ASIC
Australian Securities & Investments Commission

REGULATORY GUIDE 166

AFS licensing: Financial requirements

September 2023

About this guide

This guide sets out the financial requirements you must meet as the holder of an AFS licence. The requirements vary depending on the financial products and services you offer.

If you are a body regulated by the Australian Prudential Regulation Authority (APRA), as defined in s3(2) of the *Australian Prudential Regulation Authority Act 1998*, and are not required to comply with s912A(1)(d) of the Corporations Act, this guide does not apply to you.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in September 2023 and is based on legislation and regulations as at the date of issue. In June 2025, we updated references to reflect changes to Regulatory Guide 1 *Applying for and varying an AFS licence* (RG 1) and related guidance. In March 2026, we made amendments to reflect renamed Regulatory Guide 168 *Product Disclosure Statements: Disclosure and other obligations* (RG 168), remove out-of-date information and reflect current style and drafting practices. In October 2026, we made minor updates to reflect increases to the net tangible assets requirement for responsible entities, IDPS operators and corporate directors of retail CCIVs that apply from 1 July 2027.

Previous versions:

- Superseded Regulatory Guide 166, issued December 2009, reissued May 2010, November 2012, June 2013, November 2013, July 2015, September 2017, April 2021 and July 2022
- Superseded Regulatory Guide 239 *Retail OTC derivative issuers: Financial requirements*, issued July 2012, incorporated into Regulatory Guide 166 in November 2012 and withdrawn
- Superseded Policy Statement 166, issued 28 November 2001, reissued June 2007, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A Overview ... 5
Who this guide is for ... 5
What are the financial requirements? ... 7
How to comply with the financial requirements ... 8
How to apply for relief ... 9
How to use this guide ... 10

B The base level financial requirements ... 14
How to comply ... 14
The solvency and positive net assets requirement ... 15
The cash needs requirement ... 15
The audit requirement ... 24

C The SLF requirement: Licensees that hold client money or property ... 27
The SLF requirement ... 27

D The ASLF requirement: Licensees that transact with clients as principal ... 29
The ASLF requirement ... 29
When does the ASLF requirement apply? ... 30
How is ASLF calculated? ... 30
What are the reporting triggers? ... 32
Purpose of the ASLF requirement ... 33

E Definitions for calculating financial requirements ... 36
Summary of definitions ... 36
General definitions for all AFS licensees ... 38
Specific definitions for responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers ... 58
Specific definitions for retail OTC derivative issuers in calculating NTA ... 67

Key terms ... 70

Related information ... 78

Appendix 1: Market and clearing participants ... 81
Financial requirements under market integrity rules ... 81
How will we assess the adequacy of a licensed market or CS facility's financial requirements? ... 82
When will we assess or review adequacy? ... 83
Which markets and CS facilities currently have financial requirements that are an adequate substitute? ... 83
How does our policy affect your AFS licence? ... 84
What if the requirements cease to be adequate? ... 85

Appendix 2: Responsible entities ... 86
What requirements apply? ... 86
The tailored cash needs requirement ... 87
The tailored audit requirement ... 88
The NTA requirement ... 89

Appendix 3: Investor directed portfolio services operators ... 95
What requirements apply? ... 95
The tailored cash needs requirement ... 96
The tailored audit requirement ... 97
The NTA requirement ... 98

Appendix 4: Licensed custodial or depository service providers ... 104
What requirements apply? ... 104
The tailored cash needs requirement ... 105
The tailored audit requirement ... 106
The NTA requirement ... 107
Appendix 5: Trustee companies providing traditional services ... 113
What requirements apply? ... 113
The NTA requirement ... 113
Appendix 6: Issuers of margin lending facilities ... 115
What requirements apply? ... 115
The NTA requirement ... 115
ASLF requirement for non-standard margin lending facilities ... 116
Appendix 7: Foreign exchange dealers ... 118
What requirements apply? ... 118
Choosing between the ASLF requirement and the capital requirement ... 118
Appendix 8: Retail OTC derivative issuers ... 121
What requirements apply? ... 121
The tailored cash needs requirement ... 121
The tailored audit requirement ... 123
The NTA requirement ... 124
What are the reporting triggers? ... 125
Appendix 9: CSF intermediaries ... 129
What requirements apply? ... 129
The tailored cash needs requirement ... 129
The tailored audit requirement ... 131
Appendix 10: Corporate directors of retail CCIVs ... 133
What requirements apply? ... 133
The tailored cash needs requirement ... 134
The tailored audit requirement ... 135
The NTA requirement ... 136

A Overview

Key points

This guide explains the financial requirements that you must meet as the holder of an Australian financial services (AFS) licence. These requirements vary in their application depending on the nature, scale and complexity of your financial services business.

The requirements do not apply to you if you are a body regulated by the Australian Prudential Regulation Authority (APRA): see RG 166.4–RG 166.6. If you are prudentially regulated overseas, you can apply to ASIC for relief from the requirements: see RG 166.7–RG 166.10.

Who this guide is for

RG 166.1 The AFS licensee obligations and our licence conditions apply whether you are a natural person, a partnership, one of several trustees, or a body corporate. For partnerships and trustees, it is sufficient if any of the partners complies under s761F(1)(a) or any of the trustees under s761FA(3)(a) of the *Corporations Act 2001* (Corporations Act).

Note: In this guide, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified. References to regulations (regs) are to the *Corporations Regulations 2001* (Corporations Regulations), unless otherwise specified.

RG 166.2 This guide applies to all AFS licensees, except:

(a) bodies regulated by APRA that are not subject to s912A(1)(d) (see RG 166.4–RG 166.6);

(b) bodies subject to an alternative form of foreign prudential regulation—where we are satisfied that the foreign prudential regulation appropriately addresses the licensee obligations for financial resources and risk management (see RG 166.7–RG 166.10); and

(c) market and clearing participants if the financial requirements of the relevant market or clearing and settlement (CS) facility are an adequate substitute (see Appendix 1).

Note: The guidance on adequate arrangements to manage risk at RG 166.21 applies to market and clearing participants.

RG 166.3 The financial requirements vary in their application depending on the nature, scale and complexity of your financial services business. See Table 2 at the end of this section for an overview of how the financial requirements apply to particular categories of AFS licensee.

Bodies regulated by APRA

RG 166.4 The regulatory regime generally does not subject bodies regulated by APRA to requirements under the Corporations Act for resources and risk management systems: see s912A(1)(d) and 912A(1)(h).

RG 166.5 If you are a body regulated by APRA, and are not required to comply with s912A(1)(d), we will not require you to comply with our financial requirements. However, as a condition of your AFS licence, you must remain at all times a body regulated by APRA and your auditor must confirm this to ASIC annually on a positive assurance basis, and at any other time that we request: see Pro Forma 209 *Australian financial services licence conditions* (PF 209), condition 27.

RG 166.6 The AFS licensee obligations and our licence conditions also apply if you are a related body corporate of a body regulated by APRA, but are not yourself a body regulated by APRA. We note that APRA regulation focuses on the capacity of the body it regulates to meet financial commitments to relevant parties and applies requirements to other group members only in so far as relevant for that purpose. The financial capacity of a subsidiary of an Australian authorised deposit-taking institution (Australian ADI) may not, for example, be material to APRA's purposes in regulating the ADI.

Foreign prudentially regulated licensees

RG 166.7 We consider that recognition of adequate prudential regulation by APRA might equally be applied to prudential regulation by some foreign regulators. If we can be satisfied that there is an alternative form of foreign prudential regulation that appropriately addresses the AFS licensee obligations for financial resources and risk management, we will seek to avoid regulatory duplication.

RG 166.8 If you are prudentially regulated overseas, you can apply to ASIC for relief from the financial requirements. We will give this relief on a case-by-case basis if we are satisfied that you are regulated in a way that is comparable to regulation by APRA for entities of that kind (e.g. a general insurer or deposit-taking institution). If you are a deposit-taking institution, when we consider comparability, we will take into account the extent to which the relevant foreign prudential regulation is consistent with the Basel Committee guidelines for regulating deposit-taking institutions.

RG 166.9 If your application does not contain all relevant information, we will generally refuse it. In limited circumstances, we may consider delaying a decision on your application until you provide more information.

RG 166.10 If we decide not to impose financial requirements on you, you must still comply with the other AFS licensee obligations.

What are the financial requirements?

RG 166.11 As the holder of an AFS licence, you have certain obligations under the Corporations Act. For example, you must:

(a) have available adequate financial resources to provide the financial services covered by your AFS licence and to carry out supervisory arrangements (see s912A(1)(d));

(b) do all things necessary to ensure that the financial services covered by your AFS licence are provided efficiently, honestly and fairly (see s912A(1)(a));

(c) have adequate risk management systems (see s912A(1)(h)); and

(d) comply with the conditions on your AFS licence (see s912A(1)(b)), including the prescribed conditions under reg 7.6.04.

Note: We ask questions and may also request supporting documents in the licensing process to help us decide if an applicant is likely to meet these obligations: see Regulatory Guide 1 *Applying for and varying an AFS licence* (RG 1).

RG 166.12 This guide explains the financial requirements that we impose on AFS licensees to meet their obligations under the Corporations Act. Table 1 summarises the financial requirements.

RG 166.13 We impose these financial requirements to help ensure that:

(a) you have sufficient financial resources to conduct your financial services business in compliance with the Corporations Act (including carrying out supervisory arrangements);

(b) there is a financial buffer that decreases the risk of a disorderly or non-compliant wind-up if the business fails; and

(c) there are incentives for your owners to comply through risk of financial loss.

Table 1: Summary of the financial requirements for AFS licensees

Financial requirement	Who the requirement applies to
Base level financial requirements: • the solvency and net assets requirement; • the cash needs requirement; and • the audit requirement.	The base level financial requirements apply to all licensees, except those listed in RG 166.2. The base level financial requirements are explained in Section B. Note 1: If you are granted a limited AFS licence, the audit requirement will not apply to you if you are only licensed to provide one or more limited financial services and you do not deal with money to which Div 2 of Pt 7.8 of the Corporations Act applies: see reg 7.8.12A. You will be able to lodge a compliance certificate rather than have to undertake an annual audit: see Limited financial services on the ASIC website for more information. However, you will still need to lodge financial statements (as required by s989B(1) and 989B(2)). Note 2: 'Tailored' base level financial requirements apply to some AFS licensees: see Appendices 1–10. Table 2 at the end of this section provides an overview of how the financial requirements apply to particular categories of AFS licensee.

Financial requirement	Who the requirement applies to
Additional requirements: • the surplus liquid funds (SLF) requirement; and • the adjusted surplus liquid funds (ASLF) requirement.	The SLF requirement applies to licensees that hold client money or property: see Section C. The ASLF requirement applies to licensees that transact with clients as principal: see Section D. Note: Retail over-the-counter (OTC) derivative issuers and foreign exchange dealers that elect to meet a capital requirement generally do not need to meet the ASLF requirement: see Appendices 7–8.

RG 166.14 In setting financial requirements, we seek to set minimum standards that are framed as clearly and simply as possible so as to provide certainty. We seek to avoid any:

(a) unreasonable burden in maintaining particular levels of assets or in reporting; and

(b) unjustifiable barriers to market entry for providing different kinds of financial services.

RG 166.15 ASIC is not a prudential regulator. Therefore, our financial requirements do not seek to prevent AFS licensees from:

(a) becoming insolvent; or

(b) failing because of poor business models or cash flow problems.

How to comply with the financial requirements

RG 166.16 We generally apply our financial requirements by using ASIC's statutory power to modify Pt 7.6, or by AFS licence conditions. PF 209 sets out our standard licence conditions, including licence conditions for financial requirements. The financial requirements operate in this way:

(a) More than one requirement can apply to you—if so, you have to comply with each of them.

(b) If you are required to have assets to meet one requirement, you can also count those assets for another applicable requirement.

(c) You must monitor your compliance with each of your obligations and be satisfied that you are continuously complying with all your obligations (including any requirements in Appendices 1–10 that apply to you).

(d) If you become aware that a reportable situation may have arisen, or is likely to arise, in relation to a financial requirement, you must notify ASIC on the matter under s912DAA.

Note: For further guidance on notifying ASIC of reportable situations, see Regulatory Guide 78 *Breach reporting by AFS licensees and credit licensees* (RG 78).

RG 166.17 You must comply with any requirements applying to you via our modification of Pt 7.6 and/or your AFS licence conditions: see s912A(1)(b) and 912A(1)(c). Meeting the financial requirements will help to ensure that you have adequate financial resources as required by s912A(1)(d) and adequate risk management systems as required by s912A(1)(h).

RG 166.18 This guide is not designed to ensure that you will be able to compensate clients if you breach the AFS licensee obligations in Ch 7. In developing this guide, we have been mindful that there are separate, specific obligations to have compensation arrangements under s912B. Under s912B, a licensee must have compensation arrangements that comply with requirements in any regulations, or requirements, made by ASIC.

RG 166.19 Meeting the financial requirements will also contribute to your continuing capacity to meet financial obligations to clients. However, it is not the focus of this guide to protect clients against credit risk.

Note: For a list of key relevant regulatory guides setting out other AFS licensee obligations, see 'Related information'.

Managing financial risk

RG 166.20 We set minimum financial requirements to promote appropriate financial risk management, taking into account the nature, scale and complexity of an AFS licensee's business. While our requirements are not aimed at preventing licensee failure, they are intended to help ensure that cash shortfalls do not put compliance with the licensee obligations at risk.

RG 166.21 To satisfy your obligation under s912A(1)(h), we expect your risk management systems to specifically deal with the risk that your financial resources will not be adequate to ensure that you are able to carry on your business in compliance with the AFS licensee obligations, or to wind up your business in an orderly manner.

Note: For further guidance about risk management systems, see Regulatory Guide 104 *AFS licensing: Meeting the general obligations* (RG 104).

How to apply for relief

RG 166.22 To apply for relief from the financial requirements, please follow these steps:

(a) include with your AFS licence application, request for variation of licence, or request for exemption from or modification of a requirement, a submission for ASIC not to impose its standard licence conditions about financial requirements;

(b) ensure that your application complies with Regulatory Guide 51 *Applications for relief* (RG 51); and

(c) accurately set out all information that may be relevant to your application, including details, if relevant, about foreign regulatory arrangements.

Note: For more information about applying for relief, see How to apply for relief on the ASIC website.

How to use this guide

RG 166.23 As an AFS licensee, you must meet the financial requirements explained in Sections B–D of this guide (except for licensees listed in RG 166.2)—that is, the base level financial requirements, as well as the SLF and ASLF requirements (if applicable).

RG 166.24 In addition, certain categories of AFS licensee must meet 'tailored' and/or additional financial requirements that reflect the particular financial products and services offered: see Appendices 1–10. Different financial services activities mean that different financial requirements apply. The categories of licensee for which tailored or additional financial requirements apply are:

(a) market and clearing participants (see Appendix 1);

(b) responsible entities (see Appendix 2);

(c) investor directed portfolio services (IDPS) operators (see Appendix 3);

(d) licensed custodial or depository service providers (see Appendix 4);

(e) trustee companies providing traditional services (see Appendix 5);

(f) issuers of margin lending facilities (see Appendix 6);

(g) foreign exchange dealers (see Appendix 7);

(h) retail OTC derivative issuers (see Appendix 8);

(i) crowd-sourced funding (CSF) intermediaries (see Appendix 9); and

(j) corporate directors of retail corporate collective investment vehicles (CCIVs) (see Appendix 10).

Note: AFS licensees authorised to operate the business and conduct the affairs of a wholesale CCIV must still meet the base level financial requirements in Section B.

RG 166.25 If your AFS licence authorises you for any one of the types of financial products or services covered by Appendices 1–10, you must meet a combination of the standard financial requirements in Sections B–D, as well as the tailored and additional requirement(s) explained in the relevant appendix. The appendices explain, for particular categories of licensee, which 'standard' financial requirements apply and which 'tailored', or additional, financial requirements apply.

RG 166.26 Depending on the types of financial products and services you offer, more than one set of financial requirements may apply to you. If this is the case, you need to meet all applicable requirements. There is no need to hold separate assets to meet each requirement and you can count the same assets to meet multiple requirements, except where provided otherwise.

RG 166.27 Table 2 summarises the structure of this guide and how the requirements might apply to you. The additional requirements for each category of AFS licensee are set out in Sections C–D and the relevant appendix. You must meet the requirements in Table 2 at all times while you hold an authorisation for the relevant financial products and services, even during periods where you are not actively offering that product or service.

Revisions in this update of RG 166

RG 166.28 This update of RG 166 includes minor changes to reflect increases to the net tangible assets (NTA) requirement for responsible entities, IDPS operators and corporate directors of retail CCIVs that apply from 1 July 2027.

Table 2: What base level and additional requirements apply?

Category of AFS licensee	*Base level*: Solvency and positive net assets requirement	*Base level*: Cash needs requirement	*Base level*: Audit requirement	*Additional*: NTA requirement	*Additional*: SLF requirement	*Additional*: ASLF requirement
All AFS licensees except bodies regulated by APRA and others listed in RG 166.2: see Sections B–D	Yes	Yes	Yes[1]	Yes, if required in one of Appendices 1–8 or 10	Yes, if holding client money or property valued at $100,000 or more	Yes, if transacting with clients as principal[2]
Market and clearing participants: see Appendix 1	The financial requirements do not apply if the financial requirements of the relevant market or CS facility are an adequate substitute.					
Responsible entities: see Appendix 2	Yes	Yes, tailored	Yes, tailored	Yes	Yes, if holding client money or property valued at $100,000 or more	Yes, if transacting with clients as principal
IDPS operators: see Appendix 3	Yes	Yes, tailored	Yes, tailored	Yes	Yes, if holding client money or property valued at $100,000 or more	Yes, if transacting with clients as principal
Licensed custodial or depository service providers: see Appendix 4	Yes	Yes, tailored	Yes, tailored	Yes, depending on the nature of your business	Yes, if holding client money or property valued at $100,000 or more	Yes, if transacting with clients as principal
Trustee companies providing traditional services: see Appendix 5	Yes	Yes	Yes	Yes	Yes, if holding client money or property valued at $100,000 or more	Yes, if transacting with clients as principal

Category of AFS licensee	*Base level*: Solvency and positive net assets requirement	*Base level*: Cash needs requirement	*Base level*: Audit requirement	*Additional*: NTA requirement	*Additional*: SLF requirement	*Additional*: ASLF requirement
Issuers of margin lending facilities: see Appendix 6	Yes	Yes	Yes	Yes	Yes, if holding client money or property valued at $100,000 or more	Yes, if title to the security provided for the loan passes away from the client, or otherwise transacting with clients as principal
Foreign exchange dealers: see Appendix 7	Yes	Yes	Yes	No	Yes, if holding client money or property valued at $100,000 or more	Yes, you can choose to comply with the ASLF requirement *or* a capital requirement
Retail OTC derivative issuers: see Appendix 8	Yes	Yes, tailored	Yes, tailored	Yes, this replaces the ASLF requirement	Yes, if holding client money or property valued at $100,000 or more	No
CSF intermediaries: see Appendix 9	Yes	Yes, tailored	Yes, tailored	No, but an NTA requirement may apply if you hold other licence authorisations	Yes, if holding client money or property valued at $100,000 or more	Yes, if transacting with clients as principal
Corporate directors of retail CCIVs: see Appendix 10	Yes	Yes, tailored	Yes, tailored	Yes	Yes, if holding client money or property valued at $100,000 or more	Yes, if transacting with clients as principal

[1] If you are granted a limited AFS licence, the audit requirement will not apply to you if you are only licensed to provide one or more limited financial services and you do not deal with money to which Div 2 of Pt 7.8 of the Corporations Act applies: see reg 7.8.12A. You will be able to lodge a compliance certificate rather than have to undertake an annual audit: see Limited financial services on the ASIC website for more information. However, you will still need to lodge financial statements (as required by s989B(1) and 989B(2)).

[2] OTC retail derivative issuers and foreign exchange dealers electing to meet a capital requirement generally do not need to meet the ASLF requirement.

B The base level financial requirements

Key points

The base level financial requirements apply to all AFS licensees except bodies regulated by APRA and others listed in RG 166.2.

As an AFS licensee, you must meet the following base level financial requirements:

- the solvency and positive net assets requirement (see RG 166.32–RG 166.34);
- the cash needs requirement (see RG 166.35–RG 166.61); and
- the audit requirement (see RG 166.62–RG 166.68).

Some AFS licensees may have to comply with additional requirements that reflect specific business risks: see Table 2 in Section A.

We expect that most small business licensees that do not hold client money or property over $100,000 will only need to comply with the base level financial requirements to meet their AFS licence conditions.

How to comply

RG 166.29 You can only comply with your obligations as an AFS licensee if you have the resources, including financial resources, to do so. The financial resources you have must be enough to cover any risks your business faces that may affect your cash position and that it is reasonable for you to plan to manage.

RG 166.30 As an AFS licensee, you must meet the following base level financial requirements:

(a) *The solvency and positive net assets requirement*—At all times you must be solvent (i.e. be able to pay all your debts as and when they become due and payable) and have total assets that exceed total liabilities (as shown in your most recent annual balance sheet lodged with ASIC), and at all times have no reason to suspect that total assets would no longer exceed total liabilities on a current balance sheet.

Note: If you have more liabilities than assets, you can apply an alternative test. You can calculate on the basis of adjusted assets and adjusted liabilities as defined in Section E. For example, this may apply to you if you rely on an undertaking from an eligible provider such as an Australian ADI.

(b) *The cash needs requirement*—You must have sufficient resources to meet your anticipated cash flow expenses.

(c) *The audit requirement*—You must include information about your compliance with the financial requirements in your audit report under s989B(3).

Note: If you are granted a limited AFS licence, the audit requirement will not apply to you if you are only licensed to provide one or more limited financial services and you

do not deal with money to which Div 2 of Pt 7.8 of the Corporations Act applies: see reg 7.8.12A. You will be able to lodge a compliance certificate rather than have to undertake an annual audit. See Limited financial services on the ASIC website for more information. However, you will still need to lodge financial statements (as required by s989B(1) and 989B(2)).

RG 166.31 Tailored base level financial requirements that reflect specific business risks apply to certain AFS licensees: see Table 2 in Section A and Appendices 1–10 at the end of this guide.

The solvency and positive net assets requirement

Who the solvency and positive net assets requirement applies to

The solvency and positive net assets requirement applies to all AFS licensees (except those listed in RG 166.2).

RG 166.32 The Corporations Act requires directors of a company to prevent insolvent trading by the company: see Div 3 of Pt 5.7B. It is not appropriate for any AFS licensee, including a natural person, to carry on a financial services business while insolvent.

RG 166.33 It is also not appropriate that you carry on a financial services business with liabilities exceeding your assets. AFS licensees that trade when insolvent or while having negative net assets are unlikely to have the resources to carry on the financial services business in compliance with the licensee obligations under Ch 7.

RG 166.34 You should continuously monitor your solvency, but we do not require you to continuously monitor your net assets position. However, you must review it if you have some reason to doubt you have adequate net assets.

The cash needs requirement

Who the cash needs requirement applies to

The cash needs requirement applies to all AFS licensees (except those listed in RG 166.2).

A tailored cash needs requirement applies to:

- responsible entities (see Appendix 2);
- IDPS operators (see Appendix 3);
- licensed custodial or depository service providers (see Appendix 4);
- retail OTC derivative issuers (see Appendix 8);
- CSF intermediaries (see Appendix 9); and
- corporate directors of retail CCIVs (see Appendix 10).

RG 166.35 As a condition of your AFS licence, you must have sufficient resources to meet your anticipated cash flow expenses (cash needs requirement). Because of the large range of sizes and types of AFS licensee, there are several options that can be used to satisfy the cash needs requirement.

RG 166.36 Unless a tailored cash needs requirement applies to you, you can meet the cash needs requirement by choosing one of five options:

(a) Options 1 or 2 are 'basic' options and we expect that most small business AFS licensees will only need to consider complying with Options 1 or 2, and will generally prefer Option 2.

(b) Options 3, 4 or 5 do not require you to prepare projections and may be more suitable for your business if you:

(i) are part of a corporate group; or

(ii) have general financial support from an Australian ADI or, in some cases, have financial support from foreign deposit-taking institutions; and

(iii) can comply with the requirements for the relevant option.

