

# ASIC REVIEW OF ASSET-HOLDING REQUIREMENTS IN FUNDS MANAGEMENT AND CUSTODIAL SERVICES - ARE YOU PREPARED?

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Legal Briefings - By **Fiona Smedley, Steven Rice and Aaron Jones**

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ASIC has reported the findings of its review of the compliance by custodians and responsible entities of managed investment schemes with the asset holding requirements ([REP 531](#)) imposed by ASIC under Regulatory Guide 133 ([RG 133](#)).

## WHAT IS RG 133?

RG 133 explains the obligations of Australian financial services licensees in relation to holding assets and the minimum standards for asset holders that relevantly apply to licensed providers of custodial or depository services and responsible entities (**RE**) of registered managed investment schemes. RG 133 also sets out ASIC's policy in relation to Class Orders [[CO 13/1409](#)] and [[CO 13/1410](#)] (**Class Orders**) which also relate to the asset holding requirements.

## ASIC'S REVIEW

ASIC undertook compliance reviews in relation to RG 133 and the Class Orders in late 2016 and 2017. ASIC reviewed the 19 entities, including REs and Custodians. ASIC considers that overall compliance with RG 133 and the Class Orders fell short of ASIC's expectations due to a poor level of understanding of RG 133's requirements.

In summary, ASIC found that:

- all reviewed entities were compliant with their relevant net tangible assets requirements;
- several entities demonstrated comprehensive compliance with RG 133 and the Class Orders and have a significant commitment to operating their business in a compliant manner, with priority given to this by senior staff and the board;
- in certain instances, there was poor awareness and understanding of RG 133 and the Class Orders which resulted in poor compliance including in relation to the execution of compliant custody agreements;
- some entities did not have automated and efficient processes and systems which increased operational risk to the entity;
- some entities were not well resourced at the director and compliance staff level, and did not respond to ASIC's inquiries either comprehensively or in the stipulated timeframe;
- some REs could not locate key documentation following the acquisition of a business, highlighting that a change in custodian or transfer of a responsible entity business represents a significant operational challenge, as it diverts resources from day-to-day tasks;
- some REs that hold assets for a registered scheme demonstrated poor understanding and management of conflicts of interest; and
- the selection and monitoring of custodians was not given the level of priority and commitment expected following ASIC's publication of RG 133.

## **WHAT HAPPENS NEXT?**

ASIC requires that entities rectify identified breaches and to also amend or update their custody agreements and risk management arrangement for the purpose of improving ongoing compliance.

ASIC has warned that custody is and will remain a focus and that it will continue to engage with industry on RG 133 compliance. ASIC expects that entities which provide custodial services to review its findings in Report 531 and incorporate its recommendations into its own policies and operational practices.

We highly encourage entities to review Report 531, consider whether they need to remedy any non-compliance within its operations and contact us if they have any questions about their compliance with RG 133. We consider it likely that any review that ASIC undertakes in this area in the future will see ASIC looking to take enforcement action in respect of any serious deficiencies it identifies.

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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