

ACSA RG133 Industry Guide – Omnibus Account Section

Background and implications

As outlined in Section F of ASIC RG133, generally unless an exemption applies, ASIC expects that a responsible entity (R.E.) holding scheme property on trust must ensure that the property is (a) clearly identified as scheme property and (b) held separately from the RE's own property and the property of any other scheme. Similar obligations also apply to custodians holding scheme property.

However ASIC has acknowledged that in some circumstances it may not be appropriate to separate assets from those of other persons or schemes, as this may be inconsistent with market practice where it is likely to substantially add to the cost of holding scheme property.

Accordingly, ASIC has granted limited relief from these requirements for responsible entities (under CO 13/1409) and custodians (under CO 13/1410), permitting the use of an omnibus account structure to hold property¹, subject to certain conditions being met. For custodians the conditions are broadly as follows:

- (a) the custodian must put in place (and keep for 7 years after it was last relied on), a written policy outlining why it believes the use of an omnibus account structure is appropriate having regard to any potential risks this structure may expose its clients to; and
- (b) this policy must be reviewed at least every 13 months, with a written record of the outcome of the review being kept for 7 years; and
- (c) adequate records must be kept showing each client's entitlement to property held in an omnibus account; and
- (d) reconciliations must be performed daily (or depending on the type of property, as frequently as is reasonably commercially practical) in relation to the property held in an omnibus account; and

¹ For custodians this relief applies to the following types of property: (a) deposit-taking facilities of a body carrying on a business of accepting money on deposit, including rights under those facilities, (b) securities or (c) derivatives.

(e) use of this structure should not restrict the custodian's ability to act on a client's direction to exercise powers (including in relation to voting rights) which the client has in relation to property held within an omnibus account; and

(f) the omnibus account does not fail to be sufficient after the end of the second business day to meet the entitlements of the client and any other person in relation to the assets not held separately, if necessary, through supplementing the assets not held separately with its own assets (or such other means).

ACSA Approach

Although ACSA members who utilise omnibus account structures would generally employ similar approaches to meet the requirements of conditions (a) – (e) above, given the variances in operating models, client bases and organisational structure from member to member, members may use a number of different alternatives to meet the requirements of condition (f) based on their own analysis of which approach is most appropriate for their organisation.