Note: You must meet all the requirements of the option you select.

RG 166.37 Table 3 gives an overview of the five options available for meeting the cash needs requirement. For the definitions for calculating cash needs, including 'cash', 'cash flow', 'eligible provider' and 'relevant trust', see Section E.

Table 3: The five options available to AFS licensees for meeting the cash needs requirement

Option	Description
1 Reasonable estimate projection plus cash buffer See RG 166.40–RG 166.44	Option 1 is designed for licensees that maintain a certain level of cash or other liquid financial resources at all times (e.g. by way of commitments by a parent company). We expect this option will be relevant for some small business licensees.
2 Contingency-based projection See RG 166.45–RG 166.47	Option 2 is suitable for all kinds of licensees, including small business licensees that do not always maintain cash or commitments of support from others. We expect this option will be most relevant for small business licensees.
3 Financial commitment by an Australian ADI or comparable foreign institution See RG 166.50	Option 3 is relevant to licensees that can draw on financial backing from an Australian ADI or a relevantly recognised foreign regulated deposit-taking institution. We expect this option will not be relevant for small business licensees: see Table 6 and Information release (IR 03-26) *Alternative means to satisfy cash needs requirement under PS 166*.
4 Expectation of support from an Australian ADI or comparable foreign institution See RG 166.51	Option 4 is relevant to subsidiaries of certain prudentially regulated bodies. We expect this option will not be relevant for small business licensees: see Table 6 and IR 03-26.

Option	Description
5 Parent entity prepares cash flow projections on a consolidated basis See RG 166.52	Option 5 is relevant to licensees in corporate groups that plan cash flows on a group basis. We expect this option will not be relevant for small business licensees: see Table 6 and Information release (IR 03-44) *ASIC provides further options to meet cash needs requirements*. There are alternatives under Option 5: Option 5A (suitable for a licensee with a commitment from a parent) and Option 5B (suitable for a licensee without a commitment from a related body corporate).

Basic options (Options 1 and 2)

RG 166.38 Options 1 and 2 are different ways for you to show how you will manage the effect of risks on your cash position through your own projections. Neither option requires you to have at any one time all the cash you might need to meet all your liabilities over the next 3 months.

RG 166.39 Compliance with either Option 1 or 2 will meet the cash needs requirement under our AFS licence conditions and help to ensure you adequately manage financial risks. However, ultimately you must determine what additional measures are appropriate in your circumstances to satisfy your obligation under s912A(1)(h) to have adequate risk management systems.

Option 1: Reasonable estimate projection plus cash buffer

RG 166.40 We expect that Option 1 would be more suitable for larger businesses or those that have external sources of financial support. Option 1 allows you to rely on a simpler calculation based on having in effect 18 days outgoings (i.e. 20% of 3 months) available to you in liquid form. Such a cash buffer will help you manage commercial contingencies.

RG 166.41 Where you have this buffer, we will not require you to document a projection based on the commercial contingencies that may adversely affect your cash position, as is required under Option 2. If you rely on Option 1, you need only prepare a projection based on what you reasonably estimate is most likely. This projection will help you to measure how much cash you might have to hold as a cash buffer to satisfy Option 1.

RG 166.42 To provide a yardstick, you must also calculate how much cash you might have to hold as a cash buffer based on the previous financial year's cash outflow (if you have done a profit and loss statement for a previous financial year).

RG 166.43 In the end, the cash you have to hold as a cash buffer will be either an amount based on last year's results or an amount based on your cash flow projection, whichever is the greater.

RG 166.44 Table 4 summarises the requirements you must meet if you choose Option 1: see Section E for key definitions relevant to this option, including a definition of 'cash' for the purposes of item 5.

Table 4: Option 1: Reasonable estimate projection plus cash buffer

Requirement	You must meet all these requirements
Projection	**1** Prepare a projection of cash inflow and outflow (cash flows) over at least the next 3 months based on your reasonable estimate of what is likely to happen over this term. Note: You can take into account, for example, the following factors in preparing your projection if you reasonably believe they are likely to be available: assets you hold at the time the projection starts that can be used to pay your liabilities; and inflow you may receive, including income from your business, amounts that you may borrow (e.g. under an overdraft), and amounts that you may receive from your owners or associates as financial support. **2** Document your calculations and assumptions, and describe in writing why they are the appropriate assumptions. Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business. **3** Update the projection of cash flows when it ceases to cover the next 3 months, or if you have reason to suspect that an updated projection would show you were not meeting your AFS licence conditions.
Financial resources	**4** Show, based on your projection of cash flows, that you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 3 months, including any additional liabilities you project you will incur during that term. **5** Have in cash an amount equal to 20% of the greater of: (a) the cash outflow for the projected period of at least the next 3 months (if the projection covers a period longer than 3 months, the cash outflow may be adjusted to produce a 3-month average); or (b) your actual cash outflow for the most recent financial year for which you have prepared a profit and loss statement, adjusted to produce a 3-month average.

Option 2: Contingency-based projection

RG 166.45 Option 2 is potentially suitable for all AFS licensees, especially small businesses that do not always maintain cash or commitments of support from others. Option 2 allows you to demonstrate that the risk that you will not have access to adequate cash is sufficiently small by calculating a projection that takes into account a range of commercial contingencies that could impact on your cash position.

RG 166.46 Your projection should demonstrate the effect of the combination of eventualities that makes it most difficult for you to show you will have sufficient cash. However, you can disregard highly unlikely contingencies or combinations of contingency. For example, when calculating what cash you will have available, you can take into account income you expect to receive. However, you also have to take into account the risk that you could have a shortfall in cash inflow. This might arise, for instance, because of bad debts, or increased prices from your suppliers. You would need to take into account these eventualities unless you reasonably believe they are highly unlikely to materially impact on you if the other contingencies you are planning for occur. Similarly, you can take into account the financial support you expect

a parent company or other entity would provide if needed, but only to the extent that the risk that the support would not be provided is highly unlikely.

Note: If you have sufficient financial support from a parent or related entity, you may be able to use Option 3, 4 or 5 instead.

RG 166.47 Table 5 summarises the requirements you must meet if you choose Option 2: see Section E for key definitions relevant to this option (the definition of 'cash' will not be relevant to licensees using Option 2).

Table 5: Option 2: Contingency-based projection

Requirement	You must meet all these requirements
Projection	**1** Prepare a projection of cash inflow and outflow (cash flows) over at least the next 3 months that shows your estimate of what would happen if your ability to meet your liabilities over the projected term was adversely affected by commercial contingencies. This includes any liabilities you might incur during the term of the projection. You have to take into account all contingencies that are sufficiently likely for a reasonable licensee to plan how they might manage them. Note: We would normally expect you to take into account assets you hold at the start of the projection term that can be used to pay your liabilities and inflow you may receive, including: income from your business or sale of your business; amounts that you may borrow (e.g. under an overdraft); and amounts that you may receive from your owners or associates as financial support. However, you may have to reduce the amount of assets and inflow you take into account as part of planning to meet commercial contingencies (e.g. if you lose a key client, or someone who pays you income has a systems failure that delays payments). You will not have to take into account these occurrences if it is highly unlikely that they would materially affect your cash position. **2** Document your calculations and assumptions, and describe in writing why they are the appropriate assumptions. Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business. **3** Update the projection of cash flows when it ceases to cover the next 3 months, or if you have reason to suspect that an updated projection would show you were not meeting your licence conditions.
Financial resources	**4** Show, based on the projection of cash flows, that you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 3 months, including any additional liabilities you might incur during that term.

Options that do not require projections (Options 3–5)

RG 166.48 In addition to Options 1 and 2, we have provided three further options for AFS licensees that are able to meet their cash needs requirement in a manner that does not involve providing individual cash flow projections: see Table 6. This may be either because they have alternative means of demonstrating that they are likely to have sufficient cash, or because they are part of a large corporate group that manages cash as an economic entity and will prepare appropriate projections.

RG 166.49 These options are generally only available to AFS licensees within corporate groups or that have general financial support from an Australian ADI or in some cases a relevantly recognised foreign deposit-taking institution. They are not likely to be relevant to most small business licensees. For these licensees, Options 1 and 2 are most relevant and we expect most small business licensees will prefer Option 2.

Option 3: Financial commitment by an Australian ADI or comparable foreign institution

RG 166.50 This option is suitable for AFS licensees able to meet the cash needs requirement in a manner that does not involve providing cash flow projections. In this case, an Australian ADI (or a foreign deposit-taking institution we agree is subject to comparable regulation) has given the licensee (generally, its subsidiary) an enforceable and unqualified commitment to meet the licensee's financial obligations. This option is necessarily restricted to licensees with a high assurance of adequate cash flow and adequate liquidity risk management overseen by a prudential regulator.

Note: For more information, see condition 13(c)(iii) of PF 209.

Option 4: Expectation of support from an Australian ADI or comparable foreign institution

RG 166.51 This option is suitable for AFS licensees that are subsidiaries of an Australian ADI or a foreign deposit-taking institution we agree is subject to comparable regulation for the purposes of this policy. It allows the licensee to rely on an expectation of support, even if there is no enforceable commitment from the parent company. The support can be in the form of a commitment to the licensee or a guarantee for the benefit of creditors generally. The expectation of support must apply in all contingencies that a licensee should reasonably plan for. This is similar to the requirement that the licensee would need to meet if it were using Option 2 for cash inflow from the parent company to be recognised. This means that if the licensee were to prepare projections under Option 2, the projected inflow from the parent company would always offset any cash outflows projected.

Note: For more information, see condition 13(c)(iv) of PF 209.

Option 5: Parent entity prepares cash flow projections on a consolidated basis

RG 166.52 This option is suitable for AFS licensees within a corporate group that manages cash flows on a consolidated basis. Under this option, the parent entity prepares cash flow projections that comply with Option 1 or 2. Where there are group-wide cash flow projections, the licensee can then either rely on:

(a) the parent giving an enforceable and unqualified commitment, which is similar to that provided by an eligible provider under Option 3; or

(b) the availability of group resources, based on the reasonable expectation of its responsible officer that it can meet the cash needs requirement in all commercial contingencies for which it should reasonably plan in a way similar to Option 4.

Note: For more information, see condition 13(c)(v) of PF 209.

Table 6: Options 3–5: No projections required

Option	You must meet all these requirements
Option 3: Financial commitment by an Australian ADI or comparable foreign institution	**1** Have an enforceable and unqualified commitment from an Australian ADI or another entity (such as a foreign deposit-taking institution) approved for this purpose in writing by ASIC. Note: For the purposes of this policy, we may recognise a foreign deposit-taking institution that is regulated in accordance with the Basel Committee guidelines for regulating deposit-taking institutions, which are comparable to the regulation of ADIs. **2** Ensure that the provider of the commitment pays an unlimited amount on demand from time to time: (a) to you; or (b) to the extent of the liability, to: (i) your creditors; or (ii) a trustee for your creditors. **3** Reasonably expect, based on documented assumptions, that the commitment will remain effective for at least the next 3 months. These assumptions should take into account all commercial contingencies you should reasonably plan for. Note: The definition of 'cash' will not be relevant to licensees using Option 3. This term is not used under this option.
Option 4: Expectation of support from an Australian ADI or comparable foreign institution	**1** Be a subsidiary of an Australian ADI or an entity approved for this purpose in writing by ASIC. Note: We may approve a foreign deposit-taking institution that is regulated in accordance with the Basel Committee guidelines for regulating deposit-taking institutions, which are comparable to the regulation of ADIs. **2** Reasonably expect (based on access to funds from related bodies corporate) that you will have adequate resources (when needed) to meet your liabilities (including any additional liabilities that you might incur during that period) for at least the next 3 months. You must take into account all commercial contingencies for which you should reasonably plan. **3** Ensure that a responsible officer has documented that they have the reasonable expectation in item 2 for at least the following 3-month period, together with their reasons for forming the expectation, the contingencies for which you consider it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions. **4** Keep the document in item 3 for at least 5 years after the end of the last financial year that includes a part of the period to which the document relates, and give it to ASIC if we request it. Note: The definition of 'cash' will not be relevant to licensees using Option 4. This term is not used under this option.

Option	You must meet all these requirements
Option 5: Parent entity prepares cash flow projections on a consolidated basis	**1** Your cash flows and the cash flows of each of your related bodies corporate (the licensee group) are managed on a consolidated basis. **2** There is a body corporate within the licensee group of which all members of the licensee group are subsidiaries (the parent entity). **3** The parent entity complies with Option 1 or 2, as if: (a) it were the licensee; (b) cash flows of any member of the licensee group were cash flows of the licensee; and (c) any cash held by a member of the licensee group (other than as trustee of a trust) were held by the licensee. **4** The parent entity's registered company auditor gives us a report, together with your annual audit report, as required under your licence, for each of your financial years (and for any other period that we request it, by a date that we request it) about your parent entity's compliance with Option 1 or 2, consistent with item 3. This report is similar to the report that would be required from your auditor if you were complying with Option 1 or 2 for that period. Note 1: If you are granted a limited AFS licence, the audit requirement will not apply to you if you are only licensed to provide one or more limited financial services and you do not deal with money to which Div 2 of Pt 7.8 of the Corporations Act applies: see reg 7.8.12A. You will be able to lodge a compliance certificate rather than have to undertake an annual audit: see Limited financial services on the ASIC website for more information. However, you will still need to lodge financial statements (as required by s989B(1) and 989B(2)). Note 2: For the terms of the report about compliance with our financial requirements, see PF 209, condition 28. **5** Either of the following applies: (a) *Alternative A:* The parent entity has provided an enforceable and unqualified commitment to pay you on demand from time to time an unlimited amount or to meet your liabilities (including any additional liabilities that you might incur while the commitment applies), which you reasonably expect will apply for at least the next 3 months, taking into account all commercial contingencies for which you should reasonably plan. (b) *Alternative B:* You: (i) reasonably expect (based on access to cash from members of the licensee group) that you will have adequate resources to meet your liabilities (including any additional liabilities that you might incur) for at least the next 3 months, taking into account all commercial contingencies for which you should reasonably plan; (ii) ensure that a responsible officer documents that they have this reasonable expectation for at least the following 3-month period, together with the reasons for forming the expectation, the contingencies for which you consider it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; and (iii) keep this document for at least 5 years after the end of the last financial year that includes a part of the period to which the document relates, and give it to ASIC if we request it by a date we request. **6** You have no reason to believe that the parent entity has not complied with item 3 or has failed to comply, in a material respect, with its obligations under Ch 2M or, if the parent entity is not a company, under any other laws (whether law in Australia or not) relating to financial reporting that apply to it.

Projections, budgeting and risk management

RG 166.53 If an AFS licensee does not have enough cash to meet its liabilities, particularly over a short timeframe like 3 months, there is a greater risk that the licensee may not provide financial services in compliance with the licensee obligations under Ch 7. If cash outflow is planned for and covered, it is less likely that a licensee will feel pressured to cut costs on its compliance arrangements or engage in non-complying conduct.

RG 166.54 Budgeting to meet current and future liabilities and to take into account risks facing the business is good business practice. Planning and monitoring will help an AFS licensee to put in place and maintain appropriate arrangements (including compliance measures) to ensure adequate financial resources are available when required. This is particularly relevant in periods of higher risk for the business (e.g. when a business is growing rapidly or when a new business is in its early stages).

RG 166.55 As part of meeting your obligation to have adequate risk management systems under s912A(1)(h), you need to take into account the risks your business faces and the impact of failing to meet your liabilities. We believe that this is an appropriate part of business and risk management for both small and large AFS licensees.

RG 166.56 Taking into account commercial contingencies, AFS licensees should have sufficient, or access to sufficient, financial resources to cover their liabilities when needed. We recognise that planning on a 12-month basis may be appropriate for many businesses. However, we require as a minimum that planning cover at least the next 3-month period.

Note: The required access to financial resources also needs to cover any additional liabilities that might be incurred over the next 3-month period.

RG 166.57 We are concerned to ensure that AFS licensees monitor their anticipated cash inflow and outflow with enough forward thinking to be able to determine whether there is a real risk that a shortfall will occur over at least the next 3 months. The continuing short-term operation of your financial services business should not be put at risk because you do not reasonably plan to address commercial contingencies.

Note: Under reg 7.6.04(1)(a), you must lodge a notice with ASIC within one business day of any event occurring that may make a material adverse change to your financial position as previously lodged with ASIC. Having budgets will help you to comply with this obligation.

RG 166.58 You can manage the effect of risks that would give rise to a cash shortfall in a number of ways. For example, you may plan to deal with your cash needs by:

(a) injecting additional cash through your owner's equity or borrowings;

(b) planning to realise liquid assets;

(c) deferring or avoiding expenses which are not necessary to your business or compliance obligations; or

(d) reducing your own drawings or remuneration.

Documenting your plans

RG 166.59 If you comply with Option 1 or 2, it is important that you document your planning process by setting out the results of your planning in a projection and setting out the basis on which it is developed. In planning to meet your commitments, you are better placed than us to determine what risks your business faces and whether these risks are material enough so that it is reasonable for you to plan to meet them. Documenting this assessment helps you to show that you are complying with the AFS licensee obligations and helps you to test and improve your planning processes over time.

Note 1: If you can rely on financial support as set out in Options 3 to 5 and you choose to use one of those options in preference to Option 1 or 2, you do not have to prepare cash flow projections.

Note 2: If you choose Option 4 or 5B, one of your responsible officers must document that they have a reasonable expectation of financial support from related bodies.

RG 166.60 We expect that the amount of documentation you need will vary depending on the nature, scale and complexity of your business. Normally, more documentation will be required where the projected cash position is underpinned by forecasts of likely continuing conduct by others who are not under legal commitments (e.g. clients' goodwill) than where you are relying on legal rights you have against creditworthy entities to provide cash.

RG 166.61 Reference in documentation to meeting the requirements of industry codes and practices may be useful in helping you to show that your projection meets our requirements. Established industry standards and practices can help you to identify risks and their materiality and how to manage them.

Note: For information about how and when ASIC will approve financial services sector codes of conduct under s1101A of the Corporations Act, see Regulatory Guide 183 *Codes of conduct for the financial services and credit sectors* (RG 183).

The audit requirement

Who the audit requirement applies to

The audit requirement applies to all AFS licensees (except those listed in RG 166.2 and limited AFS licensees).

A tailored audit requirement applies to:

- responsible entities (see Appendix 2);
- IDPS operators (see Appendix 3);
- licensed custodial or depository service providers (see Appendix 4);
- retail OTC derivative issuers (see Appendix 8);
- CSF intermediaries (see Appendix 9); and
- corporate directors of retail CCIVs (see Appendix 10).

RG 166.62 As a condition of your AFS licence, you must include information about your compliance with the financial requirements in your audit report under s989B(3) (audit requirement).

RG 166.63 The audit report you give ASIC for each financial year under s989B(3) must also contain information about compliance with our financial requirements. If you do not have to provide an audit report under s989B(3), you must still provide us with an audit report about compliance with our financial requirements. You must also give ASIC this information if we request it for a specified period at another time: see s912C(2).

Note: For the terms of the report about compliance with our financial requirements, see PF 209, condition 28.

RG 166.64 The report must contain statements by a registered company auditor addressed to you and ASIC as to whether for the relevant period:

(a) on a positive assurance basis (i.e. an audit basis), in the auditor's opinion you have complied with our financial requirements other than certain aspects of Options 1 to 5 of the cash needs requirement (see condition 28(d)(i) of PF 209); and

Note: For those AFS licensees that have to meet the ASLF requirement in Section D of this guide, the auditor may assume the appropriateness of any adjustments produced by a risk exposure calculation system if we have allowed use of the system as a substitute for standard adjustments: see RG 166.124–RG 166.131. Most licensees will not have to comply with the ASLF requirement.

(b) on a negative assurance basis (i.e. a review basis), the auditor has no reason to believe that:

(i) you did not satisfy the requirements of s912A(1)(h) for managing the risk of having insufficient financial resources to meet the financial requirements; or

(ii) you failed to comply with certain elements of the options to satisfy the cash needs requirement (see condition 28(d)(ii) of PF 209).

Note: We also expect that when giving negative assurance for the purposes of RG 166.64(b), the auditor will take into consideration any information the auditor has from the audit undertaken for RG 166.64(a).

RG 166.65 Since Pt 7.8 already requires audited accounts, asking for opinions in the annual audit on an AFS licensee's compliance with the financial requirements is unlikely to be a significant additional expense, and will substantially enhance compliance by the licensee with its financial resources and risk management obligations under s912A(1).

RG 166.66 The opinion concerning compliance with the risk management systems requirement under s912A(1)(h) and some aspects of our conditions about projections need only be on a negative assurance basis, following a review. To give negative assurance, the auditor will have to see your documentation (including your projection) and determine if there is any reason to believe it

is not properly prepared. The auditor does not have to give a positive audit opinion about the projections or form a positive opinion that they are reasonable.

RG 166.67 We require only negative assurance on some matters because we recognise the additional burden on an auditor involved in giving audit assurance as to an AFS licensee's compliance with requirements involving projections or other expectations concerning future events or the adequacy of risk management systems.

RG 166.68 We will not routinely monitor your compliance with the financial requirements. Normally, when we want to check compliance, we will consider asking for an audit. We envisage asking for an audit if we suspect that you may not be complying with your financial resources or risk management obligations (e.g. because of credible complaints). We will allow a reasonable time for you to comply as appropriate in the circumstances.

C The SLF requirement: Licensees that hold client money or property

Key points

If you hold client money or property, you must hold at least $50,000 in surplus liquid funds (SLF) unless the value of the money and property for all clients in total is less than $100,000 (the SLF requirement).

The SLF requirement is on top of the base level financial requirements in Section B applying to all AFS licensees, and the ASLF requirement (see Section D) if this requirement applies to you.

If an AFS licensee does not have a certain buffer of liquid assets, there is an increased risk that client money or property may be applied to meet the licensee's financial obligations, rather than being held in accordance with its duties to clients.

The SLF requirement

Who the SLF requirement applies to

All AFS licensees (except those listed in RG 166.2) must comply with the SLF requirement if they hold client money or property valued at $100,000 or more.

RG 166.69 If the value of the money and property you hold for all clients in total is over $100,000, you must hold at least $50,000 in SLF if at any time you:

(a) are required to hold money in a separate account under Div 2 of Pt 7.8;

(b) hold money or other property on trust for a client or are required to do so under reg 7.8.07(2) or otherwise; or

(c) have the power to dispose of a client's property under power of attorney or otherwise.

Note 1: Payments received by an AFS licensee as the proceeds of insurance claims are not client money. Such money is held at the risk of the insurer: see s985B(3). Dealing in an insurance product that is a necessary or incidental part of the settlement of claims for that product is not a financial service: see reg 7.1.33(2)(b).

Note 2: Corporate directors of wholesale CCIVs should consider whether the SLF requirement applies to them.

RG 166.70 In calculating whether the money and property has a value of less than $100,000, you need not include:

(a) money that has satisfied a client's liability on an insurance contract because you are acting under a binder or s985B applies (dealing with discharge of the insured), or property acquired by investment of that money; or

(b) the value of property where you merely hold a document of title, and the client has legal title to the property.

Note: If you are a responsible entity or corporate director, the property to which the document of title relates may be counted in your NTA requirement calculation: see Appendix 2.

Underlying principles

RG 166.71 It is internationally accepted that, in addition to the regulatory protections provided by separation of accounts and trust arrangements, financial requirements should apply to financial services providers that hold client assets.

RG 166.72 When an AFS licensee holds money paid for insurance by their client and is acting under a binder in accepting the insurance or s985B applies, the risk of loss is on the insurer and not the client in relation to the financial service. When money is held only in that circumstance, the SLF requirement will not apply.

RG 166.73 We do not apply the SLF requirement if you have less than $100,000 of client money or property. This is because the fixed SLF requirement may be disproportionately burdensome relative to the risk. This applies when, for example, a small payment is received in error from clients and needs to be banked to arrange its application or refund.

RG 166.74 We do not base the amount of SLF required on the amount of client money or property you hold. We are only seeking to reduce a risk that, at a particular time, you will be subject to pressure to use client money or property to meet your own liabilities. We are not seeking, by imposing financial requirements, to provide a source of compensation for clients whose money or property is misused.

