average RE or IDPS revenue [†] .
2. Asset holders with external custodian	The greater of AU\$150,000, 0.5% of the average value of scheme property (up to AU\$5 million) or 10% of average RE or IDPS revenue [†] .
3. Incidental providers	The greater of AU\$150,000 or 10% of average revenue.
4. Incidental providers with external custodian	No NTA requirement. You must, however, obtain an annual written assurance that your external custodian complies with its NTA requirements (unless you appoint an "eligible custodian" such as an Australian bank).
5. Custodians	The greater of AU\$10 million or 10% of average revenue.

[†] Special provisions apply if all of your scheme assets are 'Tier AU\$500,000 class assets' or 'special custody assets'.

- If you are an asset holder, custodian or incidental provider, you must also:
 - where you have an NTA requirement, hold at least half of your NTA in cash or cash equivalents, with 100% held in liquid assets
 - prepare a 12 month cash flow projection, and
 - obtain an auditor's opinion that you comply with the NTA (if applicable) and cash flow projection requirements.
- As a result of these changes, you should consider whether it is more cost effective to comply with the increased NTA requirements or to pay for an external custodian.

When Does it Start?

- All licensees need to comply with the increased requirements from **1 July 2014**.
- If you obtained your licence on or after 1 July 2013, then you are already subject to these obligations.

What is an "Incidental Provider"?

ASIC imposes lower financial requirements for businesses that perform custodial functions incidentally to their core financial services (as opposed to, for example, professional trustee or custodian companies).

You are an "incidental provider" if you are a financial services licensee that is authorised to provide a custodial or depository service and:

- you provide the services because of other financial services you provide (i.e. if you did not provide the other financial services, then the custody services would not be needed); **and**
- your revenue for custody services is less than 10% of your financial services business revenue.

Does All Scheme Revenue go Towards Calculating Average Revenue?

ASIC requires that you calculate your minimum NTA based on your "average revenue". In doing so, ASIC does not distinguish between revenue attributable only to your custodial or depository services or even revenue attributable only to your financial services business.

On the face of ASIC's guidance, it appears that *all* revenue generated by the licensee must go towards calculating the NTA requirement. It is unlikely that this is the intended result¹, as you may generate revenue from a number of sources outside of your financial services business or in different divisions of your financial services business which ought not be included in the NTA calculation (for example, revenue from investments or from providing advisory services).

¹ This is because average revenue for calculating the NTA requirement for REs and IDPS operators is only referable to average RE and IDPS revenue.

If you are concerned about the impact of calculating your average revenue for the purpose of your NTA requirement (including, for example, your non-financial services business revenue), then it may be appropriate to seek ASIC relief and we can help you with obtaining that relief.

What if You Don't Rely on Your Custody Authorisation?

In some cases, you may be authorised to provide custodial or depository services but not actually provide such services in the operation of your fund. For example, if you do not hold scheme property or all the services you provide are exempt as custodial or depository services under the Corporations Act (such as if you only hold basic deposit products or you and your associates have no more than 20 clients)².

If you are authorised to provide custodial or depository services, but you do not provide such services, then you are not required to comply with ASIC's minimum financial requirements³.

Need Help?

If you have questions about how these changes affect you, or would like further advice on complying with your AFSL obligations, please feel free to contact us:



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Further Reading

[ASIC Regulatory Guide 166 *Licensing: Financial Requirements*](#)

[ASIC Class Order 13/760](#)

[ASIC Class Order 13/761](#)

[ASIC Consultation Paper 194](#)

² See section 766E(3) of the *Corporations Act 2001* and regulation 7.1.40 of the *Corporations Regulations 2001*

³ You may still need to meet an NTA requirement for other financial services for which you are authorised.