



HENRY DAVIS YORK
LAWYERS

FINANCIAL SERVICES INSIGHT

22 November 2011

New financial requirements for responsible entities

ASIC has finalised new financial requirements which will apply to all responsible entities (REs) of registered managed investment schemes from 1 November 2012. They include a rolling 12 month cash flow projections requirement and increased net tangible assets (NTA) requirements which must be held in liquid assets, including at least 50% in cash or cash equivalents. The changes are broadly consistent with the position ASIC foreshadowed to industry in June 2011 and will be implemented via Class Order and an updated Regulatory Guide 166 Licensing: Financial requirements.

Key issues

REs need to be aware that:

- All RE revenue is included in the NTA calculation plus anything paid out of scheme property to a third party service provider appointed as an agent of the RE to satisfy RE obligations.
- The application of the formula for calculating RE revenue using actual revenues of the past two years and an estimate/forecast for the current year, means that in a volatile climate, a reduction in funds under management or loss of any performance fee revenue would not immediately translate to a reduced NTA requirement.
- The requirements to hold the NTA requirement in liquid assets will mean that REs may need to restructure operations and raise additional capital to comply before the 1 November 2012 commencement.
- ASIC has not followed through on its proposed restriction on REs giving guarantees and indemnities. However for NTA purposes REs will be required to account for the maximum potential liability under any guarantees given by the RE, except those recoverable out of scheme property, or provided to another member of a stapled group.

Who does this affect?

Responsible Entities.

Highlights

- ASIC has released new base-level financial requirements for REs from 1 November 2012.
- Increased NTA requirement with an uncapped RE revenue test.
- New obligations to hold at least 50% of NTA in cash or cash equivalents.
- Proposed restriction on guarantees and indemnities no longer included.

The requirements

Cash needs

A new base-level financial requirement:

- a rolling 12 month cash flow projection, including documentation of calculations and assumptions
- updating the cash flow projection for material changes, or if the RE suspects it would not have enough financial resources to meet its liabilities or it does not meet the liquidity test (see below)
- minimum quarterly board approval of the cash flow projection.

NTA Requirements

Two options for calculating an RE's NTA requirement:

1. Where scheme property is held by an external custodian (either considered an eligible custodian by ASIC, or itself holding \$5 million in capital) the RE's NTA requirement will be the greater of:
 - \$150,000
 - 0.5% of the average value of scheme property (capped at \$5 million)
 - 10% of average RE revenue.
2. Otherwise an RE will be required to hold the greater of:
 - \$5 million
 - 10% of average RE revenue.

Notably, RE revenue is considered to be all of the licensee's revenue but also includes non-licensee revenue, to the extent that it relates to third party service provider payments out of scheme property.

Average RE revenue will be determined by averaging the preceding two financial years' revenue together with an estimate/forecast of the current financial year.

Liquidity

REs must hold an amount equal to their NTA requirement in liquid assets. Liquid assets are those considered reasonably realisable at market value within six months.

At least 50% of the liquidity amount must be held in cash or cash equivalents, with a minimum cash holding of \$150,000.

CONTACT



Elizabeth Gray
Partner

+61 2 9947 6589
elizabeth_gray@hdy.com.au



Nikki Bentley
Partner

+61 2 9947 6245
nikki_bentley@hdy.com.au



Kathy Civardi
Partner

+61 2 9947 6064
kathy_civardi@hdy.com.au



Lucinda McCann
Partner

+61 2 9947 6070
lucinda_mccann@hdy.com.au



Anne MacNamara
Partner

+61 2 9947 6722
anne_macnamara@hdy.com.au

Further details

For more information see 11-242MR [ASIC releases new financial requirements for responsible entities](#).

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CONTACT



Jon Ireland
Senior Associate

+61 2 9947 6091
jon_ireland@hdy.com.au



Esther Wong
Senior Associate

+61 2 9947 6225
esther_wong@hdy.com.au

SYDNEY

44 MARTIN PLACE SYDNEY NSW 2000 AUSTRALIA
T +61 2 9947 6000 F +61 2 9947 6999

BRISBANE

324 QUEEN STREET BRISBANE QLD 4000 AUSTRALIA
T +61 7 3087 5000 F +61 7 3087 5099