D The ASLF requirement: Licensees that transact with clients as principal

Key points

As an AFS licensee, you must comply with the adjusted surplus liquid funds (ASLF) requirement in RG 166.75 if:

- certain circumstances concerning transactions with clients apply to you (see RG 166.76); or
- you are a foreign exchange dealer that chooses to comply with this requirement (even if it would not otherwise apply to you) rather than the requirement in Appendix 7 for $10 million of Tier 1 capital.

AFS licensees that are required to have ASLF of more than $50,000 must follow reporting and risk management measures when certain trigger points are reached: see RG 166.82–RG 166.86.

This requirement is additional to the base level financial requirements that apply to AFS licensees generally and any additional financial requirements that may apply to you.

The ASLF requirement

Who the ASLF requirement applies to

All AFS licensees (except those listed in RG 166.2) must comply with the ASLF requirement if they transact with clients as principal (as defined in RG 166.76).

An NTA requirement replaces the ASLF requirement for retail OTC derivative issuers: see Appendix 8.

Foreign exchange dealers can choose to comply with the ASLF requirement or a capital requirement: see Appendix 7.

RG 166.75 If the ASLF requirement applies to you (see RG 166.76), you must hold at least the sum of:

(a) $50,000; plus

(b) 5% of adjusted liabilities between $1 million and $100 million; plus

(c) 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding $100 million.

There is a maximum requirement of $100 million ASLF.

When does the ASLF requirement apply?

RG 166.76 The ASLF requirement applies to you if:

(a) you incur actual or contingent liabilities of the relevant kind;

(b) this occurs by entering into a transaction with a client; and

(c) the transaction is entered into in the course of providing a financial service to the client.

Note: 'Actual or contingent liabilities of the relevant kind' includes a liability under a non-standard margin lending facility to transfer equivalent marketable securities to the client: see Section E for the relevant definition.

RG 166.77 For the purposes of RG 166.76, a client includes a person who acquires or disposes of financial products in a transaction that you entered into at a price you stated in the course of making a market.

RG 166.78 The ASLF requirement does not apply to you if:

(a) the total of the following is less than $100,000:

(i) the current liabilities that would be included in the calculation of your adjusted liabilities; and

(ii) the contingent liabilities that if crystallised would be a current liability and be included in the calculation of your adjusted liabilities; or

(b) other than under debentures you issued under Ch 2L, you have no:

(i) liabilities to clients that would be included in calculating your adjusted liabilities; or

(ii) contingent liabilities to clients which if crystallised would be included in calculating your adjusted liabilities.

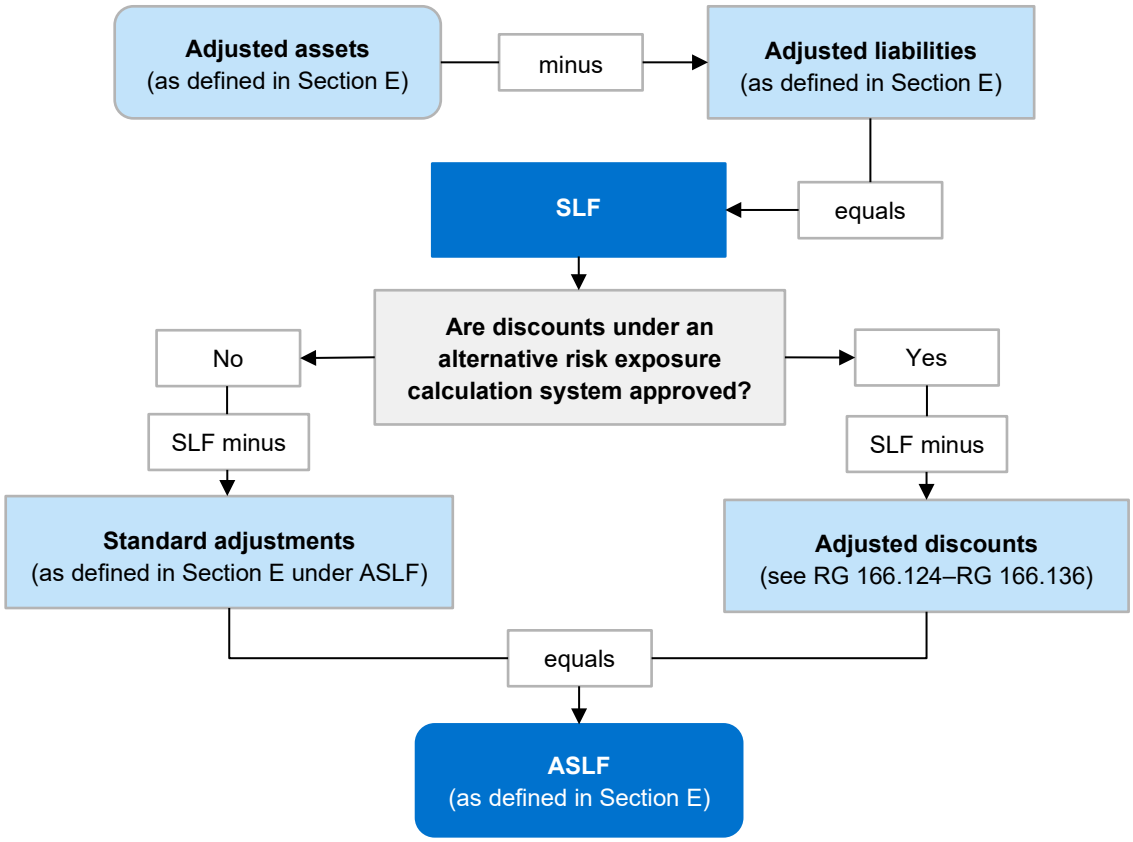
Note: In determining whether the ASLF requirement applies to you, certain liabilities can be disregarded: see RG 166.81.

How is ASLF calculated?

RG 166.79 To help you understand how to calculate ASLF, see Figure 1 and the definition of 'ASLF' in Section E. For the definition of 'adjusted liabilities', see Section E.

RG 166.80 As shown in Figure 1, you need to first calculate SLF by subtracting adjusted liabilities from adjusted assets (as defined in Section E). Then, if discounts under an alternative risk exposure calculation are approved (see RG 166.124–RG 166.136), you need to subtract these discounts from the SLF, and this amount will be your ASLF. If discounts under an alternative risk exposure calculation are not approved, you need to subtract the standard adjustments (as defined in Section E under 'ASLF') from the SLF, and this amount will be your ASLF.

Figure 1: How to calculate ASLF



Note: See RG 166.80 for the text shown in this flowchart (accessible version).

What liabilities can be disregarded?

RG 166.81 For the purposes of determining whether your actual and contingent liabilities are less than $100,000 (see RG 166.78), you can disregard a liability or contingent liability that:

(a) is a contingent liability (and not a liability) that is not:

(i) a derivative; or

(ii) a contingent liability from underwriting securities or managed investment products;

(b) you reasonably estimate has a probability of less than 5% of becoming an actual liability;

(c) is covered by money or property that you hold in a separate account under Pt 7.8 or on trust for clients;

(d) is adequately secured (see the definition of 'adequately secured' in Section E);

(e) is a liability incurred by entering into a transaction on a licensed market that is to be settled using a CS facility, the operation of which is authorised by an Australian CS facility licence;

(f) is under a foreign exchange contract and you are required by a condition in your licence reflecting Appendix 7 to have $10 million of Tier 1 capital;

(g) is under a derivative where:

(i) you do not make a market in derivatives;

(ii) you entered into the dealing for the purposes of managing a financial risk;

(iii) your dealings in derivatives are:

(A) not a significant part of your business; or

(B) even if they are a significant part of your business, then they are not a significant part of the combined business of yourself and your related bodies corporate; and

(iv) you did not enter into the dealing on the instructions of another person;

(h) is under a foreign exchange contract where you:

(i) do not make a market in foreign exchange contracts;

(ii) entered into the contract for the purposes of enabling a payment in one of the currencies under the foreign exchange contract; and

(iii) did not enter into the foreign exchange contract on the instructions of another person;

Note: If you are entering into foreign exchange contracts, see also Appendix 7.

(i) is a liability that was not incurred in:

(i) providing a financial service by entering into transactions with clients; or

(ii) transactions that you entered into at a price you stated in the course of making a market; or

(j) is under a margin lending facility where you agree to provide credit to another person, to the extent that any portion of the credit remains undrawn.

What are the reporting triggers?

RG 166.82 Generally, you must not enter into any transactions with clients that could give rise to financial obligations if:

(a) you are required to have ASLF of more than $50,000; and

(b) your ASLF is below the trigger points in RG 166.83.

However, you may enter into the transaction once your governing body has conducted reasonable inquiry into your financial position and certifies in writing that there is no reason to believe that you may fail to meet your AFS licensee obligations.

RG 166.83 Each of the following is a trigger point:

(a) if you have between $1 million and $100 million in adjusted liabilities—when your ASLF is less than 5.5% of adjusted liabilities; and

(b) if you have more than $100 million in adjusted liabilities and you do not have $100 million ASLF—when your ASLF is less than $500,000 in excess of the amount that you must have.

RG 166.84 You must ensure a further certification is made at least monthly until your ASLF continuously exceeds the trigger point for at least one month.

RG 166.85 You must keep each certification for at least 5 years. You must provide ASIC with a copy of each certification within 3 business days of the date of each certification.

RG 166.86 Your governing body must affirm that there will be compliance with financial requirements when trigger points are reached. This enables them to put into place any additional measures that may be needed to ensure you do not breach your AFS licence conditions or other licensee obligations.

Purpose of the ASLF requirement

RG 166.87 Market integrity can be jeopardised by disorderly failure of AFS licensees where their counterparties depend on their financial performance. Setting a scalable and certain standard focusing on liquidity is consistent with international regulatory practice and appropriate management of risks that would impact on your financial stability. We do not seek to prevent failures of licensees, as we are not a prudential regulator. We seek to reduce the risk that failure will occur in circumstances that put at risk your compliance with the licensee obligations.

RG 166.88 Monitoring of trigger points and going through internal processes to comply with certification requirements is an appropriate risk management measure.

RG 166.89 The ASLF requirement applies in some circumstances when you are or may become liable for more than $100,000 in aggregate to clients from transactions you entered into with them. The ASLF requirement is not triggered by liability covered by money held in a separate account under s981B, or other money or property held on trust for a client. If your assets are held separately from clients' assets, the risk to your financial resources is less because you will not have to use your own assets to meet your financial obligations to clients. The ASLF requirement does not apply to you if your only liabilities to clients are under debentures under Ch 2L. Chapter 2L sets the requirements Parliament thinks appropriate for debenture issuers.

RG 166.90 The ASLF requirement generally only applies when money in excess of $100,000 is owed. The $50,000 minimum ASLF required would be disproportionate to the risk for any lesser obligation.

RG 166.91 The $50,000 minimum amount is consistent with the minimum requirement for AFS licensees that hold client money or property.

RG 166.92 The required level of ASLF is set at 5% subject to reduced rates where ASLF of more than $5 million is required. However, the requirement is not fully comparable. The approach in this policy involves changes to the calculation of SLF, such as requirements for discounting of assets to reflect market and credit risk.

RG 166.93 A reduced ASLF requirement applies if you have at least $5 million in ASLF (bearing in mind that there is a maximum requirement of $100 million ASLF). To meet our objectives, the ASLF requirement need not increase with adjusted liabilities to such an extent as set out in RG 166.75 when more than $5 million is required (or, in cases when $100 million ASLF is held, at all). For example, economies of scale will facilitate economical use of resources in providing capacity to carry on your business in compliance with the AFS licensee obligations or to wind up the business in an orderly manner. The financial requirements are not intended to give assurance of financial capacity to meet liabilities to clients.

RG 166.94 The ASLF requirement applies regardless of whether liabilities are to retail or wholesale clients. Regulation of licensees is designed to promote market integrity, efficiency and confidence, as well as consumer protection. We anticipate that the ASLF requirement will apply to persons such as market makers in derivatives (other than derivatives which are foreign exchange contracts, unless the AFS licensee chooses to be subject to the ASLF requirement rather than the requirements in Appendix 7), underwriters of securities issues, issuers of non-cash payment facilities, and dealers in the fixed interest market.

RG 166.95 We have noted the requirements that apply for broker–dealers in the United States and certain financial services providers in the United Kingdom. These requirements incorporate a scalable element and require detailed calculation to quantify risks.

RG 166.96 We have adopted a simple approach that is different from regulatory approaches involving more sophisticated adjustments for risk, such as are necessary for prudential regulation. Our focus is on the risk of you being unable to comply with your AFS licensee obligations and therefore causing a disruption to the market.

Derivatives

RG 166.97 If you only transact with clients by entering into derivatives for the purpose of managing your financial risks, you may be exempted from the requirement to be licensed for this activity under reg 7.6.01(1)(m)–(ma). If you require an AFS licence only for other products and services you provide, but fall within the exemption in reg 7.6.01(1)(m)–(ma) for your derivatives trading, the ASLF requirement may not apply to you (unless you undertake other activities that trigger the ASLF requirement, such as underwriting securities). In this case, you will only need to meet the financial requirements applying to your non-derivatives financial services activities.

RG 166.98 For example, if you are a responsible entity, and only transact with clients by dealing in derivatives to manage your financial risk within the scope of the exemption in reg 7.6.01(1)(m), you are not likely to need to meet the ASLF requirement. Instead, you must meet the NTA requirement applying to responsible entities: see Appendix 2.

E Definitions for calculating financial requirements

Key points

This section sets out the definitions for calculating the financial requirements that apply to you as an AFS licensee.

We seek to enable calculations for financial requirements that best balance the following objectives. They must:

- be as easily understood and certain as possible;
- not be subject to manipulation;
- be based on accepted accounting principles; and
- be a meaningful measure to achieve the purpose of the relevant requirement.

Summary of definitions

RG 166.99 We have listed the definitions in this section, grouped under three categories:

(a) general definitions for all AFS licensees (see Table 7);

(b) specific definitions for responsible entities, corporate directors of retail CCIVs, IDPS operators and custodians (see Table 8); and

(c) specific definitions for retail OTC derivative issuers in calculating NTA (see Table 9).

Table 7: General definitions for all AFS licensees

Definition	Reference
Adequately secured	RG 166.100
Adjusted assets	RG 166.101
Adjusted liabilities	RG 166.102–RG 166.104
Adjusted surplus liquid funds (ASLF)	RG 166.105–RG 166.136
Approved foreign market	RG 166.137–RG 166.138
Cash (for Option 1 of the cash needs requirement)	RG 166.139–RG 166.140
Cash flow (for the cash needs requirement)	RG 166.141
Eligible provider	RG 166.142–RG 166.146
Eligible undertaking	RG 166.147–RG 166.152

Definition	Reference
Excluded assets	RG 166.153–RG 166.163
Net tangible assets (NTA)	RG 166.164
Relevant trust (for the cash needs requirement)	RG 166.165
Surplus liquid funds (SLF)	RG 166.166

Table 8: Specific definitions for responsible entities, corporate directors of retail CCIVs, IDPS operators and custodians

Definition	Reference
Average revenue	RG 166.167
Average value of fund assets	RG 166.168
Calculation date	RG 166.169
Cash or cash equivalents	RG 166.170
Custodial or depository services revenue	RG 166.171
Eligible custodian	RG 166.172
Eligible provider	RG 166.173
Financial services business revenue	RG 166.174
First financial year	RG 166.175
Fund assets	RG 166.176
Incidental provider	RG 166.177
Liquid assets	RG 166.178–RG 166.179
Regulated trust account	RG 166.180
Revenue	RG 166.181
Special custody assets	RG 166.182
Tier $500,000 class assets	RG 166.183
Value of fund assets	RG 166.184

Table 9: Specific definitions for retail OTC derivative issuers in calculating NTA

Definition	Reference
Average revenue	RG 166.185
Cash or cash equivalents	RG 166.186
Eligible provider	RG 166.187
Liquid assets	RG 166.188

General definitions for all AFS licensees

Adequately secured

RG 166.100 Adequately secured means, in relation to an AFS licensee:

(a) secured by an enforceable security interest over financial products (other than financial products issued by the licensee or its associate, or issued by a retail CCIV operated by the licensee or its associates) if:

(i) the financial products are:

(A) regularly traded on:

(I) a financial market (as defined in s767A(1) and disregarding s767A(2)) operated by a market licensee, or an AFS licensee other than the licensee or its associates that, in the reasonable opinion of the licensee, produces sufficiently reliable prices to assess the value of the security provided by the security interest;

(II) an ASIC-approved foreign market under Regulatory Guide 72 *Foreign securities: Disclosure relief* (RG 72); or

(III) a foreign market approved in writing for this purpose by ASIC (see the definition of 'approved foreign market' in RG 166.137); or

(B) interests in a registered scheme for which withdrawal prices are regularly quoted by the responsible entity, and the licensee believes on reasonable grounds that withdrawal will be effected within 5 business days;

(C) shares in a CCIV for which redemption prices are regularly quoted by the CCIV, and the licensee believes on reasonable grounds that redemption may be effected within 5 business days; and

(ii) the market value of these financial products is at least 120% of the amount owing, or at least 109% of the amount owing if the financial products are debt instruments; or

(b) secured by a registered first mortgage over real estate that has a fair market valuation of at least 120% of the amount owing; or

(c) owing from an eligible provider for the category of licensee in question; or

(d) secured by an enforceable security interest over amounts owing to another AFS licensee which themselves are adequately secured.

Adjusted assets

RG 166.101 Adjusted assets means, in relation to an AFS licensee, the value of total assets at the time of calculation, as they would appear on a balance sheet made up for lodgement as part of a financial report under Ch 2M if the licensee were a reporting entity:

(a) minus the value of excluded assets that would be included in the calculation;

(b) minus the value of any receivable that would be included in the calculation, up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable;

(c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC, up to the amount of the bond;

(d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities;

(e) plus:

(i) the amount of any eligible undertaking that is not an asset; or

(ii) if the eligible undertaking is for an unlimited amount, an unlimited amount;

Note 1: If the eligible undertaking is given by a person who is an eligible provider only because of RG 166.142(b) of the definition of 'eligible provider', the amount added may be no more than one-quarter of the eligible provider's net assets (excluding intangible assets) as shown in the most recent audited financial statements of the provider lodged with ASIC.

Note 2: The adjustment in RG 166.101(e)(ii) does not apply for responsible entities, corporate directors of retail CCIVs, IDPS operators, licensed custodial or depository service providers or retail OTC derivatives issuers. For these AFS licensees, the eligible undertaking must be for a specified dollar amount.

(f) for calculating ASLF, plus the value of any current assets of any trust (other than a registered scheme) of which the licensee is trustee, except to the extent the value exceeds the sum of:

(i) the current liabilities of the trust; and

(ii) any adjustments to ASLF that are a result of current assets, liabilities and contingent liabilities of the trust for accounting purposes being included when calculating adjustments; and

Note: We require licensees that are trustees to take into account liabilities and contingent liabilities as if they were not incurred as trustee: see RG 166.111. However, we recognise that the licensee should be able to include trust assets (subject to adjustments under RG 166.106) when calculating ASLF up to but not more than is necessary to cover the liabilities and the amount required to be adjusted due to the nature of the trust assets and for contingent liabilities.

(g) for calculating ASLF, plus the value of the applicable percentage of the value of any current assets that would be acquired in return for paying a contingent liability, except to the extent that this value exceeds the amount which is the applicable percentage of the contingent liability (see RG 166.106(c)(i) and (RG 166.106(c)(iii)).

Note: The rights of an underwriter against a sub-underwriter are treated as an asset for this purpose.

Adjusted liabilities

RG 166.102 Adjusted liabilities means, in relation to an AFS licensee, the amount of total liabilities as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Ch 2M if the licensee were a reporting entity:

(a) minus the amount of any liability under any subordinated debt approved by ASIC in writing;

(b) minus the amount of any liability that is the subject of an enforceable right of set-off, if the corresponding receivable is excluded from adjusted assets;

(c) minus the amount of any liability under a credit facility that is made without recourse to the licensee;

(d) for calculating ASLF, plus the amount of the total current liabilities of any trust (other than a registered scheme) of which the licensee is trustee;

(e) plus the value of any assets that are encumbered as a security against another person's liability where the licensee is not otherwise liable, but only up to the lower of:

(i) the amount of that other person's liability; or

(ii) the value of the assets encumbered after deducting any adjustments;

Note 1: RG 166.102(e) does not apply if the other person's liability is owed jointly by the licensee and that other person (i.e. to avoid double counting).

Note 2: For responsible entities, corporate directors of retail CCIVs, IDPS operators and licensed custodial or depository service providers, the value of encumbered assets is only included in RG 166.102(e) to the extent that it is not already included in RG 166.102(f).

(f) for responsible entities, corporate directors of retail CCIVs, IDPS operators and licensed custodial or depository service providers, plus the maximum potential liability of any guarantee provided by the AFS licensee other than:

(i) a guarantee limited to an amount recoverable out of any scheme property of a managed investment scheme or any assets of retail CCIVs operated by the licensee; or

Note: For an unregistered managed investment scheme, 'scheme property' in RG 166.102(f)(i) is taken to have the same meaning as if the scheme were registered.

(ii) for responsible entities, IDPS operators and licensed custodial or depository service providers—a guarantee of the obligations of another member of a stapled group, except when the licensee is the responsible entity of a registered scheme that is not part of the stapled group.

Note 1: 'Stapled group' means the group of entities consisting of:

(a) one or more stapled issuers where securities referable to the stapled issuer must be transferred together; and

(b) all wholly owned entities controlled by the stapled issuers.

Note 2: 'Stapled issuer' means an entity for which a security must be transferred together with a security of one or more other entities under:

(a) the terms on which it is traded on a prescribed financial market;

(b) the constitution of the entity; or

(c) the terms of issue.

Deed of subordination

RG 166.103 We will generally only approve subordinated debt if it is in substantially the same form as Pro Forma 63 *Deed of subordination* (PF 63).

RG 166.104 PF 63 clarifies that the debt cannot be repaid without ASIC's consent even after the AFS licensee ceases to hold a licence. We consider that this may help ensure that former licensees meet obligations to clients and wind up their businesses in an orderly way.

Adjusted surplus liquid funds (ASLF)

RG 166.105 ASLF means surplus liquid funds (calculated for ASLF purposes) minus either:

(a) the standard adjustments (see RG 166.106–RG 166.112); or

(b) the adjustments produced by a risk exposure calculation system we allow to be used instead of one or more of the standard adjustments (see RG 166.124–RG 166.136).

Note: To help you understand how ASLF is calculated, see Figure 1 in Section D.

Standard adjustments

RG 166.106 The standard adjustments are:

(a) discounts as follows:

(i) 8% for the values that reflect obligations to pay you a certain sum maturing beyond 12 months, unless the interest rate applicable is reset to reflect market interest rates at least annually; and

(ii) 16% for the values that reflect any assets other than:

(A) an obligation to pay you a certain sum;

(B) a derivative; or

(C) an interest in property held in trust by another licensee under Div 3 of Pt 7.8 or the rights to money held by another licensee in an account under s981B;

(b) 8% of the values that reflect others' obligations to pay you a certain sum, except to the extent that the asset is adequately secured or is a right against another AFS licensee in respect of money or property held by that other licensee in an account under s981B or held in trust under Div 3 of Pt 7.8;

Note: If discounts under RG 166.106(a) apply, this calculation is to be performed after those discounts are calculated.

(c) the following amounts for contingent liabilities and contingent liabilities of any trust (other than a registered scheme) of which the licensee is trustee:

(i) 5% of any contingent liabilities that can be quantified under an underwriting or sub-underwriting of financial products except:

(A) during the 5 business days after the commitment is assumed; and

(B) during any period it is unlawful to accept applications for the financial products to which the underwriting relates (such as under s727(3) or 1016B) and the period ending 5 business days after the first day on which it becomes lawful to accept applications; and

(C) to the extent that the underwriter holds funds from persons seeking to acquire the financial products subject to the underwriting;

Note: For this purpose, an underwriting is an enforceable obligation to acquire financial products in defined circumstances. An obligation to use best endeavours to arrange for acquisitions of financial products is not an underwriting for this purpose.

(ii) 5% of the potential liability of any contingent liabilities that can be quantified under a derivative, other than to the extent there is an offsetting position in:

(A) the 'something else' for the purposes of s761D(1)(c);

(B) another derivative relating to that something else; and/or

(C) a thing that is so similar to the something else as to make the probability of net loss from the liability under the derivative exceeding any increase in value of the thing less than 5% in the reasonable and documented opinion of the licensee; and

Note 1: The offsetting positions should be ignored if the licensee is of the reasonable opinion that the risk that they will become liabilities (or become liabilities to a greater extent than taken into account for the purposes of applying the adjustment) because of a change in the price or value of the something else is trivial.

Note 2: In assessing the probability of net loss, the likelihood of the licensee being able to dispose of the derivative so as to avoid further loss can be taken into account.

(iii) 20% of the potential liability of any contingent liabilities that can be quantified under a guarantee or indemnity;

(d) the relevant percentage as set out in RG 166.106(c)(ii)–RG 166.106(c)(iii) of the amounts that in the licensee's reasonable opinion is the maximum amount that the licensee may be liable for in relation to a contingent liability referred to in RG 166.106(c) where the maximum liability cannot be quantified; and

Note: Trivial risks that the amount may be higher in the case of RG 166.106(c)(ii) because of a change in the price or value of the something else can be disregarded.

(e) where the licensee has agreed to sell an asset that it does not hold, the amount of the adjustment that would apply if it held that asset is to be applied against adjusted assets.

RG 166.107 For the purposes of the standard adjustments, the risk that a contingent liability will become a liability may be treated as trivial if the probability that this will occur is reasonably estimated by the AFS licensee as less than 5%.

RG 166.108 For RG 166.105(a) and RG 166.105(b), discounts apply against the value of current assets:

(a) used in calculating adjusted assets;

(b) of any trust (other than a registered scheme) of which the licensee is a trustee (see RG 166.101(f)(ii));

(c) that are deducted under RG 166.101(c);

(d) that are deducted under RG 166.101(d) as assets to which recourse may be had for a liability of the licensee where the licensee's liability is limited to those assets, but the total discounts applied to those assets

shall not exceed any excess of the value of the licensee's assets to which recourse may be taken over the amount of the liability; and

(e) that is the applicable percentage of the current assets that would be acquired in return for paying a contingent liability under RG 166.106(c)(i) or RG 166.106(c)(iii).

RG 166.109 The AFS licensee does not have to apply the discounts to the value of amounts payable from a client in the ordinary course of its financial services business for financial products that the client has agreed to buy, if the money is required to be—and in the reasonable estimation of the licensee probably will be—paid no more than 5 business days after the client became liable.

Note: For more information, see RG 166.118.

RG 166.110 There is a common calculation framework for SLF and NTA. We do not require that non-current liabilities be included in calculating adjusted liabilities.

RG 166.111 To prevent avoidance and promote competitive neutrality we require that, where the AFS licensee is trustee, it must take into account trust liabilities and contingent liabilities as if they were held beneficially. Trust assets can also be counted, subject to the standard adjustments but not so as to allow the licensee to rely on trust assets to meet ASLF requirements that do not arise from the relevant trust.

RG 166.112 We require adjustments to be made to reflect in a limited way possible market and credit risks affecting assets and contingent liabilities. We recognise that our requirements do not necessarily accurately reflect risks to assets or the risk of off-balance sheet exposures. However, we believe our requirements are more likely to result in requirements that are more consistent with our policy objectives than if we disregard risks to assets and contingent liabilities. We are prepared to examine further the appropriate amount of the adjustments if industry submissions indicate they are unreasonably burdensome or that they are leading to significant distortions that are not overcome by the use of models.

Risks to assets

RG 166.113 To take into account risks that assets may not be available to meet your liabilities, we require adjustments to be made. The standard adjustments address market risk and counterparty credit risk. Since these risks are separate, we require their cumulative effect to be quantified by applying adjustments for both risks where relevant.

RG 166.114 Financial requirements imposed on broker–dealers in the United States under Rule 15c3–1 of the Securities and Exchange Commission's (SEC) financial responsibility rules, and in Hong Kong and the United Kingdom under financial requirements for financial services providers that have liabilities to clients, all require discounting of assets to reflect risks.

RG 166.115 We also recognise the relative risk of different assets in our financial requirements for certain market participants: see, for example, Annexure 5 to Schedule 1A of *ASIC Market Integrity Rules (Capital) 2021*. The amount of discount required for assets such as shares in the ASLF calculation (i.e. 16%: see RG 166.106(a)(ii)) broadly reflects our capital requirements for certain market participants in relation to position risk for shares not included in an index. While our capital requirements for certain market participants are structured differently and so are not directly comparable, we have adopted this figure as a basis for adopting a discount level for market risk.

RG 166.116 Reflecting Basel Committee guidelines, APRA generally requires ADIs to meet capital requirements by holding a minimum total capital ratio of 8% (with additional amounts and requirements depending on the circumstances). While not directly comparable (and noting our additional requirement for a surplus of assets over liabilities), we have adopted this as a basis for requiring an 8% discount based on credit risk. Prudential regulators such as APRA also have requirements that differentiate between asset types and can impose capital requirements of up to 100% of exposures. We do not differentiate between asset types in this way, as our financial requirements are not imposed for the purpose of prudential regulation and we seek to avoid unnecessary complexity. However, it is appropriate that, in calculating ASLF, there be some recognition of the relative safety of holding certain kinds of assets. ASLF is a measure that helps to indicate when you may be at risk of having insufficient financial resources to comply with your AFS licensee obligations.

RG 166.117 The levels of discount reflect only very broadly the extent of risk. We have chosen these discount levels to promote simplicity and reduce errors, classification issues, and regulatory and compliance costs. We do not require fine assessments of relative risk of assets, nor do we require that you take into account the very significant implications for risk of potential correlations in exposures that may have a risk-reducing effect. Changes may occur over time in the relative risks associated with certain assets. The relatively arbitrary quantification of certain percentage requirements to help achieve the objectives of s912A is not consistent with an elaborate specification of various discount levels. Balancing these considerations with the need for some recognition of relative risk, we have adopted the simple percentage discounting factors stated in this guide.

RG 166.118 We exclude financial products that relate to short-term settlements from discounting. This is to avoid excessive financial requirements based on short-term liabilities, where market and credit risk are limited and of short duration. These liabilities will still trigger the requirement for the tiered level of ASLF.

Contingent liabilities

Note: For the definition of 'actual or contingent liabilities of the relevant kind' for the purposes of determining whether the ASLF requirement will apply to you, see RG 166.123.

RG 166.119 In calculating ASLF, we require adjustments to reflect the risk that contingent liabilities from derivatives, underwriting, and guarantees and indemnities may need to be satisfied within the current period. A derivative may be shown as an asset or liability on a mark-to-market basis. However, this represents the derivative's current value and not the range of risks it exposes you to.

RG 166.120 To give weight to such contingent liabilities, we require that from 5% to 20% of their value be deducted in calculating ASLF. Any liability that is probable (i.e. more than 50% probability) is an actual and not a contingent liability in any case. Where an asset will be acquired if the contingent liability crystallises, the asset may be included. Such an asset cannot be allowed to count in excess of the liability and has to be discounted for market and credit risk as appropriate. For underwriting liabilities, this applies to the financial products that the underwriter has agreed to acquire, and the rights against any sub-underwriter that require the sub-underwriter to satisfy part of the underwriting commitment.

RG 166.121 For example, if an underwriter fully underwrites a $320 million securities issue (and has 50% of it sub-underwritten), the underwriter must take into account 5% of the total price to be paid in the worst case under the underwriting agreement as a liability (i.e. $16 million). The underwriter may then assume that, if it were called on to pay 5% of the underwritten amount, it would get 2.5% of the total underwritten amount in securities (i.e. securities which in this example the licensee values at $8 million) and 2.5% from the sub-underwriter (i.e. $8 million). These calculations assume that the liability under the underwriting commitment is a contingent liability (i.e. its probability is less than 50%).

RG 166.122 However, both the securities and benefit of the sub-underwriting commitment may have to be discounted. If the securities are shares, they would have to be discounted by 16% so that, for ASLF purposes, after adjustment the right to the shares would offset the contingent liability up to $6.72 million. The value of the contingent sub-underwriting receivable would have to be discounted by 8% (assuming the sub-underwriter is not an eligible provider) so that, for ASLF purposes, it would offset the contingent liability by a further $7.36 million. Therefore, in this example, in order to offset fully the $16 million that is deducted from ASLF because of the $320 million underwriting commitment, the underwriter would need to have adjusted assets of $1.92 million from other sources (i.e. $16 million *minus* $6.72 million *minus* $7.36 million).

Actual or contingent liabilities of the relevant kind

RG 166.123 For the purposes of determining whether the ASLF requirement will apply to you (see RG 166.76), an actual or contingent liability of the relevant kind means:

(a) an actual or contingent monetary liability; or

(b) an actual or contingent liability under a non-standard margin lending facility, in the circumstances determined under the terms of the facility, to transfer marketable securities to the client.

Risk exposure calculation system

RG 166.124 In some cases and on application to ASIC, we may allow different discounts other than the standard adjustments to be applied. We will allow different discounts where we are satisfied by external evidence that the AFS licensee has an appropriate risk exposure calculation system. The system would need to incorporate a model with several essential components to quantify the exposure of the licensee that the corresponding standard adjustments would otherwise cover. These components are as follows:

(a) for RG 166.106(a), the value of the assets would be less than their current value if the assets were required to be realised at a particular future time;

Note 1: The licensee may choose the future time based on when the liabilities of the licensee that are due within 12 months will be payable, or can simplify the calculation by referring to an average time until the liabilities become payable.

Note 2: When the licensee considers loss of value, the licensee can take into account the net loss after any offsets by other gains under derivatives or otherwise to the extent of the probability the licensee will receive them if its assets lose value.

(b) for RG 166.106(b), financial obligations to the licensee will not be performed when due, or at all; and

(c) for RG 166.106(c)(ii) and RG 166.106(d) (insofar as it relates to RG 166.106(c)(ii)), loss will arise because contingent liabilities will crystallise from derivatives without offsetting gain.

RG 166.125 The system must include measures to ensure that there is:

(a) a functionally independent and appropriately qualified and experienced team responsible for assessing the risks that may impact on the relevant exposure and documenting their findings;

(b) frequent reporting about the risks to management with sufficient authority to enforce steps to reduce risks;

Note: These reports must be considered by management, and the continuing appropriateness of the model assessed by management and documented.

(c) back testing of the amounts calculated by the system against experience of losses, and that changes are made to the system to address any material deficiencies testing has identified;

(d) appropriate use of external sources of information such as ratings information to assess credit risk;

(e) risk management systems that are documented and implemented, including appropriate limits on exposures and internal controls; and

(f) assurance that all practicable steps are taken to ensure that information is entered into the model generating the quantifications in accordance with the model's requirements without material error.

RG 166.126 We will not assess the model used in the system ourselves as we are not a prudential regulator. We will require evidence that the model used in the system is substantially the same as has been accepted as the basis for quantifying exposures of another entity by:

(a) APRA; or

(b) another prudential regulator we accept for the purpose (including a foreign regulator).

If we accept use of the system as a substitute for the adjustments that would otherwise apply, AFS licence conditions will require the licensee to implement the system and monitor that the licensee continuously implements all the necessary procedures.

RG 166.127 We have provided an alternative to the standard adjustments because we are conscious that you may be able to quantify your risk in a way that is more accurate than our specifications. However, we will only allow use of systems for risk calculation where there is a means of recognition that is consistent with efficient administration. We need to be satisfied, based on checks performed by appropriate independent experts, that the system is robust and controlled by appropriately enforceable parameters to enable verification and consistency as part of your risk management systems.

RG 166.128 If you are able to demonstrate you have an appropriate risk exposure calculation system incorporating a model that has been accepted by a prudential regulator, it provides a basis for us to allow the model to be used for calculating exposures. Entities with significant exposures to derivatives will ordinarily have such systems to comply with their duty to have adequate risk management systems. The standard adjustments may be appropriate, if you have limited exposure to risks of this kind. Even in this case, compliance with the ASLF requirement does not limit your obligation to have adequate risk management systems: see s912A(1)(h).

RG 166.129 We understand that some AFS licensees will not be in a position to adopt a model that has been approved by a prudential regulator. We will consider

reviewing our policy to cater for these exceptional circumstances if industry demonstrates there is a need for, and an appropriate means of obtaining assurance about, use of other models to calculate exposures.

RG 166.130 We encourage development of guidance about risk exposure calculation systems and other risk management practices by industry bodies. Prudential regulators and auditors may take note of these guidelines in coming to their own assessments. We will not be approving risk exposure calculation systems whether they have been developed by industry bodies or others, but will rely on a combination of the evidence in RG 166.126 and certificates and audit reports: see RG 166.132–RG 166.136. The certificates require the chief executive officer and governing body of the AFS licensee to assure us that the risk calculation exposure system meets appropriate standards and is supplemented by assurance by the auditor that the processes that are key elements of an effective system are being implemented.

How to apply to be allowed to use a risk calculation exposure system

RG 166.131 To apply to be allowed to use a risk calculation exposure system:

(a) Include a submission for approval with your licence application or request for variation of licence, or at a later time when needed.

(b) Ensure that your application complies with RG 51.

(c) Include the certificates and evidence set out in this guide.

(d) Candidly set out all information that may be relevant to your application.

Note: For more information, see How to apply for relief on the ASIC website.

Certification and audit report requirements

RG 166.132 We will require a certificate by the chief executive and an audit report about any risk exposure calculation system if we are asked to allow it to be used as a substitute for the standard adjustments.

RG 166.133 We require a certificate by the chief executive endorsed by the governing body of the AFS licensee:

(a) at the time of the application;

(b) every 3 months; and

(c) at any other time we require a certificate.

RG 166.134 The certificate must state that:

(a) the licensee has identified all material risks the licensee faces that may impact on the calculation of the relevant exposure;

(b) the licensee has established systems to monitor those risks, including by adequate and timely reporting processes and by applying a model that is appropriate to the licensee;

(c) those risk management systems (and in particular the risk exposure calculation system) are operating effectively and are adequate having regard to the risks they are designed to control;

(d) the measures in RG 166.125 are being effectively implemented; and

(e) the description of the licensee's risk management systems provided to the licensee's registered company auditor is accurate and current.

RG 166.135 We also require a report by a registered company auditor that the auditor has reviewed the risk exposure calculation system and has no reason to believe that:

(a) the licensee is not applying its risk exposure calculation system, incorporating the model that we are being asked to allow, or have allowed, to be used to calculate adjustments for ASLF, to determine those adjustments; or

(b) during the period for the report, the licensee has not materially failed to ensure that there is:

(i) a functionally independent team, including relevantly qualified and experienced staff responsible for assessing the risks that may impact on the relevant exposure and documenting its findings;

(ii) frequent reporting about the risks to management with sufficient authority to enforce steps to reduce risks;

(iii) back testing of the amounts calculated by the system against experience of losses, and that changes are made to the system to address any material deficiencies testing has identified;

(iv) use of external sources of information such as ratings information to assess credit risk;

(v) risk management systems that are documented and implemented, which includes limits on exposures and internal controls; and

(vi) a reasonable system designed to ensure that that information is input into the model generating the quantifications in accordance with the model's requirements without material error.

RG 166.136 This report would be required:

(a) at the time of the application for a reasonable period before the application;

(b) at the time the audit report on the licensee's financial statements as required under s989B(3) is lodged in respect of the relevant financial year; and

(c) any other time we require and for the period we require.

Note: In preparing an audit report on the AFS licensee's compliance with our financial requirements, the auditor may assume the appropriateness of any adjustments produced by a risk exposure calculation system if we have allowed use of the system as a substitute for the standard adjustments.

Approved foreign market

RG 166.137 An approved foreign market means a foreign market that we will approve for the purposes of RG 166.100(a)(i)(A)(III) if the AFS licensee demonstrates that it is a market in which independent, bona fide offers to buy and sell are regularly made, so that a price reasonably related to the last sale price or current bona fide competitive bid and offer quotations can be determined promptly, and payment may reasonably be expected to be received within the customary period.

How to apply for approval of a foreign market

RG 166.138 To apply for approval of a foreign market for the purposes of RG 166.100(a)(i)(A)(III):

(a) Include a submission for approval with your AFS licence application or request for variation of licence, or at a later time when needed.

(b) Ensure that your application complies with RG 51.

(c) Candidly set out all information that may be relevant to your application, including details as to the effectiveness of the market's price formation and settlement processes.

Note: For more information, see How to apply for relief on the ASIC website.

Cash (for Option 1 of the cash needs requirement)

RG 166.139 For the purposes of item 5 of Table 4 (relating to Option 1), cash means:

(a) current assets valued at the amount of cash for which they can be expected to be exchanged within 5 business days; or

(b) a commitment to provide cash from an 'eligible provider' (see RG 166.142–RG 166.146) that can be drawn down within 5 business days and has a maturity of at least a month provided that, if the commitment is given by a person who is only an eligible provider under RG 166.142(b), the maximum amount of the commitment that may be counted as cash is one quarter of the eligible provider's net assets (excluding intangible assets) as shown in the most recent audited financial statements of the provider lodged with ASIC.

RG 166.140 This includes any cash in a 'relevant trust' (see RG 166.165) if you have no reason to believe that the cash will not be available to meet all of your projected cash flows.

Cash flow (for the cash needs requirement)

RG 166.141 For the purposes of calculating the cash needs requirement, references to your cash flow include your own cash flow and any cash flow of a 'relevant trust' (see the definition at RG 166.165), but do not include cash flows of any other trust.

Eligible provider

RG 166.142 Except where otherwise specified in this section, eligible provider means:

(a) an Australian ADI;

(b) an entity (other than a registered scheme of which the licensee or the licensee's associate is the responsible entity):

(i) whose ordinary shares are listed on a licensed market or an ASIC-approved foreign exchange under RG 72; and

(ii) that has net assets (excluding intangible assets) of more than $50 million, as shown in the most recent audited financial statements of the provider lodged with ASIC. This applies if the licensee has no reason to believe the entity no longer has net assets of at least that amount;

Note: The type of provider described in RG 166.142(b) is not an eligible provider for responsible entities, corporate directors of retail CCIVs, IDPS operators or licensed custodial or depository service providers: see RG 166.173.

(c) an Australian government (i.e. the government of the Commonwealth or of a state or territory) or the government of a country that is a member of the Organisation for Economic Co-operation and Development (OECD country government), or an agency or instrumentality of an Australian or OECD country government;

Note: We would consider you to be an agency or instrumentality of a government if you represent that government and you are conferred with all the powers, privileges, rights and remedies, or their equivalent, of that government.

(d) a foreign deposit-taking institution that is regulated by a regulator approved in writing by ASIC for this purpose;

(e) a foreign deposit-taking institution we approve in writing for this purpose (see RG 166.144);

(f) a CS facility licensee; or

(g) in exceptional circumstances, an entity of undoubted financial substance we approve in writing.

RG 166.143 If the provider is not otherwise required to lodge financial statements with ASIC, the AFS licensee must ensure that its financial statements are lodged with its balance sheet under s989B(2).

RG 166.144 We will approve a foreign deposit-taking institution if the AFS licensee demonstrates to us that the foreign deposit-taking institution is prudentially regulated to appropriate standards under the Basel Committee guidelines.

RG 166.145 We do not recognise a body as an eligible provider merely on the basis of ratings in relation to its debt instruments. However, where exceptional circumstances make it necessary for the licensee to rely on such an entity to provide an eligible undertaking, we will take into account ratings

information in assessing whether the body has undoubted financial substance. This evidence may be significant but alone will not be determinative.

How to apply for approval of an eligible provider

RG 166.146 To apply for approval of an eligible provider:

(a) Include a submission for approval with your licence application or request for variation of licence, or at a later time when needed.

(b) Ensure that your application complies with RG 51.

(c) Candidly set out all information that may be relevant to your application, including details as to the foreign regulatory arrangements or financial substance of the provider, and other exceptional circumstances.

Note: For more information, see How to apply for relief on the ASIC website.

Eligible undertaking

RG 166.147 Eligible undertaking means the amount of a financial commitment payable on written demand by the AFS licensee, provided by an eligible provider in the form of an undertaking to pay the amount of the financial commitment to the licensee, and that:

(a) is an enforceable and unqualified obligation; and

(b) remains operative (even if, for example, the licensee ceases to hold an AFS licence) until we consent in writing to the cancellation of the undertaking.

RG 166.148 An AFS licensee cannot include as an eligible undertaking any amount committed that would be repayable as a current liability or, for calculating NTA, as a liability by the licensee if money were paid.

Note: For calculating NTA, a credit facility cannot be counted as an eligible undertaking. For calculating SLF, only a credit facility that if drawn down would not result in a current liability can count as an eligible undertaking.

RG 166.149 We will consider allowing an AFS licensee to treat as an eligible undertaking a financial commitment in a different form, if the licensee demonstrates that in exceptional circumstances:

(a) it would be impracticable or unreasonably burdensome for the financial support to be obtained by an undertaking complying with RG 166.147; and

(b) the financial commitment would be as effective in meeting the objectives of the financial requirements as an undertaking complying with RG 166.147.

RG 166.150 For example, we have allowed an AFS licensee that is a custodial or depository service provider to a superannuation entity to, in certain circumstances, treat an 'approved guarantee' obtained for the purpose of meeting its obligations under s123 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) as an eligible undertaking.

RG 166.151 If the amount of an eligible undertaking is unlimited, the AFS licensee will have satisfied any applicable NTA, SLF or ASLF requirement. This does not apply if the eligible undertaking is given by a person who is an eligible provider only because of RG 166.142(b). In this case, the amount added to the licensee's adjusted assets can be no more than:

(a) one-quarter of the eligible provider's net assets (excluding intangible assets) as shown in the most recent audited financial statements of the provider lodged with ASIC; or

(b) if you have reason to believe that the eligible provider would have assets less intangible assets in a balance sheet made currently of a lesser amount, one-quarter of the amount that you reasonably believe the eligible provider has.

How to apply for approval of an eligible undertaking

RG 166.152 To apply for approval of an eligible undertaking:

(a) Include a submission for approval with your licence application or request for variation of licence, or at a later time when needed.

(b) Ensure that your application complies with RG 51.

(c) Candidly set out all information that may be relevant to your application, including details as to the unreasonableness of the burden, effectiveness of the undertaking, and other exceptional circumstances.

Note: For more information, see How to apply for relief on the ASIC website.

Excluded assets

RG 166.153 Excluded assets means, in relation to an AFS licensee:

(a) intangible assets (i.e. non-monetary assets without physical substance);

(b) except when allowed under RG 166.155 or RG 166.156, receivables from, or assets invested in, any person who:

(i) is an associate (as defined in the Corporations Act) of the licensee;

(ii) was an associate of the licensee (as defined in the Corporations Act) at the time the liability was incurred or the investment was made; or

(iii) became liable to the licensee in connection with the acquisition of interests in a managed investment scheme the licensee operates;

(c) except when allowed under RG 166.156, assets over which the licensee or an associate may exercise any form of power or control and that are:

(i) held as a beneficial interest or interest in a managed investment scheme;

(ii) invested in a superannuation product; or

(iii) shares held in a CCIV; and

(d) except when allowed under RG 166.155 or RG 166.156, receivables from a trustee of a trust (including where the licensee is the trustee of the trust) in respect of which the licensee or an associate may exercise any form of power or control.

RG 166.154 Despite RG 166.153(b) and RG 166.153(d), a receivable is not an excluded asset to the extent that:

(a) it is adequately secured; or

(b) the following apply:

(i) it is receivable as a result of a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis;

(ii) no part of the consideration for the transaction is, in substance, directly or indirectly invested in the licensee;

(iii) the value of the receivable (before any discount is applied) is not more than 20% of the assets less liabilities of the licensee; and

(iv) for the purposes of calculating ASLF, the amount is further discounted by 10% of the value after any standard adjustments (see RG 166.106) or other discounts (see RG 166.124); or

(c) the following apply:

(i) it is receivable from an insurance company that is a body regulated by APRA and results from a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis;

(ii) the licensee has no reason to believe that any amount invested in the licensee would not have been invested if the transaction that caused the receivable had not taken place or was not at the time of the investment expected to take place;

(iii) the licensee has no reason to believe that the recoverability of the receivable will materially depend on the value of an investment by any person in the licensee; and

(iv) the total value of the receivables under RG 166.154(c) before any discount is applied is not more than 60% of the adjusted liabilities of the licensee disregarding RG 166.154(c); or

(v) we consent in writing to the licensee treating the receivable as not being an excluded asset having regard to evidence that:

(A) the receivable does not arise from a transaction to avoid our financial requirements;

(B) recovery is highly probable; and

(C) it would be unreasonably burdensome to have structured the transaction so that the receivable was not an excluded asset.

RG 166.155 Despite RG 166.153(b) and RG 166.153(d), the AFS licensee can include a receivable to the extent that:

(a) it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of, a superannuation entity as defined in the SIS Act, an IDPS, a sub-fund of a retail CCIV or a registered scheme; and

(b) it:

(i) exceeds amounts invested by the entity, IDPS, retail CCIV as an asset of the sub-fund or scheme in, or lent (other than by way of a deposit with an Australian ADI in the ordinary course of its banking business) directly or indirectly by the entity, IDPS, retail CCIV as an asset of the sub-fund or scheme to, the licensee, a body corporate the licensee controls, a body corporate that controls the licensee or a body corporate that the licensee's controller controls;

(ii) if receivable by way of fees, represents no more than the amount of fees owing for the previous 3 months; and

(iii) if receivable under rights of reimbursement for expenditure by the licensee, has not been receivable for more than 3 months.

RG 166.156 Despite RG 166.153(c), the AFS licensee does not have to exclude interests in a managed investment product or share in a retail CCIV unless any part of the amount invested is, in substance, directly or indirectly invested in the licensee.

RG 166.157 The intention of RG 166.153 is that the value of the specified kinds of investments on ordinary business terms can count towards your NTA or SLF, unless any part of that investment or the value provided in connection with the receivable is, in turn, invested in or lent to you. Allowing those investments to be reinvested in you or lent to you might be used as a device to artificially inflate your NTA or SLF. The intention is that these amounts should not count towards NTA even if other entities are interposed in the flow of funds and even if the sequence of the flow of funds does not start from you.

RG 166.158 The requirement in RG 166.153(b)(ii) has a similar rationale.

RG 166.159 Despite anything in RG 166.154, a right-of-use asset for a lessee under Australian Accounting Standard AASB 16 *Leases* is not an excluded asset. This is despite the usual position that a right-of-use asset is an intangible asset (under RG 166.153(a)).

RG 166.160 We consider that an AFS licensee should be allowed to include a right-of-use asset in its calculation of adjusted assets and, where applicable, NTA, SLF and ASLF. If a right-of-use asset were an excluded asset on the basis that it is an intangible asset under RG 166.154(a), you would be required to exclude the right-of-use asset from the calculation of adjusted assets, but include the corresponding lease liability in adjusted liabilities. In light of the right-of-use asset and the lease liability usually both being non-tangible in nature, this would be anomalous and potentially unfair. Consequently, RG 166.159 removes the right-of-use asset from the definition of 'excluded assets'. You may include the right-of-use asset in your calculation of, where applicable, NTA, SLF and ASLF. When calculating SLF and ASLF, you must not include, for a lease with a remaining term of more than 12 months, a non-current right-of-use asset and the non-current portion of the lease liability.

RG 166.161 Under RG 166.155(a), an AFS licensee must exclude deferred tax assets from its calculation of adjusted assets and, where applicable, NTA, SLF and ASLF. A deferred tax asset is an amount of tax recoverable in a future period in relation to:

(a) deductible temporary differences;

(b) the carry-forward of unused tax losses; or

(c) the carry-forward of unused tax credits.

RG 166.162 For the purposes of the financial requirements, an AFS licensee should treat deferred tax assets in the same way as other types of intangible assets (except for right-of-use lease assets).

How to apply for consent to an amount owing not being an excluded asset

RG 166.163 To apply for consent to an amount owing not being an excluded asset:

(a) Include a submission for approval with your AFS licence application or request for variation of licence, or at a later time when needed.

(b) Ensure that your application complies with RG 51.

(c) Candidly set out all information that may be relevant to your application, including evidence that the assets do not arise from a transaction to avoid our financial requirements, there is strong evidence of recoverability and it would be unreasonably burdensome to have structured the transaction so that the asset was not an excluded asset.

Note: For more information, see How to apply for relief on the ASIC website.

Net tangible assets (NTA)

RG 166.164 NTA means the AFS licensee's adjusted assets minus adjusted liabilities.

Relevant trust (for the cash needs requirement)

RG 166.165 For the purposes of calculating the cash needs requirement, relevant trust means a trust:

(a) of which the AFS licensee is trustee;

(b) through which the AFS licensee carries on substantially all of its financial services business;

(c) that is not a registered scheme or a superannuation entity as defined in s10(1) of the SIS Act; and

(d) that is not a trust to which a trustee company provides traditional services.

Surplus liquid funds (SLF)

RG 166.166 SLF means the AFS licensee's adjusted assets minus the licensee's adjusted liabilities:

(a) plus any non-current liabilities that were used in calculating adjusted liabilities and the value of any assets that are encumbered (where the licensee is not liable and the assets do not secure another person's current liability) that were added when calculating the licensee's adjusted liabilities;

(b) minus any non-current assets that were used in calculating adjusted assets; and

(c) if the licensee is an eligible provider under RG 166.142(b)—plus one-quarter of the value of its non-current assets minus any intangible assets and the amount of its non-current liabilities.

Specific definitions for responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers

Average revenue

RG 166.167 For responsible entities, IDPS operators, corporate directors of retail CCIVs and licensed custodial or depository service providers, average revenue means:

(a) for a licensee in its first financial year—the licensee's forecast of its revenue from the calculation date for the remainder of the first financial year, pro-rated to a 12-month period;

(b) for a licensee in its second financial year—the aggregate of the licensee's:

(i) estimate of its revenue for the second financial year-to-date; and

(ii) forecast of its revenue for the remainder of the second financial year;

(c) for a licensee in its third financial year—the average of:

(i) the aggregate of the licensee's:

(A) estimate of its revenue for the third financial year-to-date; and

(B) forecast of its revenue for the remainder of the third financial year; and

(ii) the licensee's revenue for its second financial year; and

(d) for all subsequent financial years of a licensee—the average of:

(i) the aggregate of the licensee's:

(A) estimate of its revenue for the current financial year-to-date; and

(B) forecast of its revenue for the remainder of the current financial year;

(ii) the licensee's revenue for the last preceding financial year; and

(iii) the licensee's revenue for the second preceding financial year.

Note: We expect an AFS licensee to base its forecast on reasonable assumptions and to take into account the amount of actual revenue of the entire business of the licensee over that financial year-to-date in making the forecast.

Average value of fund assets

RG 166.168 For responsible entities, IDPS operators and corporate directors of retail CCIVs, average value of fund assets means the greater of:

(a) the current value of fund assets; and

(b) the value of fund assets in the following circumstances:

(i) for a licensee in its first financial year—the average of:

(A) the value of fund assets at the end of each calendar month since the calculation date; and

(B) the forecast value of fund assets at the end of each calendar month for the remainder of the first financial year; and

(ii) for a licensee in its second financial year—the average of:

(A) the value of fund assets at the end of each calendar month since the calculation date; and

(B) the forecast value of fund assets at the end of each calendar month for the remainder of the second financial year; and

(iii) for all subsequent financial years of a licensee—the average of:

(A) the value of fund assets at the end of each calendar month since the beginning of the second preceding financial year; and

(B) the forecast value of fund assets at the end of each calendar month for the remainder of the current financial year.

Note: We do not require licensees to perform monthly valuations of fund assets. In determining the frequency of valuations, licensees should take into account the nature of the property: see s601FC(1)(j) and 1224D(2)(j).

Calculation date

RG 166.169 For responsible entities, IDPS operators, corporate directors of retail CCIVs and licensed custodial or depository service providers, calculation date means the day on which the AFS licensee was first authorised as a responsible entity, IDPS operator, corporate director of a retail CCIV, or a licensed custodial or depository service provider.

Note: The 'calculation date' applies to the first date on which the licensee is authorised in the current authorisation period.

Cash or cash equivalents

RG 166.170 For responsible entities, IDPS operators, corporate directors of retail CCIVs and licensed custodial or depository service providers, cash or cash equivalents means:

(a) assets of the licensee that are cash on hand, demand deposits and money deposited with an Australian ADI that is available for immediate withdrawal;

(b) assets of the licensee that are short-term, highly liquid investments that are readily convertible to known amounts of cash that are subject to an insignificant risk of changes in value;

(c) the value of any eligible undertaking provided by an eligible provider that is an asset of the licensee; and

(d) assets of the licensee that are committed by an eligible provider to provide cash on request within 5 business days:

(i) which will not expire within the next 6 months and which cannot be withdrawn by the provider without giving at least 6 months written notice to the person to whom the commitment is made; and

(ii) in relation to which any cash provided is not repayable for at least 6 months.

Custodial or depository services revenue

RG 166.171 Custodial or depository services revenue, in relation to an AFS licensee, means the aggregate of the AFS licensee's:

(a) estimate of the revenue attributable to custodial or depository services provided by the licensee and its related bodies corporate for the current financial year to date; and

(b) forecast of such revenue for the remainder of the financial year;

determined on the basis that such revenue must at least include the cost of providing those services.

Note: See also the definition of 'revenue' in RG 166.181.

Eligible custodian

RG 166.172 Eligible custodian means:

(a) an Australian ADI;

(b) a market participant or a clearing participant as specified in ASIC Instrument 2023/647 and ASIC Instrument 2023/648; or

(c) a person engaged as a custodian by one of the above.

Eligible provider

RG 166.173 For responsible entities, IDPS operators, licensed custodial service providers and corporate directors of retail CCIVs, eligible provider means:

(a) an Australian ADI;

(b) an Australian government (i.e. the government of the Commonwealth or of a state or territory), or the government of a country that is a member of the Organisation for Economic Cooperation and Development (OECD country government), or an agency or instrumentality of an Australian or OECD country government;

Note: We would consider you to be an agency or instrumentality of a government if you represent that government and you are conferred with all the powers, privileges, rights and remedies, or their equivalent, of that government.

(c) a foreign deposit-taking institution:

(i) that is regulated by a regulator approved in writing by ASIC for this purpose; or

(ii) approved in writing by ASIC for this purpose;

(d) a CS facility licensee within the meaning of s9; or

(e) an entity approved by ASIC in writing for this purpose.

Financial services business revenue

RG 166.174 Financial services business revenue means, in relation to an AFS licensee, the aggregate of the licensee's:

(a) estimate of the revenue attributable to the financial services business of the licensee and its related bodies corporate for the current financial year to date, excluding any revenue attributable to custodial or depository services provided by the licensee or a related body corporate; and

(b) forecast of such revenue for the remainder of the financial year;

determined on the basis that the revenue attributable to custodial or depository services must at least include the cost of providing those services.

First financial year

RG 166.175 First financial year means, in relation to an AFS licensee, the financial year in which the calculation date occurs.

Note: The second and later financial years are determined accordingly.

Fund assets

RG 166.176 Fund assets means, in relation to a registered scheme, IDPS or retail CCIV, the scheme property of the registered scheme, IDPS property of the IDPS or the assets of the retail CCIV.

Incidental provider

RG 166.177 Incidental provider means a licensed custodial or depository service provider:

(a) that does not provide any custodial or depository services other than services which:

(i) are a need of the person to whom the services are provided because of, or in order to obtain the provision of other financial services by the licensee or its related bodies corporate; and

(ii) do not form part of an IDPS; and

(b) whose custodial or depository services revenue is less than 10% of its financial services business revenue.

Liquid assets

RG 166.178 Liquid assets means, in relation to an AFS licensee:

(a) cash or cash equivalents other than a commitment of the kind specified in RG 166.170(d); and

(b) assets of the licensee that the licensee can reasonably expect to realise for their market value within 6 months.

RG 166.179 These cash, cash equivalents and assets must be free from encumbrances and, in the case of receivables, free from any right of set-off.

Regulated trust account

RG 166.180 Regulated trust account means a trust account maintained by:

(a) a licensed trustee company within the meaning of Ch 5D or the public trustee of a state or territory;

(b) a solicitor unless moneys in the account include moneys that are excluded from regulation as trust money under laws of the state or territory relating to legal practitioners that are relevant to the operation of the trust account by the solicitor;

(c) a real estate agent under the law of a state or territory; or

(d) an entity other than the licensee and that provides protections similar to the accounts described in RG 166.180(a)–RG 166.180(c), and is approved in writing by ASIC for this purpose.

Revenue

RG 166.181 For responsible entities, IDPS operators, corporate directors of retail CCIVs and licensed custodial or depository service providers, revenue means:

(a) the licensee's revenue (within the meaning given by the Australian accounting standards), including revenue of the licensee's entire business; and

(b) to the extent it is not the licensee's revenue (within the meaning of the Australian accounting standards):

(i) for responsible entities, IDPS operators and corporate directors of retail CCIVs—any amount paid or payable for the performance of the obligations imposed on the licensee as a responsible entity in connection with operating that registered scheme, IDPS or retail CCIV, even if those obligations are performed by another entity; or

(ii) for licensed custodial or depository service providers—any amount paid or payable for the performance of the obligations imposed on the licensee to provide custodial or depository services, even if those obligations are performed by another entity.

Note: An amount under RG 166.180(b) excludes any audit fees paid or payable to an auditor engaged to meet any audit requirements under the Corporations Act.

Special custody assets

RG 166.182 Special custody assets means, in relation to a registered scheme, retail CCIV or an IDPS operated by an AFS licensee:

(a) for serviced strata schemes, cash held in a regulated trust account;

(b) currency and chattels (other than documents) that it would not be reasonably practicable for a person other than the licensee or the retail CCIV to hold;

(c) funds received from members of the scheme or the retail CCIV, or clients of the IDPS within the previous 6 months held in a regulated trust account;

(d) cash held for up to 3 months in an account with an Australian ADI styled as a trust account:

  (i) pending payment to members of the scheme or retail CCIV or clients of the IDPS;

  (ii) to meet expected expenses (not including investments) over a 3-month period; or

  (iii) pending application in acquiring a mortgage and paying any fees and costs incidental to the acquisition;

(e) contractual, lease or licence rights that are not assignable except with the consent of the member or client or that it would not be reasonably practicable to assign and any documents evidencing those contractual, lease or licence rights;

(f) land and other real property of a time-sharing scheme and cash held in an account styled as a trust account with an Australian ADI or a body formed or incorporated outside Australia which is authorised to accept deposits and is prudentially regulated by a government or an agency of a government in relation to its deposit-taking activities (foreign ADI), general insurance products relating to real property and other assets and interests in other time-sharing schemes that are registered schemes or exempt from registration;

(g) mortgages or documents of title held under a mortgage where:

  (i) particular members or clients have a specific beneficial or legal interest in the mortgage;

  (ii) either:

    (A) the mortgage was acquired on the specific direction of the relevant members or clients (at the time of acquisition of the interest); or

    (B) the members or clients are able to withdraw from that mortgage for a period of 14 days after the date of disclosure of the mortgage terms to the members or clients; and

  (iii) it is not reasonable to expect that the mortgage will be sold before its discharge;

(h) a derivative and any contractual right (the margin repayment right) for the payment of any balance owing to the licensee in relation to dealings in derivatives, including any credit balance in a deposit-taking facility notified to the licensee or retail CCIV for margining those derivatives. All of the following must apply:

(i) the licensee or the retail CCIV has directed in writing the other party (the counterparty) to the derivative or, in the case of a derivative acquired through a financial market, the market participant acting for the licensee or the retail CCIV, that any amounts payable by the counterparty or market participant in connection with the derivative to or at the direction of the licensee or retail CCIV are to be made only:

(A) to the deposit-taking facility (if any); or

(B) to a complying custodian; or

Note: A 'complying custodian' means an eligible custodian, or a custodian that complies with s912AA(5)(a)(i) as notionally inserted under ASIC Instrument 2023/647 or a sub-custodian appointed by such a custodian.

(C) as the complying custodian directs;

(ii) if there is a margin repayment right held as scheme property or assets of a retail CCIV, the licensee has directed in writing that repayments are to be made only to, or as directed by, a complying custodian;

(iii) a complying custodian and, if the direction refers to a complying custodian, that complying custodian is given a copy of each written direction given for the purposes of RG 166.182(h)(i)–RG 166.182(h)(ii) within one business day and is given authority to require the counterparty or market participant to provide reasonable access to information about all transactions relating to the derivative;

(i) a security or interest in a managed investment scheme and any chose in action (associated chose in action) that is not a financial product related to the acquisition or holding of securities or interests in a managed investment scheme where:

(i) the security or interest is not of a class that is able to be traded on a financial market;

(ii) the security or interest or any associated chose in action may give rise to a liability for the holder under its terms; and

(iii) the licensee reasonably considers that it is not reasonably practicable to ensure the exclusion of liability of the person holding the security or interest or any associated chose in action that may arise from that holding;

Note: RG 166.182(i) will typically apply to some private equity assets.

(j) a deposit-taking facility with an Australian ADI or a foreign ADI, if the licensee reasonably considers that holding the deposit-taking facility by another person would raise unreasonable operational difficulties or be impracticable;

(k) a deposit-taking facility with an Australian ADI or a foreign ADI where the issuer of the deposit taking facility is a complying custodian that holds other scheme property of the scheme, IDPS property of the IDPS or assets of the retail CCIV; and

(l) any chose in action that is not a financial product and which is not reasonably practicable to assign other than to the relevant member or members of the scheme or retail CCIV or to the clients of the IDPS (as applicable), or together with other property that is a special custody asset.

Tier $500,000 class assets

RG 166.183 Tier $500,000 class assets means, in relation to a registered scheme or retail CCIV:

(a) real property (including mortgages or leases over or licences in relation to real property) that is intended to be kept for the whole duration of the scheme, or the relevant mortgage;

(b) physical assets which as a matter of reasonable practice can be held by a custodian (such as currency, valuables or precious metals);

(c) funds held in a regulated trust account that were received from members or shareholders within the previous:

(i) 6 months, if held for the purposes of the initial investment by the responsible entity as part of the scheme or as part of the CCIV, as relevant; or

(ii) 13 months, if held pending payment of expenses of the scheme or CCIV, as relevant; or

(d) special custody assets.

Value of fund assets

RG 166.184 The value of fund assets is calculated as the aggregate of:

(a) the value of the scheme property and any other assets (including mortgages held by members of a mortgage scheme and managed as part of the scheme) of the registered schemes operated by the licensee as responsible entity where the value is determined as follows:

(i) in the case of scheme property and other assets that would be recognised in preparing a balance sheet under Ch 2M—the value as if at that time such a balance sheet was being prepared;

(ii) otherwise in accordance with the market value; and

(b) the market value of the IDPS property of the IDPSs operated by the licensee; and

(c) the value of the assets of the retail CCIV operated by the licensee as corporate director, excluding the value of any securities acquired by the CCIV in respect of a sub-fund that are referable to shares in another sub-fund of the same CCIV (i.e. 'cross-invested shares'), where the value is determined as follows:

(i) in the case of assets that would be recognised in preparing a balance sheet for the sub-funds under Ch 2M—the value as if at that time such a balance sheet was being prepared;

(ii) otherwise in accordance with the market value.

Note 1: 'Assets' are as defined by applicable accounting principles. 'Scheme property' is defined in s9 of the Corporations Act.

Note 2: Sub-fund assets may include dividends or distributions to members of a sub-fund: see s1234B.

Specific definitions for retail OTC derivative issuers in calculating NTA

Average revenue

RG 166.185 For an AFS licensee with an authorisation to make a market in derivatives to retail clients and that owes liabilities or contingent liabilities by entering into derivatives with retail clients, average revenue means:

(a) in its first financial year of being authorised to provide those financial services, the licensee's forecast of its revenue from the calculation date for the remainder of the first financial year pro-rated to a 12-month period;

(b) in its second financial year of being authorised to provide those financial services, the average of the aggregate of the licensee's:

(i) actual revenue for the second financial year-to-date;

(ii) reasonable forecast of its revenue for the remainder of the second financial year; and

(iii) revenue in the first financial year from the calculation date pro-rated to a 12-month period;

(c) in its third financial year of being authorised to provide those financial services, the average of:

(i) the aggregate of the licensee's:

(A) revenue for the third financial year-to-date;

(B) reasonable forecast of its revenue for the remainder of the third financial year;

(ii) licensee's revenue for its second financial year; and

(iii) the revenue in the first financial year from the calculation date pro-rated to 12-month period; and

(d) for all subsequent financial years, the average of:

(i) the aggregate of the licensee's:

(A) revenue for the current financial year-to-date; and

(B) reasonable forecast of its revenue for the remainder of the current financial year;

(ii) the licensee's revenue for the last preceding financial year; and

(iii) the licensee's revenue for the second preceding financial year.

Cash or cash equivalents

RG 166.186 For an AFS licensee with an authorisation to make a market in derivatives to retail clients and that owes liabilities or contingent liabilities by entering into derivatives with retail clients, cash or cash equivalents includes:

(a) cash on hand, demand deposits and money deposited with an Australian ADI that is available for immediate withdrawal;

(b) short-term, highly liquid investments that are readily convertible to known amounts of cash and that are subject to an insignificant risk of changes in value;

(c) the value of any eligible undertaking provided by an eligible provider; and

(d) a commitment by an eligible provider to provide cash on request within 5 business days:

(i) that will not expire within the next 6 months and that cannot be withdrawn by the provider without giving at least 6 months written notice to the person to whom the commitment is made; and

(ii) in relation to which any cash provided is not repayable for at least 6 months.

Eligible provider

RG 166.187 For an AFS licensee with an authorisation to make a market in derivatives to retail clients and that owes liabilities or contingent liabilities by entering into derivatives with retail clients, eligible provider means:

(a) an Australian ADI;

(b) an Australian government (i.e. the government of the Commonwealth or of a state or territory), the government of a country that is a member of the Organisation for Economic Co-operation and Development (OECD

country government), or an agency or instrumentality of an Australian or OECD country government;

Note: We would consider you to be an agency or instrumentality of a government if you represent that government and you are conferred with all the powers, privileges, rights and remedies, or their equivalent, of that government.

(c) a foreign deposit-taking institution:

(i) that is regulated by a regulator approved in writing by ASIC for this purpose; or

(ii) approved in writing by ASIC for this purpose;

(d) a CS facility licensee within the meaning of s9; or

(e) an entity we approve in writing for this purpose.

Liquid assets

RG 166.188 For an AFS licensee with an authorisation to make a market in derivatives to retail clients and that owes liabilities or contingent liabilities by entering into derivatives with retail clients, liquid assets means either:

(a) cash or cash equivalents, other than those defined at RG 166.170(d); or

(b) an asset the issuer can reasonably expect to realise for its market value within 6 months.

The cash, cash equivalents or assets must be free from encumbrances and, in the case of receivables, free from any right of set-off.

Key terms

Term	Meaning in this document
adequately secured	See RG 166.100 in Section E for the meaning of this term
ADI	An authorised deposit-taking institution—a corporation that is authorised under the *Banking Act 1959*. ADIs include: • banks; • building societies; and • credit unions
adjusted assets	See RG 166.101 in Section E for the meaning of this term
adjusted liabilities	See RG 166.102–RG 166.104 in Section E for the meaning of this term
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition in s9.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
approved foreign market	A foreign market that we will approve for the purposes of RG 166.100(a)(i)(A)(III): see RG 166.137–RG 166.138 Note: This is different from an ASIC-approved foreign market under RG 72.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Instrument 2017/339 (for example)	An ASIC legislative instrument (in this example numbered 2017/339)
ASLF	Adjusted surplus liquid funds—see RG 166.105–RG 166.136 in Section E for the meaning of this term
ASX	ASX Limited (ACN 008 624 691) or the exchange market operated by ASX Limited
ASX 24	The exchange market formerly known as Sydney Futures Exchange (SFE), operated by Australian Securities Exchange Limited (ACN 000 943 377)
ASX Clear	ASX Clear Pty Limited (ACN 001 314 503). A CS facility licensee
ASX Clear (Futures)	ASX Clear (Futures) Pty Limited (ACN 050 615 864). A CS facility licensee

Term	Meaning in this document
Australian ADI	An Australian authorised deposit-taking institution—has the meaning given in s9 of the Corporations Act
average corporate director, responsible entity and IDPS revenue	See RG 166.167 in Section E for the meaning of this term
average revenue	See RG 166.185 in Section E for the meaning of this term
average value of fund assets	See RG 166.168 in Section E for the meaning of this term
Basel Committee guidelines	The Basel Committee on Banking Supervision's publications *Core Principles for Effective Banking Supervision* (September 1997) and *Capital Accord* (July 1988, as amended September 1997) or later publications by the Basel Committee
body regulated by APRA	Has the meaning given in s3(2) of the *Australian Prudential Regulation Authority Act 1998*
calculation date	See RG 166.169 in Section E for the meaning of this term Note: This term only applies to responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers.
cash	See RG 166.139–RG 166.140 in Section E for the meaning of this term when calculating the cash needs requirement (Option 1)
cash flow	See RG 166.141 in Section E for the meaning of this term when calculating the cash needs requirement
cash or cash equivalents (responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers)	See RG 166.170 in Section E for the meaning of this term
cash or cash equivalents (retail OTC derivative issuers)	See RG 166.186 in Section E for the meaning of this term
Cboe	Cboe Australia Pty Ltd (ACN 129 584 667) or the exchange market operated by Cboe
CCIV	A corporate collective investment vehicle—a company that is registered as a corporate collective investment vehicle under the Corporations Act Note: This is a definition in s9.

Term	Meaning in this document
CCIV assets	Means the money and property of a CCIV, including assets of the CCIV's sub-funds
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
clearing participant	A participant as defined in s768A of the Corporations Act in relation to a CS facility where that clearing and settlement facility is a licensed CS facility
complying custodian	Has the meaning given in ASIC Instrument 2023/647 (see also RG 166.182 in Section E)
corporate director	The company named in ASIC's record of the CCIV's registration as the corporate director or temporary corporate director of the CCIV Note: This is a definition in s1224(3) of the Corporations Act.
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
Corporations Regulations	*Corporations Regulations 2001*
crowd-funding service	Has the meaning given in s766F of the Corporations Act
CS facility	A clearing and settlement facility as defined in s768A of the Corporations Act
CS facility licensee	A person who holds an Australian CS facility licence Note: This is a definition in s9 of the Corporations Act.
CSF	Crowd-sourced funding
CSF intermediary	An AFS licensee whose licence expressly authorises the licensee to provide a crowd-funding service Note: See s738C of the Corporations Act.
custodial or depository services revenue	Has the meaning given in ASIC Instrument 2023/648 (see also RG 166.171 in Section E) Note: This term only applies to responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers.
custodial service	The service provided under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement (whether or not there are also other parties to any such arrangement), under which a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client unless the service is not a custodial service under s766E(3) of the Corporations Act Note: This is a definition in s766E for the term 'provide a custodial or depository service'.

Term	Meaning in this document
custodian	A person who holds scheme property or assets of a registered scheme, CCIV assets, IDPS property or financial products or a beneficial interest in financial products held under a custodial service
eligible custodian	See RG 166.172 in Section E for the meaning of this term Note: This term only applies to responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers.
eligible provider (general definition)	See RG 166.142–RG 166.146 in Section E for the meaning of this term
eligible provider (responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers)	See RG 166.173 in Section E for the meaning of this term
eligible provider (retail OTC derivative issuers)	See RG 166.187 in Section E for the meaning of this term
eligible undertaking	See RG 166.147–RG 166.152 in Section E for the meaning of this term
estate assets	Assets (including assets in common funds) of an estate in relation to which a trustee company is performing estate management functions
estate management functions	Has the meaning given in s601RAC(2) of the Corporations Act, and includes the following functions: • acting as a trustee of any kind, or otherwise administering or managing a trust; • acting as an executor or administrator of a deceased estate; • acting as an agent, attorney or nominee; • acting as a receiver, controller or custodian of property; • otherwise acting as a manager or administrator (including in the capacity as guardian) of the estate of an individual; and • acting in any other capacity prescribed by the regulations for the purpose of this paragraph
excluded assets	See RG 166.153–RG 166.163 in Section E for the meaning of this term
FEX	FEX Global Pty Ltd (ACN 124 127 224) or the market operated by FEX

Term	Meaning in this document
financial product	Generally, a facility through which, or through the acquisition of which, a person does one or more of the following: • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition. In addition to the general categories above, this specifies certain things as being included or excluded from the definition.
financial services business revenue	Has the meaning given in ASIC Instrument 2023/648 or any instrument that amends or replaces that instrument (see also RG 166.174 in Section E) Note: This term only applies to responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers.
first financial year	See RG 166.175 in Section E for the meaning of this term Note: This term only applies to responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers.
foreign exchange contract	Has the meaning given in s761A of the Corporations Act Note: This definition includes derivatives (as defined in s761D) that are foreign exchange contracts (as defined in s761A) and may, for example, include a contract for delivery of foreign currency, where the rate at which the exchange takes place is determined with reference to interest rates or interest rate differentials. It does not include a contract that is to be settled by adjustment rather than the delivery of any foreign currency.
foreign exchange dealer	A person who carries on a business of entering, as principal, into foreign exchange contracts in Australia
fund assets	See RG 166.176 in Section E for the meaning of this term
governing body	The board of directors, committee of management or other governing body of the licensee, including, in relation to a licensee who is a natural person, that person
IDPS	An investor directed portfolio service as defined in *ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/669* or any instrument that amends or replaces that instrument
IDPS property	Property acquired or held through an IDPS other than property held by a client
incidental provider	Has the meaning given in ASIC Instrument 2023/648 (see also RG 166.177 in Section E) Note: This term only applies to responsible entities, corporate directors of retail CCIVs, IDPS operators, and licensed custodial or depository service providers.
licensed CS facility	A CS facility the operation of which is authorised by an Australian CS facility licence Note: This is a definition in s9 of the Corporations Act.

Term	Meaning in this document
licensed custodial or depository service provider	An AFS licensee authorised to provide a custodial or depository service
licensed market	A financial market the operation of which is authorised by an Australian market licence Note: This is a definition in s9 of the Corporations Act.
licensee	A person who holds an AFS licence
licensee obligations	The obligations of an AFS licensee under Ch 7 of the Corporations Act
limited AFS licence	An AFS licence that only includes authorisations to provide one or more limited financial services
limited AFS licensee	A person who holds a limited AFS licence
limited financial services	Has the meaning given in regs 7.6.01BA(3), 7.6.04(3), 7.8.12A(4) and 7.8.14B(3) of the Corporations Regulations
liquid assets (responsible entities, corporate directors of retail CCIVs, IDPS operators, and custodial or depository service providers)	See RG 166.178 in Section E for the meaning of this term
liquid assets (retail OTC derivative issuers)	See RG 166.188 in Section E for the meaning of this term
margin lending facility	Has the meaning given in s761EA(1) of the Corporations Act, and includes: • a standard margin lending facility; or • a non-standard margin lending facility; or • a facility declared by ASIC to be a margin lending facility under s761EA(8) of the Corporations Act
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
market licensee	The holder of an Australian market licence Note: This is a definition in s9 of the Corporations Act.
market participant	A participant of a market Note: Participant has the meaning given by s767A(4) and (5) of the Corporations Act.
non-standard margin lending facility	Has the meaning given in s761EA(5) of the Corporations Act

Term	Meaning in this document
NSX	National Stock Exchange of Australia Limited (ACN 000 902 063) or the exchange market operated by NSX
NTA	Net tangible assets—see RG 166.164 in Section E for the meaning of this term
OECD country government	The government of a country that is a member of the Organisation for Economic Co-operation and Development
OTC	Over the counter
PF 209 (for example)	An ASIC pro forma (in this example numbered 209)
Pt 7.8 (for example)	A part of the Corporations Act (in this example numbered 7.8)
RBA	Reserve Bank of Australia
reg 7.6.04 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.6.04)
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
regulated superannuation fund	Has the meaning given in the SIS Act
regulated trust account	See RG 166.180 in Section E for the meaning of this term Note: This term only applies to responsible entities, IDPS operators and corporate directors of retail CCIVs.
relevant trust	See RG 166.165 in Section E for the meaning of this term for the cash needs requirement
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
retail CCIV	A CCIV that satisfies the retail CCIV test in s1222K of the Corporations Act or is notified as a retail CCIV under s1222L of the Corporations Act Note: This is a definition contained in s1222J.
RG 136 (for example)	An ASIC regulatory guide (in this example numbered 136)
s912A (for example)	A section of the Corporations Act (in this example numbered 912A), unless otherwise specified
secured property	Has the meaning given in s761EA(2)(c) of the Corporations Act
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SLF	Surplus liquid funds—see RG 166.166 in Section E for the meaning of this term
special custody assets	See RG 166.182 in Section E for the meaning of this term Note: This term only applies to responsible entities, corporate directors of retail CCIVs and IDPS operators.

Term	Meaning in this document
standard margin lending facility	Has the meaning given in s761EA(2) of the Corporations Act
sub-fund	Has the meaning given in s1222Q of the Corporations Act Note: A sub-fund is established on the day on which it is registered: see s1222T.
SSX	Sydney Stock Exchange Limited (ACN 080 399 220) or the exchange market operated by SSX
Tier $500,000 class assets (responsible entities, corporate directors of retail CCIVs and IDPS operators)	See RG 166.183 in Section E for the meaning of this term
traditional services	Traditional trustee company services—has the meaning given in s601RAC(1) of the Corporations Act, and includes: • performing estate management functions (as defined in s601RAC(2)); • preparing a will, a trust instrument, a power of attorney or an agency arrangement; • applying for probate of a will, applying for grant of letters of administration, or electing to administer a deceased estate; • establishing and operating common funds; and • any other services prescribed by the Corporations Regulations as traditional trustee company services
transferred securities	Has the same meaning as in s761EA(5)(a) of the Corporations Act
trustee company	Has the same meaning as in s601RAB of the Corporations Act
value of fund assets	See RG 166.184 in Section E for the meaning of this term
wholesale CCIV	A CCIV that is not a retail CCIV Note: This is a definition in s1222J.
wholesale client	A client who is not a retail client as defined in s761G and 761GA of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations

Related information

Headnotes

adjusted surplus liquid funds requirement, AFS licence, AFS licence conditions, AFS licensee, ASLF requirement, audit requirement, Australian financial services licence, cash and cash equivalents, cash needs requirement, CCIV, client assets, corporate collective investment vehicle, crowd-sourced funding, CSF, CSF intermediaries, custodial or depository services, financial resources, financial requirements, foreign exchange dealers, holding client money, IDPS, investor directed portfolio service, licensed custodial or depository service provider, licensing, limited AFS licence, limited AFS licensee, limited financial services, market participants, net tangible assets, NTA, NTA requirement, reporting triggers, responsible entities, risk exposure calculation system, risk management systems, SLF requirement, solvency and positive net assets requirement, surplus liquid funds requirement, traditional services, transactions with a client, trustee companies

Regulatory guides

RG 1 *Applying for and varying an AFS licence*

RG 36 *Licensing: Financial product advice and dealing*

RG 51 *Applications for relief*

RG 72 *Foreign securities: Disclosure relief*

RG 78 *Breach reporting by AFS licensees and credit licensees*

RG 104 *AFS licensing: Meeting the general obligations*

RG 105 *AFS licensing: Organisational competence*

RG 121 *Doing financial services business in Australia*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 133 *Funds management and custodial services: Holding assets*

RG 146 *Licensing: Training of financial product advisers*

RG 148 *Platforms that are managed investment schemes and nominee and custody services*

RG 167 *AFS licensing: Discretionary powers*

RG 168 *Product Disclosure Statements: Disclosure and other obligations*

RG 175 *AFS licensing: Financial product advisers—Conduct and disclosure*

RG 176 *Foreign financial services providers*

RG 182 *Dollar disclosure*

RG 183 *Codes of conduct for the financial services and credit sectors*

RG 192 *Licensing: Wholesale equity schemes*

RG 262 *Crowd-sourced funding: Guide for intermediaries*

RG 265 *Guidance on ASIC market integrity rules for participants of securities markets*

RG 266 *Guidance on ASIC market integrity rules for participants of futures markets*

RG 271 *Internal dispute resolution*

Consultation papers

CP 388 *Net tangible assets requirement for responsible entities*

Legislative instruments and pro formas

ASIC Corporations (Financial Requirements for CSF Intermediaries) Instrument 2017/339

ASIC Corporations (Licence Conditions—Treatment of Lease Assets) Instrument 2021/229

ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705

ASIC Corporations (Financial Requirements for Responsible Entities, IDPS Operators and Corporate Directors of Retail CCIVs) Instrument 2023/647

ASIC Corporations (Financial Requirements for Custodial or Depository Service Providers) Instrument 2023/648

ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/669

ASIC Corporations (Amendment) Instrument 2026/708

ASIC Market Integrity Rules (Capital) 2021

PF 63 *Deed of subordination*

PF 209 *Australian financial services licence conditions*

Legislation

Australian Prudential Regulatory Authority Act 1998, s3

Corporations Act 2001, Chs 2L, 2M, 5D, 7; Pts 5.7B (Div 3), 7.2A, 7.6, 7.8 (Divs 2 and 3); s9, 601FC, 727, 761D, 761F, 761FA, 766E, 767A, 912A, 912AA, 912AB, 912AH, 912B, 912C, 912DAA, 981B, 985B, 989B, 1016B, 1017B, 1101A, 1224D, 1233H, 1234B, 1241E

Corporations Regulations 2001, regs 7.1.33, 7.1.40, 7.6.01, 7.6.04, 7.8.07, 7.8.12A, 8B.5.10

Superannuation Industry (Supervision) Act 1993, s10, 123

Standards

APS 111 *Capital adequacy: Measurement of capital*

Media and information releases

IR 03-26 *Alternative means to satisfy cash needs requirement under PS 166*

IR 03-44 *ASIC provides further options to meet cash needs requirements*

Appendix 1: Market and clearing participants

Key points

Our financial requirements will not apply to you as long as:

- if you are a market participant of ASX, ASX 24, Cboe, FEX, NSX or SSX, you comply with the financial requirements in the *ASIC Market Integrity Rules (Capital) 2021* (taking into account any waiver by ASIC); or
- if you are a market participant in another licensed financial market, or a clearing participant in a licensed CS facility, we are satisfied that the financial requirements of the licensed market or CS facility are an adequate substitute for the financial requirements in the AFS licence.

We may impose additional conditions in certain circumstances.

Financial requirements under market integrity rules

RG 166.189 Market participants (other than principal traders or clearing participants) of the ASX, ASX 24, Cboe, FEX, NSX and SSX markets are subject to financial requirements under ASIC market integrity rules: see Pt 7.2A of the Corporations Act, Part 8.2 of *ASIC Market Integrity Rules (Capital) 2021*, Regulatory Guide 265 *Guidance on ASIC market integrity rules for participants of securities markets* (RG 265) and Regulatory Guide 266 *Guidance on ASIC market integrity rules for participants of futures markets* (RG 266).

Note: In this appendix, and in this guide more broadly, we refer to 'our financial requirements' as the financial requirements we apply to AFS licensees using ASIC's statutory power to modify Pt 7.6, or by AFS licence conditions. These should be distinguished from the financial requirements applying to market and clearing participants via ASIC market integrity rules or the rules of the relevant market.

RG 166.190 For an ASX, ASX 24, Cboe, FEX, NSX or SSX market participant (other than a principal trader or a clearing participant), we consider the financial requirements in the ASIC market integrity rules are an adequate substitute for the financial requirements in the AFS licence in the provision of relevant financial services. This is because the financial requirements in the ASIC market integrity rules for the ASX, ASX 24, Cboe, FEX, NSX and SSX markets take into account and address the risks arising from other forms of business beyond stockbroking.

RG 166.191 If in future we make ASIC market integrity rules imposing financial requirements on licensed financial markets other than ASX, ASX 24, Cboe, FEX, NSX, or SSX, we will consider whether those financial requirements are an adequate substitute for the financial requirements in the AFS licence, having regard to the nature of the market and other relevant factors.

How will we assess the adequacy of a licensed market or CS facility's financial requirements?

RG 166.192 The financial requirements in the AFS licence will not apply to you if we are satisfied that the licensed market's or licensed CS facility's financial requirements are an adequate substitute for the financial requirements in the AFS licence and you are a participant of:

(a) a licensed financial market other than ASX, ASX 24, Cboe, FEX, NSX or SSX (or any other licensed financial market for which ASIC makes market integrity rules imposing financial requirements that ASIC considers an adequate substitute for the financial requirements in the AFS licence); or

(b) a licensed CS facility.

RG 166.193 When assessing whether the financial requirements with which you must comply as a market or clearing participant are an adequate substitute for our financial requirements, we will consider whether these requirements are at least equivalent in effectiveness to the financial requirements:

(a) we impose on other licensees; and

(b) that apply to market or clearing participants in major overseas jurisdictions.

RG 166.194 In particular, we will consider the obligations that the market or clearing participant will have as a licensee, including the obligation to:

(a) have available adequate financial resources to conduct its financial services business in compliance with the Corporations Act (including carrying out supervisory arrangements);

(b) have adequate risk management systems, which would include addressing certain financial risks (see RG 166.21); and

(c) comply with our licence condition requiring the licensee to comply with financial requirements under the market or CS facility's operating rules.

RG 166.195 We will focus on the operating rules of the licensed market or CS facility and how they are enforced. We will also take into account the extent and nature of waivers that the market licensee or CS facility licensee gives to its market or clearing participants.

RG 166.196 We may consider that the relevant financial requirements applying to a market or clearing participant adequately address the objectives of our own financial requirements for the licensee if the licensee only conducts a financial services business as a market or clearing participant, or incidentally to this role. In this case, our financial requirements will not apply as long as the licensee limits its financial services business to participating in that licensed market or CS facility and incidental business that is supervised by the relevant market or CS facility licensee.

RG 166.197 We set out below which licensed markets or CS facilities we are satisfied have financial requirements (other than financial requirements in the ASIC market integrity rules) that are an adequate substitute for the financial requirements in the AFS licence: see RG 166.201–RG 166.204.

When will we assess or review adequacy?

RG 166.198 We will assess the adequacy of the financial requirements applying to market or clearing participants:

(a) when an application for an Australian market or CS facility licence is made, if the applicant requests it;

(b) if we have previously assessed a market or CS facility licensee's financial requirements to be an adequate substitute for our requirements, but there is a material change in:

(i) operating rules;

(ii) the market's or CS facility's licence conditions;

(iii) the market or CS facility licensee's conduct (particularly supervision); or

(iv) our policy on financial requirements for licensees; or

(c) at another time, if the market or CS facility licensee asks us to.

RG 166.199 The fact that an amendment to operating rules has not been disallowed does not prevent us from reconsidering our view of the market or CS facility licensee's financial requirements on the basis of the new rule.

RG 166.200 We may also decide to review the adequacy of a market or CS facility licensee's financial requirements, or the financial requirements in ASIC market integrity rules at any time.

Which markets and CS facilities currently have financial requirements that are an adequate substitute?

ASX Clear Pty Limited

RG 166.201 We consider that the financial requirements of ASX Clear Pty Limited (ASX Clear) are an adequate substitute for the financial requirements in the AFS licence in the provision of relevant financial services. This applies only to a clearing participant in the licensed CS facility operated by ASX Clear as defined in the operating rules of ASX Clear.

RG 166.202 Like the financial requirements in the ASIC market integrity rules, the financial requirements of ASX Clear take into account and address the risks arising from other forms of business beyond stockbroking.

ASX Clear (Futures) Pty Limited

RG 166.203 We consider that the requirements of ASX Clear (Futures) Pty Limited (ASX Clear (Futures)) are an adequate substitute for our requirements only for licensees that restrict their financial services business to participating in ASX Clear (Futures) (and, if the clearing participant is also a market participant, in the ASX 24 market) and incidental business. This applies only to a clearing participant in the licensed CS facility operated by ASX Clear (Futures) as defined in the operating rules of ASX Clear (Futures).

RG 166.204 The financial requirements of ASX Clear (Futures) are based on NTA levels and are not directed to financial resources that may be needed as a result of other business.

How does our policy affect your AFS licence?

RG 166.205 Even if the financial requirements in the ASIC market integrity rules apply to you as a participant in a licensed market, or you are a participant in a licensed market or CS facility that we consider has financial requirements that are an adequate substitute for our financial requirements, we will still include our standard financial requirements in your licence conditions. However, we will also impose additional conditions providing that the standard requirements do not apply as long as:

(a) you comply with the financial requirements in the ASIC market integrity rules or the licensed market's or CS facility's operating rules, taking into account any waiver by ASIC or the market or CS facility licensee;

(b) if you are a market participant of ASX 24 and/or clearing participant of ASX Clear (Futures), you restrict your financial services business to participating in the ASX 24 market and/or ASX Clear (Futures), and incidental business;

(c) for each financial year during which you relied on being a market or clearing participant, and at other times for a period we request, you give ASIC an auditor's opinion on a positive assurance basis stating that:

(i) you were a market or clearing participant at all times during the relevant period during which you relied on being a market or clearing participant; and

(ii) if you are a market participant of ASX 24 and/or clearing participant of ASX Clear (Futures), you restricted your financial services business to participating in the ASX 24 market and/or ASX Clear (Futures) and incidental business throughout any part of the relevant period during which you relied on being a market or clearing participant.

What if the requirements cease to be adequate?

RG 166.206 If we consider that the financial requirements of a licensed market or CS facility are no longer an adequate substitute for our financial requirements, we may give you notice in writing that our financial requirements will apply from a specified future date. Under your licence conditions, this notice will mean that, from that date, our financial requirements apply to you.

Appendix 2: Responsible entities

Key points

If you are a responsible entity authorised to operate a managed investment scheme, you must meet:

- the standard solvency and positive net assets requirement;
- a tailored cash needs requirement;
- a tailored audit requirement;
- a net tangible assets (NTA) requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.207 A responsible entity authorised to operate a managed investment scheme must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) a tailored cash needs requirement (see RG 166.210–RG 166.211);

(c) a tailored audit requirement (see RG 166.213–RG 166.215);

(d) a net tangible assets (NTA) requirement with requirements for holding cash or cash equivalents and holding liquid assets (see RG 166.216–RG 166.236); and

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note: The financial requirements for responsible entities, IDPS operators and corporate directors are set out in ASIC Instrument 2023/647.

RG 166.208 If you are required as a licensee to have assets to meet financial requirements under ASIC Instrument 2023/647, you can also count those assets for another applicable financial requirement. If multiple financial requirements apply based on the financial products and services you offer, you will need to satisfy the highest requirement. For example, in addition to the NTA requirement for a responsible entity, you might also be subject to at least one other NTA requirement under Appendices 4–9. If this is the case, you will need to satisfy the NTA requirement with the highest dollar value.

RG 166.209 If you are a responsible entity and also an IDPS operator and/or corporate director, please also see Appendices 3 and 10.

The tailored cash needs requirement

Note: This requirement replaces the standard cash needs requirement in Section B of this guide.

RG 166.210 You must meet the tailored cash needs requirement for AFS licensees authorised as responsible entities. You will need to prepare a cash flow projection (see Table 10), which covers a period of at least 12 months—that is, you must assess your cash needs over at least a 12-month forward period.

RG 166.211 You must update your cash flow projection when:

(a) those cash flows cease to cover the next 12 months;

(b) there is a material change; or

(c) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 in Table 10.

RG 166.212 Your board must approve the cash flow projection at least quarterly.

Table 10: The tailored cash needs requirement for responsible entities

Requirement	You must meet all these requirements
Projection	**1** Prepare a projection of your cash flows over at least the next 12 months based on your reasonable estimate of what is likely to happen over this term. Note: You can take into account, for example, the following factors in preparing your projection if you reasonably believe they are likely to be available: assets you hold at the time the projection starts that can be used to pay your liabilities; and inflows you may receive, including income from your business, amounts that you may borrow (e.g. under an overdraft), and amounts that you may receive from an eligible provider under an eligible undertaking. **2** Document your calculations and assumptions on which the projection is based, and describe in writing why they are the appropriate assumptions. Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business. **3** Update your projection of cash flows when: (a) those cash flows cease to cover the next 12 months; (b) there is a material change; or (c) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 below. Note: A 'material change' is a change for which it would be reasonable for you to plan by updating your cash flow projection. **4** Have your cash flow projection approved by the board of directors at least quarterly as satisfying the requirements in this cash needs requirement.

Requirement	You must meet all these requirements
Financial resources	**5** Document whether, based on your projection of cash flows, you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 12 months, including any additional liabilities you project will be incurred during that term. **6** Document whether, based on the projection of your cash flows, you will hold at all times during the period to which the projection relates, in cash or cash equivalents, an amount equal to or greater than the current amount you are required to hold in cash or cash equivalents: see RG 166.216–RG 166.328.

The tailored audit requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

RG 166.213 All AFS licensees must give ASIC an audit report under s989B(3) for each financial year that includes information about compliance with the financial requirements that apply to you: see Section B. If you do not have to provide an audit report under s989B(3), you must still give ASIC an audit report about compliance with the financial requirements. You must also give ASIC this information if we request it for a specified period at another time: see s912C(2).

Note: For the form of this compliance report applying to AFS licensees generally, see PF 209, condition 28.

RG 166.214 As an AFS licensee that is a responsible entity, the information you must include in your audit report reflects the financial requirements that apply to you: see ASIC Instrument 2023/647.

RG 166.215 Your audit report must include statements by a registered company auditor addressed to you and ASIC that, for the relevant period:

(a) in the auditor's opinion, you:

(i) complied with any financial requirements applying to you and had the cash flow projection approved by the board at least quarterly;

(ii) had, at all times, cash flow projections (covering at least the following 12 months) that purported to, and on their face appeared to, demonstrate your solvency; and

(iii) correctly calculated the cash flow projections based on the assumptions you used for the projection; and

(b) following an examination of the calculations, assumptions and description used in preparing the cash flow projection, including the document prepared under items 5 and 6 in Table 10, the auditor has no reason to believe that:

(i) you did not have adequate systems for managing the risk of having insufficient financial resources to meet the financial requirements applying to you;

(ii) you failed to document the calculations and assumptions used in preparing the cash flow projections and describe why they are appropriate;

(iii) you will not have access when needed to enough financial resources to meet your liabilities over the projected term of at least 12 months or that you will not hold at all times during the period to which the projection relates, in cash or cash equivalents, an amount equal to or greater than the current amount you are required to hold in cash or cash equivalents; and

(iv) the assumptions you adopted for your cash flow projections were unreasonable.

Note: We refer to the auditor statements in RG 166.215(a) as 'positive assurance' and the statements in RG 166.215(b) as 'negative assurance'. We expect that when giving negative assurance for the purposes of RG 166.215(b), the auditor will take into consideration any information from the audit for positive assurance.

The NTA requirement

RG 166.216 If you are a responsible entity, you must meet the NTA requirement in Table 11 that applies to you. This requirement also applies in relation to any IDPS or retail CCIVs you operate: see Appendices 3 and 10.

Note: Changes to the NTA requirement will commence on 1 July 2027. The minimum financial thresholds in the requirement (see the dollar amounts referred to in RG 166.217, RG 166.221, Table 11, RG 166.223 and RG 166.231) will be increased to reflect inflation since 2013 (when they were last amended). In addition, annual indexation will be introduced to help ensure the thresholds continue to reflect their real value over time. For more information, see *ASIC Corporations (Amendment) Instrument 2026/708*.

RG 166.217 Our position is that you must meet the NTA requirements in Table 11 at all times while you hold an authorisation for the relevant financial products and services, even during periods where you are not actively offering that product or service. If at any time you do not currently operate any registered schemes, IDPS or retail CCIVs, as applicable, you will still need to meet your NTA requirement (of at least $150,000).

RG 166.218 When determining the 0.5% average value of fund assets test, you must calculate the required amount of NTA based on:

(a) the value of all scheme property and other assets of schemes you operate as a responsible entity;

(b) if you are also an IDPS operator, the value of all IDPS property; and

(c) if you are also a corporate director of a retail CCIV, the value of assets of all sub-funds in retail CCIVs you operate as a corporate director.

Note: You do not need to include the value of fund assets of any scheme, IDPS or retail CCIV you no longer operate.

RG 166.219 In determining the value of the assets, the following apply:

(a) The value of the assets will generally be the amount that would be recognised in a balance sheet for members under Ch 2M as if, at that time, such a balance sheet was being prepared. This amount should reflect the carrying value of the asset. For example, for assets such as property, plant and equipment, the carrying amount would be the value of the asset minus accumulated depreciation and impairment losses.

(b) The 'gross value' of the assets is to be used rather than the net value. For an asset that is subject to a liability, such as a property that is subject to a mortgage, you must use the amount that would be shown in a balance sheet for that asset and are not permitted to deduct the amount of a liability that is connected to an asset.

RG 166.220 When determining the 10% of average licensee revenue test, the revenue is all of your revenue as a licensee (within the meaning given by the accounting standards). This also includes any amounts paid or payable to agents for services performed on your behalf in relation to any scheme, IDPS or retail CCIV you operate as licensee.

RG 166.221 Of the required NTA (as applicable to you), you must hold:

(a) cash or cash equivalents valued at—at least the greater of:

(i) $150,000; or

(ii) 50% of the required NTA; and

(b) liquid assets to the amount of required NTA—this may include cash or cash equivalents, other than a commitment to provide cash from an eligible provider that can be drawn down within 5 business days upon request, and will not expire within the next 6 months.

Table 11: NTA requirements for responsible entities

Type of responsible entity	NTA requirement
You are a responsible entity only **OR** You are a responsible entity and also an IDPS operator or corporate director of a retail CCIV **AND** You satisfy any of the requirements relating to custody in RG 166.223(a)–RG 166.223(d).	**1** You must hold at all times minimum NTA of the greater of: (a) $150,000; (b) 0.5% of the average value of fund assets (based on scheme property of the registered scheme(s) you operate **OR** all scheme property, IDPS property and CCIV assets, as applicable) up to $5 million NTA; or (c) 10% of your average revenue.

Type of responsible entity	NTA requirement
You are a responsible entity only **OR** You are a responsible entity and also an IDPS operator or corporate director of a retail CCIV **AND** You do not satisfy any of the requirements relating to custody in RG 166.223(a)–RG 166.223(d).	**2** You must hold at all times minimum NTA of the greater of: (a) $10 million; or (b) 10% of your average revenue. Note: As a result of s766E(3)(b), the operation of a registered scheme or the holding of scheme assets by a responsible entity is not a 'custodial or depository' service. Consistent with the focus of regulation of the operation of registered schemes being on the responsible entity, we impose the responsibility for ensuring adequate financial standing of custodians for registered schemes on the responsible entity.

Note: See the note under RG 166.216 for information about the changes to the NTA requirement that will commence on 1 July 2027.

Definitions for the NTA requirement

RG 166.222 Some definitions for calculating the required NTA for responsible entities are in Section E: see RG 166.99–RG 166.184. Relevant definitions include:

(a) average revenue;

(b) average value of fund assets;

(c) calculation date;

(d) cash or cash equivalents;

(e) eligible provider;

(f) first financial year;

(g) fund assets;

(h) liquid assets;

(i) revenue; and

(j) value of fund assets.

Requirements relating to custody

RG 166.223 You must meet the NTA requirement in item 2 of Table 11 unless any of the following requirements are satisfied:

(a) all the scheme property of registered schemes (or IDPS property of IDPS or assets of retail CCIVs) operated are held by a custodian (or a sub-custodian appointed by that custodian) who you reasonably believe meets the financial requirements for AFS licensees authorised to provide a custodial or depository service other than as an incidental provider (see Appendix 4), or by an eligible custodian;

(b) all the scheme property of registered schemes (or IDPS property of IDPS or assets of retail CCIVs) operated are Tier $500,000 class assets, each of which are held by you (or in relation to the retail CCIV, the

retail CCIV) or a custodian appointed by you (or a sub-custodian appointed by that custodian), and:

(i) if you hold the scheme property (or in relation to a retail CCIV—the retail CCIV holds the assets), you (or the retail CCIV as the holder of the retail CCIV assets) have at least $500,000 NTA; or

(ii) if a custodian or sub-custodian holds the scheme property (or assets of the retail CCIV), the custodian has at least $500,000 NTA, or is an eligible custodian; or

(c) the only scheme property (or IDPS property or assets of the retail CCIV) not held under RG 166.223(a) or RG 166.223(b) are special custody assets, each of which is held by:

(i) you (or in relation to assets of the retail CCIV—the retail CCIV);

(ii) a custodian that has the level of NTA that you are required to have (or a sub-custodian appointed by that custodian) or an eligible custodian;

(iii) a custodian (or sub-custodian appointed by that custodian) and the assets fall within:

(A) paragraph (a), (c) or (f) of the definition of 'special custody assets'; or

(B) paragraph (d) of the definition of 'special custody assets' where the trust account is a regulated trust account; or

Note 1: For the definition of 'eligible custodian', 'special custody assets' and 'Tier $500,000 class assets', see RG 166.172 and RG 166.182–RG 166.183 in Section E.

Note 2: For additional details on the NTA requirements, see ASIC Instrument 2023/647.

(d) you do not currently operate any registered schemes (or IDPS or retail CCIVs).

RG 166.224 If you have obtained written assurance within the preceding 13 months from a custodian that is authorised to provide custodial or depository services that, at the time the assurance is given, it complies with the financial requirements for custodians that are not incidental providers (see Appendix 4), you are taken to have the reasonable belief referred to in RG 166.223(a) in relation to that custodian.

RG 166.225 If the custodian is not an AFS licensee authorised to provide a custodial or depository service, you must meet the NTA requirement in item 2 of Table 11 unless you have received:

(a) written assurance within the preceding 13 months from the custodian regarding its compliance with the financial requirements that apply to custodians that are authorised to provide custodial or depository services other than as incidental providers; and

(b) a report from a registered company auditor in respect of a period of at least 12 months, confirming the custodian's compliance with these requirements on terms reflecting the audit report required for AFS licensees.

RG 166.226 The audit report must be received upon appointment in the first instance and must apply to a period not more than 16 months before the date it is received by you.

Note: The operation of a registered scheme or holding assets of a registered scheme does not constitute a custodial or depository service under s766E of the Corporations Act and therefore custodial or depository services authorisation is not required in order to provide these services.

RG 166.227 If you are relying on holding a reasonable belief that a custodian meets financial requirements for custodians to meet a lower NTA requirement and at any time you are aware of information that makes you suspect that the financial requirements for custodians will be not met by the custodian, you will need to obtain further confirmation and, where appropriate, an audit report addressing compliance with the financial requirements, before you will be taken to have the reasonable belief.

Underlying principles of the NTA requirement

RG 166.228 The NTA requirement generally aims to:

(a) ensure that you have adequate financial resources to meet your operating costs (e.g. the costs of ensuring compliance with the Corporations Act) throughout the life of your registered schemes you operate;

(b) align your interests and the interests of scheme members by ensuring that you are an entity of substance and that your shareholders have sufficient equity in the business to have a real incentive to ensure its success; and

(c) provide some level of assurance that, if you do fail, there is sufficient money available for the orderly transition to a new responsible entity or to wind up each registered scheme.

RG 166.229 The financial requirements for responsible entities take into account:

(a) the diversity of the types of schemes;

(b) the need for investor confidence and assessment of comparable regulatory regimes in leading financial centres; and

(c) comparable regulatory regimes, such as the SIS Act for public offer superannuation funds.

RG 166.230 We will not require the NTA calculation to address market or credit risks to assets. NTA is a measure of general financial standing. It includes non-current assets and is not specifically a measure of capacity to meet financial obligations.

Cash or cash equivalents

RG 166.231 The requirement to hold at least 50% of the required NTA (disregarding any additional amount required by the requirements relating to custody) in cash or cash equivalents (with a minimum of $150,000) aims to help you to meet expenditure in unanticipated situations over the coming 6-month period. The required NTA to be held as liquid assets should be realisable within 6 months so you can continue to meet your liabilities over the 12-month period.

RG 166.232 As one of the purposes of this requirement is to ensure money is available for situations that are unanticipated, it is imperative that a portion of the required assets be available at call, with the balance being available in the short term.

Use of custodian and sub-custodian

RG 166.233 The purpose of our policy is to ensure that the person holding the client assets:

(a) is an entity of some substance; and

(b) has sufficient financial resources to enable assets to be transferred if it ceases to be a custodian.

RG 166.234 In some cases the full NTA requirements relating to custody will not apply to a responsible entity. This recognises that, in certain circumstances:

(a) it would be unreasonably costly or impracticable for a responsible entity to retain a custodian that can meet the NTA requirement;

(b) the custodial systems for some scheme property need not be as sophisticated as for other schemes; and

(c) the prospect of loss of certain asset types due to custodial failure is less than for others because:

(i) the risk can be addressed adequately by appropriate controls involving oversight by a person other than the responsible entity; or

(ii) there is a low risk of misappropriation of those asset types.

RG 166.235 A responsible entity that undertakes self-custody must ensure the custody standards in Regulatory Guide 133 *Funds management and custodial services: Holding assets* (RG 133) are met and that controls on authorisation to engage in transactions comply with the compliance plan of the relevant scheme and the other duties of the responsible entity.

RG 166.236 Generally, the effect of our policy is that, to hold certain types of scheme property, you must use a substantial custodian unless your NTA is over a specified amount. For those assets for which a reduced amount of custodial financial requirements applies under your AFS licence as a responsible entity, you must still ensure that the custodian meets the standards for holding scheme property as set out in RG 133.

Appendix 3: Investor directed portfolio services operators

Key points

If you are an AFS licensee that is an IDPS operator, you must meet:

- the standard solvency and positive net assets requirement;
- a tailored cash needs requirement;
- a tailored audit requirement;
- a net tangible assets (NTA) requirement with requirements for holding cash or cash equivalents and holding liquid assets; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.237 If you are an IDPS operator, you must meet the following financial requirements:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) a tailored cash needs requirement (see RG 166.240–RG 166.241);

(c) a tailored audit requirement (see RG 166.243–RG 166.245);

(d) a net tangible assets (NTA) requirement (see RG 166.246–RG 166.267); and

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note 1: The financial requirements for IDPS operators, responsible entities and corporate directors are set out in ASIC Instrument 2023/647. See also Regulatory Guide 148 *Platforms that are managed investment schemes and nominee and custody services* (RG 148).

Note 2: The requirements in this appendix do not apply to an AFS licensee that is authorised to operate a registered scheme as a responsible entity (including an IDPS-like scheme). See Appendix 2 for the requirements that apply to these licensees.

RG 166.238 If you are required as a licensee to have assets to meet financial requirements under ASIC Instrument 2023/647, you can also count those assets for another applicable financial requirement. If multiple financial requirements apply based on the financial products and services you offer, you will need to satisfy the highest requirement. For example, in addition to the NTA requirement for an IDPS operator, you might also be subject to at least one other NTA requirement under Appendices 4–9. If this is the case, you will need to satisfy the NTA requirement with the highest dollar value.

RG 166.239 If you are an IPDS operator and also a responsible entity and/or a corporate director, please also see Appendices 2 and 10.

The tailored cash needs requirement

Note: This requirement replaces the standard cash needs requirement in Section B of this guide.

RG 166.240 You must meet the tailored cash needs requirement for IDPS operators. You will need to prepare a cash flow projection (see Table 12), which covers a period of at least 12 months—that is, you must assess your cash needs over at least a 12-month forward period.

RG 166.241 You must update your cash flow projection when:

(a) those cash flows cease to cover the next 12 months;

(b) there is a material change; or

(c) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 in Table 12.

RG 166.242 Your board must approve the cash flow projection at least quarterly.

Table 12: The tailored cash needs requirement for IDPS operators

Requirement	You must meet all these requirements
Projection	**1** Prepare a projection of your cash flows over at least the next 12 months based on your reasonable estimate of what is likely to happen over this term. Note: You can take into account, for example, the following factors in preparing your projection if you reasonably believe they are likely to be available: assets you hold at the time the projection starts that can be used to pay your liabilities, and inflows you may receive, including income from your business, amounts that you may borrow (e.g. under an overdraft), and amounts that you may receive from an eligible provider under an eligible undertaking. **2** Document your calculations and assumptions on which the projection is based, and describe in writing why they are the appropriate assumptions. Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business. **3** Update your projection of cash flows when: (a) those cash flows cease to cover the next 12 months; (b) there is a material change; or (c) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 below. Note: A 'material change' is a change for which it would be reasonable for you to plan by updating your cash flow projection. **4** Have your cash flow projection approved by the board of directors at least quarterly as satisfying the requirements in this cash needs requirement.

Requirement	You must meet all these requirements
Financial resources	**5** Document whether, based on your projection of cash flows, you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 12 months, including any additional liabilities you project will be incurred during that term. **6** Document whether, based on the projection of your cash flows, you will hold at all times during the period to which the projection relates, in cash or cash equivalents, an amount equal to or greater than the current amount you are required to hold in cash or cash equivalents under the liquidity requirement: see RG 166.246–RG 166.267.

The tailored audit requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

RG 166.243 All AFS licensees must give ASIC an audit report under s989B(3) for each financial year that includes information about compliance with the financial requirements that apply to you: see Section B. If you do not have to provide an audit report under s989B(3), you must still give ASIC an audit report about compliance with the financial requirements. You must also give ASIC this information if we request it for a specified period at another time: see s912C(2).

Note: For the form of this compliance report applying to AFS licensees generally, see PF 209, condition 28.

RG 166.244 As an IDPS operator, the information you must include in your audit report reflects the financial requirements that apply to you: see ASIC Instrument 2023/647.

RG 166.245 Your audit report must include statements by a registered company auditor addressed to you and ASIC that, for the relevant period:

(a) in the auditor's opinion, you:

(i) complied with any financial requirements applying to you and had the cash flow projection approved by the board at least quarterly;

(ii) had, at all times, cash flow projections (covering at least the following 12 months) that purported to, and on their face appeared to, demonstrate your solvency; and

(iii) correctly calculated the cash flow projections based on the assumptions you used for the projection; and

(b) following an examination of the calculations, assumptions and description used in preparing the cash flow projection, including the document prepared under items 5 and 6 in Table 12, the auditor has no reason to believe that:

(i) you did not have adequate systems for managing the risk of having insufficient financial resources to meet any financial requirements applying to you;

(ii) you failed to document the calculations and assumptions used in preparing the cash flow projections and describe why they are appropriate;

(iii) you will not have access when needed to enough financial resources to meet your liabilities over the projected term of at least 12 months or that you will not hold at all times during the period to which the projection relates, in cash or cash equivalents, an amount equal to or greater than the current amount you are required to hold in cash or cash equivalents; and

(iv) the assumptions you adopted for your cash flow projections were unreasonable.

Note: We refer to the auditor statements in RG 166.245(a) as 'positive assurance' and the statements in RG 166.245(b) as 'negative assurance'. We expect that when giving negative assurance for the purposes of RG 166.245(b), the auditor will take into consideration any information from the audit for positive assurance.

The NTA requirement

RG 166.246 If you are an IDPS operator, you must meet the NTA requirement in Table 13 that applies to you. This requirement also applies in relation to any registered schemes or retail CCIVs you operate: see Appendices 2 and 10.

Note: Changes to the NTA requirement will commence on 1 July 2027. The minimum financial thresholds in the requirement (see the dollar amounts referred to in RG 166.247, RG 166.251, Table 13, RG 166.253 and RG 166.262) will be increased to reflect inflation since 2013 (when they were last amended). In addition, annual indexation will be introduced to help ensure the thresholds continue to reflect their real value over time. For more information, see *ASIC Corporations (Amendment) Instrument 2026/708*.

RG 166.247 Our position is that you must meet the NTA requirements in Table 13 at all times while you hold an authorisation for the relevant financial products and services, even during periods where you are not actively offering that product or service. If at any time you do not currently operate any IDPS, registered schemes or retail CCIVs, as applicable, you will still need to meet your NTA requirement (of at least $150,000).

RG 166.248 When determining the 0.5% average value of fund assets test, you must calculate the required amount of NTA based on:

(a) the value of all IDPS property;

(b) where you are also the responsible entity of a registered scheme, the value of all scheme property and other assets of schemes operated as responsible entity; and

(c) where you are also a corporate director of a retail CCIV, the value of assets of all sub-funds in retail CCIVs you operate as corporate director.

Note: You do not need to include the value of fund assets of any scheme, IDPS or retail CCIV you no longer operate.

RG 166.249 In determining the value of the assets, the following apply:

(a) The value of the assets will generally be the amount that would be recognised in a balance sheet for members under Ch 2M as if, at that time, such a balance sheet was being prepared. This amount should reflect the carrying value of the asset. For example, for assets such as property, plant and equipment, the carrying amount would be the value of the asset minus accumulated depreciation and impairment losses.

(b) The 'gross value' of the assets is to be used rather than the net value. For an asset that is subject to a liability, such as a property that is subject to a mortgage, you must use the amount that would be shown in a balance sheet for that asset and are not permitted to deduct the amount of a liability that is connected to an asset.

RG 166.250 When determining the 10% of average licensee revenue test, the revenue is all of your revenue as a licensee (within the meaning given by the accounting standards). This also includes any amounts paid or payable to agents for services provided on your behalf in relation to any scheme, IDPS or retail CCIV you operate as licensee.

RG 166.251 Of the required NTA, you must hold:

(a) cash or cash equivalents valued at—at least the greater of:

(i) $150,000; or

(ii) 50% of the required NTA; and

(b) liquid assets to the amount of required NTA—this may include cash or cash equivalents, other than a commitment to provide cash from an eligible provider that can be drawn down within 5 business days upon request, and will not expire within the next 6 months.

Table 13: NTA requirements for IDPS operators

Type of operator	NTA requirement
You are an IDPS operator **OR** You are a IDPS operator and also a responsible entity or corporate director of a retail CCIV **AND** You satisfy any of the requirements in RG 166.253(a)–RG 166.253(d)	**1** You must hold at all times minimum NTA of the greater of: (a) $150,000; (b) 0.5% of the average value of fund assets (based on IDPS property of the IDPS **OR** all IDPS property, scheme property and assets of retail CCIVs, as applicable) up to $5 million NTA; or (c) 10% of your average revenue.

Type of operator	NTA requirement
You are an IDPS operator **OR** You are a IDPS operator and also a responsible entity or corporate director of a retail CCIV **AND** You do not satisfy any of the requirements relating to custody in RG 166.253(a)–RG 166.253(d)	**2** You must hold at all times minimum NTA the greater of: (a) $10 million; or (b) 10% of your average revenue.

Note: See the note under RG 166.246 for information about the changes to the NTA requirement that will commence on 1 July 2027.

Definitions for the NTA requirement

RG 166.252 Some definitions for calculating the required NTA for IDPS operators are in Section E: see RG 166.99–RG 166.184. Relevant definitions include:

(a) average revenue;

(b) average value of fund assets;

(c) calculation date;

(d) cash or cash equivalents;

(e) eligible provider;

(f) first financial year;

(g) fund assets;

(h) liquid assets; and

(i) revenue.

Requirements relating to custody

RG 166.253 You must meet the NTA requirement in item 2 of Table 13 unless:

(a) all the IDPS property of the IDPS (or scheme property of registered schemes or assets of retail CCIVs) operated are held by a custodian (or a sub-custodian appointed by that custodian) who you reasonably believe meets the financial requirements for AFS licensees authorised to provide a custodial or depository service other than as an incidental provider (see Appendix 4), or by an eligible custodian;

(b) in relation to any registered schemes or retail CCIVs operated—the scheme property of registered schemes or assets of retail CCIVs are Tier $500,000 class assets, each of which are held by you (or in relation to a retail CCIV, the retail CCIV) or a custodian appointed by you (or a sub-custodian appointed by that custodian), and:

(i) if you hold the scheme property (or in relation to a retail CCIV—the retail CCIV holds the assets), you (or the retail CCIV as the holder of the retail CCIV assets) have at least $500,000 NTA; or

(ii) if a custodian or sub-custodian holds the scheme property (or assets of the retail CCIV), the custodian has at least $500,000 NTA, or is an eligible custodian; or

(c) the only IDPS property (or scheme property of registered schemes or assets of retail CCIVs) not held under RG 166.253(a) or RG 166.253(b) are special custody assets, each of which is held by:

(i) you (or in relation to assets of a retail CCIV—the retail CCIV);

(ii) a custodian that has the level of NTA that you are required to have (or a sub-custodian appointed by that custodian) or an eligible custodian; or

(iii) a custodian (or sub-custodian appointed by that custodian) and the assets fall within:

(A) paragraph (a), (c) or (f) of the definition of 'special custody assets'; or

(B) paragraph (d) of the definition of 'special custody assets' where the trust account is a regulated trust account; or

Note 1: For the definition of 'eligible custodian', 'special custody assets' and 'Tier $500,000 class assets', see RG 166.172 and RG 166.182–RG 166.183 in Section E.

Note 2: For additional details on the NTA requirements, see ASIC Instrument 2023/647.

(d) you do not currently operate any IDPS (or registered schemes or retail CCIVs).

RG 166.254 If you have obtained written assurance within the preceding 13 months from a custodian that is authorised to provide custodial or depository services that, at the time the assurance is given, it complies with the financial requirements for custodians that are not incidental providers (see Appendix 4) you are taken to have the reasonable belief referred to in RG 166.253(a) in relation to that custodian.

RG 166.255 If the custodian is not an AFS licensee authorised to provide a custodial or depository service, you must meet the NTA requirement in item 2 of Table 13 unless you have received:

(a) written assurance within the preceding 13 months from the custodian regarding its compliance with the financial requirements that apply to custodians that are authorised to provide custodial or depository services other than as incidental providers; and

(b) a report from a registered company auditor for a period of at least 12 months, confirming the custodian's compliance with these requirements on terms reflecting the audit report required for AFS licensees.

RG 166.256 The audit report must be received on appointment in the first instance and must apply to a period not more than 16 months before the date it is received by you.

RG 166.257 If you are relying on holding a reasonable belief that a custodian meets financial requirements for custodians in order to meet a lower NTA requirement and at any time you are aware of information that makes you suspect that the financial requirements for custodians will be not met by the custodian, you will need to obtain further confirmation and, where appropriate, an audit report addressing compliance with the financial requirements, before you will be taken to have the reasonable belief.

Underlying principles of the NTA requirement

RG 166.258 The NTA requirement for IDPS operators generally aims to:

(a) ensure that you have adequate financial resources to meet your operating costs (e.g. the costs of ensuring compliance with the Corporations Act) throughout the life of your IDPS; and

(b) provide some level of assurance that, if you do fail, there is sufficient money available for the orderly transition to a new IDPS operator or the transfer of the clients' assets to the client or as they direct.

RG 166.259 An IDPS operator performs substantially the same functions in holding IDPS property as the responsible entity of a registered scheme. Accordingly, we have aligned the NTA requirement for IDPS operators and responsible entities with the necessary adjustments to reflect the IDPS structure.

RG 166.260 Our approach to the NTA requirement is flexible enough to allow an IDPS to be structured in a number of ways provided that the person performing or taking responsibility for the transactional functions has the necessary level of assets. For example, if an IDPS involves a single operator contracting with clients to provide the service, it is not necessary for that person to have NTA of up to $10 million if that sole operator engages certain other parties to carry out the custodial functions.

RG 166.261 As with the NTA requirement for responsible entities, we will not require the NTA calculation to address market or credit risks to assets. NTA is a measure of general financial standing. It includes non-current assets and is not specifically a measure of capacity to meet financial obligations.

Cash or cash equivalents

RG 166.262 The requirement to hold at least 50% of the required NTA (disregarding any additional amount under the requirements relating to custody) in cash or cash equivalents (with a minimum of $150,000) aims to help you to meet expenditure in unanticipated situations over the coming 6-month period. The required NTA to be held as liquid assets should be realisable within 6 months so you can continue to meet your liabilities over the 12-month

period. One purpose of this requirement is to ensure money is available for situations that are unanticipated, so it is imperative that a portion of the assets relied on be available at call, with the balance being available in the short term.

RG 166.263 We use revenue as a measure of the scale of operational risk facing an IDPS operator and therefore the amount of assets it should have to address these risks beyond those needed to meet liabilities. We take into account the revenue of persons performing functions forming part of the IDPS for which the IDPS operator is responsible to clients because the operational risk arising from these activities will affect the responsible IDPS operator.

Use of custodian and sub-custodian

RG 166.264 The purpose of our policy is to ensure that the person holding the client assets:

(a) is an entity of some substance; and

(b) has sufficient financial resources to enable assets to be transferred if it ceases to be a custodian.

RG 166.265 In some cases, the full NTA requirement relating to custody will not apply to an IDPS operator. This recognises that, in certain circumstances:

(a) it would be unreasonably costly or impracticable for an IDPS operator to retain a custodian that can meet the NTA requirement;

(b) the custodial systems for some IDPS property need not be as sophisticated as for other property; and

(c) the prospect of loss of certain asset types due to custodial failure is less than for others because:

(i) the risk can be addressed adequately by appropriate controls involving oversight by a person other than the IDPS operator; or

(ii) there is a low risk of misappropriation of those asset types.

RG 166.266 An IDPS that undertakes self-custody must ensure the custody standards in RG 133 are met and that controls on authorisation to engage in transactions comply with internal control procedures of the IDPS of the relevant scheme and the other obligations of the IDPS operator.

RG 166.267 Generally, the effect of our policy is that, to hold certain types of IDPS property, you must use a substantial custodian unless your NTA is over a specified amount. For those assets for which a reduced amount of custodial financial requirements applies under your AFS licence as IDPS operator, you must still ensure that the custodian meets the standards for holding IDPS property as set out in RG 133.

Appendix 4: Licensed custodial or depository service providers

Key points

If you are a licensed custodial or depository service provider, you must meet:

- the standard solvency and positive net assets requirement;
- a tailored cash needs requirement;
- a tailored audit requirement;
- a net tangible assets (NTA) requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.268 If you are a licensed custodial or depository service provider, you must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) a tailored cash needs requirement (see RG 166.270–RG 166.271);

(c) a tailored audit requirement (see RG 166.273–RG 166.276);

(d) a net tangible assets (NTA) requirement with requirements for holding cash or cash equivalents and holding liquid assets (see RG 166.277–RG 166.302); and

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note 1: The financial requirements for licensed custodial or depository service providers are set out in ASIC Instrument 2023/648.

Note 2: The Corporations Act does not impose financial requirements on custodians and sub-custodians that are not AFS licensees, but the financial requirements applying to an AFS licensee that is responsible to its client for the custody of assets may be affected by the financial position of the custodian.

RG 166.269 If you are required as a licensee to have assets to meet financial requirements under ASIC Instrument 2023/648, you can also count those assets for another applicable financial requirement. If multiple financial requirements apply based on the financial products and services you offer, you will need to satisfy the highest requirement. For example, in addition to the NTA requirement for a custodian, you might also be subject to at least one other NTA requirement under Appendices 2–10. If this is the case, you will need to satisfy the NTA requirement with the highest dollar value.

The tailored cash needs requirement

Note: This requirement replaces the standard cash needs requirement in Section B of this guide.

RG 166.270 You must meet the tailored cash needs requirement if you are a licensed custodial or depository service provider. You will need to prepare a cash flow projection (see Table 14), which covers a period of at least 12 months—that is, you must assess your cash needs over at least a 12-month forward period.

RG 166.271 You must update your cash flow projection when:

(a) those cash flows cease to cover the next 12 months;

(b) there is a material change; or

(c) there is reason to suspect that an updated projection would differ materially from the updated projection or show that you were not meeting items 5 or 6 in Table 14.

RG 166.272 Your board of directors must approve the cash flow projection at least quarterly.

Table 14: The tailored cash needs requirement for licensed custodial or depository service providers

Requirement	You must meet all these requirements
Projection	**1** Prepare a projection of your cash flows over at least the next 12 months based on your reasonable estimate of what is likely to happen over this term. Note: You can take into account, for example, the following factors in preparing your projection if you reasonably believe they are likely to be available: assets you hold at the time the projection starts that can be used to pay your liabilities; and inflows you may receive, including income from your business, amounts that you may borrow (e.g. under an overdraft), and amounts that you may receive from an eligible provider under an eligible undertaking. **2** Document your calculations and assumptions used in preparing the projection, and describe in writing why they are the appropriate assumptions. Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business. **3** Update your projection of cash flows when: (a) those cash flows cease to cover at least the next 12 months; (b) there is reason to suspect that an updated projection would differ materially from the updated projection; or (c) there is reason to suspect that an updated projection would show that you were not meeting items 5 or 6 below. Note: A 'material change' is a change for which it would be reasonable for you to plan by updating your cash flow projection. **4** Have your cash flow projection approved in writing at least quarterly by the following persons as satisfying the requirements in this cash needs requirement: (a) if the licensee is a body corporate—the directors of the licensee; (b) if the licensee is a partnership or the trustees of a trust—the partners of the licensee or the trustees; or (c) if the licensee is a natural person—the person.

Requirement	You must meet all these requirements
Financial resources	**5** Document whether, based on your projection of cash flows, you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 12 months, including any additional liabilities you project will be incurred during that term. **6** Document whether, based on the projection of your cash flows, you will hold at all times during the period to which the projection relates, in cash or cash equivalents, an amount equal to or greater than the current amount you are required to hold in cash or cash equivalents: see RG 166.277–RG 166.302.

The tailored audit requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

RG 166.273 All AFS licensees must give ASIC an audit report under s989B(3) of the Corporations Act for each financial year that includes information about compliance with the financial requirements that apply to you: see Section B.

RG 166.274 If you do not have to provide an audit report under s989B(3), you must still give ASIC an audit report about compliance with the financial requirements. You must also give ASIC this information if we request it for a specified period at another time: see s912C(2). As a licensed custodial or depository service provider, the information you must include in your audit report reflects the financial requirements that apply to you: see ASIC Instrument 2023/648.

RG 166.275 Your audit report must include statements by a registered company auditor addressed to you and ASIC that, for the relevant period:

(a) in the auditor's opinion, you:

(i) complied with the any financial requirements applying to you;

(ii) had, at all times, cash flow projections (covering at least the following 12 months) that purported to, and on their face appeared to, demonstrate your solvency; and

(iii) correctly calculated the cash flow projections based on the assumptions you based them on; and

(b) following an examination of the documents you relied on to create your cash flow projections, the auditor has no reason to believe that:

(i) you did not satisfy s912A(1)(h) of the Corporations Act for managing the risk of having insufficient financial resources to meet any financial requirements applying to you;

(ii) you failed to prepare cash flow projections as required, failed to have these projections approved by your board, or failed to document the calculations used in creating the cash flow projections and explain why they are appropriate; and

(iii) the assumptions you used to create the cash flow projections were unreasonable.

Note: We refer to the auditor statements in RG 166.275(a) as 'positive assurance' and the statements in RG 166.275(b) as 'negative assurance'. We expect that when giving negative assurance for the purposes of RG 166.275(b), the auditor will take into consideration any information from the audit for positive assurance.

RG 166.276 If you are relying on the definition of 'incidental provider' to meet the NTA requirement in item 2 of Table 15, your audit report must also include a statement that the auditor has no reason to believe that you did not satisfy the requirement in RG 166.177(b) (in the definition of 'incidental provider').

The NTA requirement

RG 166.277 If you are a licensed custodial or depository service provider, you must meet the NTA requirement in Table 15 that applies to you.

Note: 'Custodial or depository service' is defined in s766E of the Corporations Act. To find out if your service is excluded from this definition, see s766E(3) and reg 7.1.40.

RG 166.278 Our position is that you must meet the NTA requirements in Table 15 at all times while you hold an authorisation for the relevant financial products and services, even during periods where you are not actively offering that product or service. If at any time you do not currently hold any financial products on trust or on behalf of the client or their nominee), you will still need to meet your NTA requirement (of at least $150,000) unless the exemption in RG 166.288 applies.

RG 166.279 When determining the 10% of average licensee revenue test, the revenue is all of your revenue as a licensee (within the meaning given by the accounting standards). This also includes any amounts paid or payable to an authorised representative who performs custodial or depository services on your behalf.

RG 166.280 Of the required NTA (as applicable to you), you must hold:

(a) at least 50% in cash or cash equivalents; and

(b) 100% in liquid assets.

Note: Money held in an account under s981B may not be relied on to meet these requirements or NTA requirements.

Table 15: NTA requirements for licensed custodial or depository service providers

Type of provider	NTA requirement
Your core business is to provide custodial or depository service and you are not an 'incidental provider': see RG 166.282.	**1** You must hold at all times minimum NTA the greater of: (a) $10 million; or (b) 10% of average revenue.
You are an 'incidental provider' and you hold physical custody of the assets: see RG 166.287.	**2** You must hold at all times minimum NTA the greater of: (a) $150,000; or (b) 10% of average revenue.
You are an incidental provider and you do not hold physical custody of the assets: see RG 166.288.	**3** Your NTA requirement is nil as long as you continue to satisfy the requirements for the assets being held by a separate entity. If there are not currently any assets for the separate entity to hold, an agreement with the separate entity must have at least been entered into to fall within this category. Note: You may still need to meet the NTA requirement for other financial services for which you are authorised.

Definitions for the NTA requirement

RG 166.281 Definitions for calculating the required NTA for custodial or depository service providers are set out in Section E: see RG 166.99–RG 166.184. Relevant definitions include:

(a) average revenue;

(b) calculation date;

(c) cash or cash equivalents;

(d) custodial or depository services revenue;

(e) eligible provider;

(f) financial services business revenue;

(g) first financial year;

(h) incidental provider;

(i) liquid assets; and

(j) revenue.

Requirements relating to custody

Where custodial or depository services are your core business

RG 166.282 You must meet the NTA requirement for custodians in item 1 of Table 15 if you operate a custodial or depository service that:

(a) provides custodial or depository services other than as an incidental provider; or

(b) acts as custodian for an IDPS.

Note 1: 'Custodial or depository service' is defined in s766E of the Corporations Act. To find out if your service is excluded from this definition, see s766E(3) and reg 7.1.40.

Note 2: For additional details on the NTA requirements, see ASIC Instrument 2023/648.

Incidental providers

RG 166.283 If you are an 'incidental provider' you will be subject to a concessional NTA requirement.

RG 166.284 To satisfy the definition of 'incidental provider', the following must apply:

(a) There must be a causal relationship between other financial services you provide and the custodial or depository services, such that the custodial or depository service would not be needed by the client if the other financial services were not provided. In ASIC's view, this relationship is unlikely to arise if the custodial or depository services are offered as discrete (stand-alone) services or if you advertise yourself as a 'custodian for hire'.

(b) You must identify the revenue attributable to the custodial or depository services and this must be less than 10% of your financial services business revenue. We expect that this assessment will be done at least once a year. If the fees for those services are bundled, not charged or otherwise unidentifiable, we expect that you will calculate this figure based on the cost to the business of providing these services, taking into account a share of fixed costs and the cost of capital.

RG 166.285 One example of a custodial or depository service undertaken by an incidental provider holding financial products as part of operating an unregistered managed investment scheme (other than an IDPS).

Note: A trustee/operator of an unregistered scheme will generally require an authorisation to undertake custodial or depository services in addition to authorisations required to deal in interests in the scheme and any underlying financial products and to provide financial advice (see s766E). This is because the trustee/operator will typically at a minimum have a beneficial interest in financial products that are assets of the scheme. In some cases the trustee/operator may also hold physical custody of the assets of the scheme.

RG 166.286 A licensee may also be an incidental provider where the licensee does not currently provide any custodial or depository services, even though it holds the authorisation under its licence.

Incidental provider that holds physical custody

RG 166.287 You must meet the NTA requirement for incidental providers in item 2 of Table 15 if you operate an incidental custodial or depository service and you hold physical custody of the assets—that is, the assets are not held by a separate entity under an arrangement that satisfies RG 166.288.

Incidental provider that does not hold physical custody

RG 166.288 If you are an incidental provider that does not hold physical custody of the assets, your NTA requirement as outlined in item 3 of Table 15 is nil if all the assets to which the custodial or depository service relates are held by a licensee (or a sub-custodian appointed by that licensee) who:

(a) is authorised to provide a custodial or depository service and who you reasonably believe:

(i) meets the financial requirements for custodians in item 1 of Table 15; and

(ii) is not an incidental provider; or

(b) is an eligible custodian.

Note 1: You may still need to meet an NTA requirement for other financial services for which you are authorised. For the definition of 'eligible custodian', see RG 166.172 in Section E.

Note 2: If there are not currently any assets for the separate entity to hold, an agreement with the separate entity must have at least been entered into to satisfy RG 166.288.

RG 166.289 If you have obtained written assurance within the preceding 13 months from a licensee that is authorised to provide custodial or depository services that, at the time the assurance is given, it complies with the financial requirements for custodians other than as an incidental provider, you are taken to have the reasonable belief referred to in RG 166.288 in relation to that licensee.

RG 166.290 If you are relying on holding the reasonable belief in RG 166.288 to be exempt from the NTA requirement and at any time you are aware of information that makes you suspect that the financial requirements for custodians will be not met by the licensee, you will need to obtain further confirmation and, where appropriate, an audit report addressing compliance with the financial requirements, before you will be taken to have the reasonable belief.

RG 166.291 The exemption from the NTA requirement is not available if, at any time, the incidental provider undertakes physical custody of the client assets that are financial products, rather than merely having a beneficial interest in the assets held by the custodian.

Responding to requests from AFS licensees

RG 166.292 If you receive a written request from an AFS licensee that has appointed you to provide custodial or depository services (appointing licensee) and the request is made to assist the appointing licensee to determine whether it meets its financial requirements for the custody of client assets, you must (within a reasonable time) provide the appointing licensee with a statement:

(a) about your compliance with the NTA requirement; and

(b) stating whether you are an incidental provider.

RG 166.293 The statement should relate to the time at which you provide it.

Breach reporting

RG 166.294 If you lodge a report with ASIC under s912DAA relating to a breach of your financial requirements as a licensed custodial or depository service provider, you must immediately notify each appointing licensee in writing.

RG 166.295 These reporting requirements are to enable a responsible entity, IDPS operator or licensed custodial or depository service provider to determine if they meet their financial requirements.

Underlying principles of the NTA requirement

RG 166.296 A diverse range of businesses are involved in providing custodial or depository services. It is important for all providers of custodial or depository services to have the necessary systems and controls in place to support their authorisation. However, not all licensed custodial or depository service providers need to meet the same level of financial resources.

RG 166.297 For some businesses, custodial or depository services represent a significant part of the services offered by them. Clients of these businesses place substantial trust in the custodian to ensure the safe-keeping of their assets. Substantial operating capacity is required for these licensed custodial or depository service providers. An orderly winding up is particularly important for these businesses, in order to prevent client loss, because the licensed custodial or depository service provider may hold assets of many different clients coming from different sources.

RG 166.298 This contrasts with custodial or depository services which are provided incidentally to the provision of another financial service. We refer to licensees who provide these services as 'incidental providers'.

RG 166.299 A reduced capital requirement applies to incidental providers. This recognises that in some circumstances it would be unreasonably costly for incidental providers to meet the financial requirements for custodians.

RG 166.300 If you hold assets you must ensure the custody standards in RG 133 are met. These include:

(a) have an adequate organisational structure;

(b) have adequate staffing capabilities;

(c) have adequate capacity and resources to preform core administration activities; and

(d) hold assets on trust for the client which includes the obligation to separate assets.

RG 166.301 If you engage another asset holder to hold the assets, you must also ensure that the asset holder meets the minimum standards in RG 133.

Cash or cash equivalents

RG 166.302 For all licensed custodial or depository service providers, the requirement to hold at least 50% of the required NTA in cash or cash equivalents, with 100% being held in liquid assets, aims to help you to meet expenditure in unanticipated situations over the coming 6-month period. One purpose of this requirement is to ensure funds are available for situations that are unanticipated, so it is imperative that a portion of these funds be available at call, with the balance being available in the short term.

Appendix 5: Trustee companies providing traditional services

Key points

If you are a trustee company providing traditional services, you must meet:

- the standard solvency and positive net assets requirement;
- the standard cash needs requirement;
- the standard audit requirement;
- an NTA requirement, unless you are eligible for relief;
- the surplus liquid funds (SLF) requirement where you hold client money or property valued at $100,000 or more; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.303 If you operate a trustee company providing traditional services, you must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) the standard cash needs requirement (see RG 166.35–RG 166.61 in Section B);

(c) the standard audit requirement (see RG 166.62–RG 166.68 in Section B);

(d) an NTA requirement, unless you are eligible for relief (see RG 166.304–RG 166.308);

(e) the surplus liquid funds (SLF) requirement where you hold client money or property valued at $100,000 or more (see Section C); and

(f) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

The NTA requirement

RG 166.304 You must have at all times at least $5 million NTA if you are a trustee company that provides traditional services, unless you are eligible for relief.

What relief is available?

RG 166.305 We will consider giving relief from the $5 million NTA requirement on a case-by-case basis where the trustee company:

(a) does not operate a common fund; and

(b) either:

(i) does not have present or future rights of any kind to hold trust property or estate assets; or

(ii) has rights in relation to trust property or estate assets that are not substantial when compared to our general requirement of $5 million NTA.

How to apply for relief

RG 166.306 To apply for relief:

(a) Include with your licence application or request for variation of licence a submission for ASIC not to impose the $5 million NTA requirement.

(b) Ensure that your application complies with RG 51.

(c) Candidly set out all information that may be relevant to your application, including details as to the unreasonableness of having to comply with the NTA requirement and the size and number of estates that you anticipate providing traditional services to.

Note: For more information about applying for relief, see How to apply for relief on the ASIC website.

Underlying principles of the NTA requirement

RG 166.307 A client using traditional services provided by a trustee company is typically placing substantial trust in the trustee company that provides those services and the trustee company should have some financial substance. Unlike licensed custodial or depository service providers, trustee companies may also hold property other than financial products or beneficial interests in financial products under their licence. Requiring trustee companies that provide traditional services to have NTA of at least $5 million will ensure that a trustee company is an entity of financial substance.

RG 166.308 However, we recognise that in certain circumstances, it may be unreasonably costly for a trustee company to meet the $5 million NTA requirement.

Appendix 6: Issuers of margin lending facilities

Key points

If you are an issuer of a margin lending facility, you must meet:

- the standard solvency and positive net assets requirement;
- the standard cash needs requirement;
- the standard audit requirement;
- an NTA requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.309 If you are an issuer of a margin lending facility, you must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) the standard cash needs requirement (see RG 166.35–RG 166.61 in Section B);

(c) the standard audit requirement (see RG 166.62–RG 166.68 in Section B);

(d) an NTA requirement (see RG 166.310–RG 166.312); and

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note: Depending on your business, you may need to meet the ASLF requirement. This requirement will apply to you if you issue a non-standard margin lending facility: see RG 166.313–RG 166.315.

The NTA requirement

RG 166.310 If you issue a margin lending facility, you must hold:

(a) NTA of at least 0.5% of the value of:

(i) for a standard margin lending facility—the secured property;

(ii) for a non-standard margin lending facility—any transferred securities; and

Note: This NTA has a minimum requirement of $50,000 and a maximum requirement of $5 million.

(b) at least $5 million NTA at all times:

(i) for a standard margin lending facility where:

(A) the licensee holds the secured property and that person does not have at least $5 million NTA unless they are an eligible custodian; or

(B) any other person holds the secured property and that person does not have at least $5 million NTA unless they are an eligible custodian; or

(ii) for a non-standard margin lending facility where:

(A) the licensee is the transferee of transferred securities; or

(B) any other person is the transferee of transferred securities and that person does not have at least $5 million NTA unless they are an eligible custodian.

Note: For the definition of 'eligible custodian', see Section E under 'Specific definitions for responsible entities, corporate directors, IDPS operators and licensed custodial or depository service providers'.

Underlying principles of the NTA requirement

RG 166.311 Imposing a capital requirement on issuers of margin lending facilities will ensure that an issuer is an entity of financial substance. Even if an issuer does not hold secured property or is not the transferee of transferred securities, we impose an NTA requirement of between $50,000 and $5 million. This is because the issuer will still perform a range of important functions, such as assessing that the loan is not unsuitable for the client, providing funds to settle client transactions, monitoring portfolios, and reporting on and providing notice of margin calls.

RG 166.312 However, unless the issuer or any other person that holds secured property or is the transferee of transferred securities has NTA of over $5 million, the issuer must use a substantial entity to hold the secured property or be the transferee of the transferred securities. The NTA requirement imposed on an issuer of a margin lending facility provides for the facility to be structured in a number of ways as long as either the issuer, or the person holding the secured property or transferred securities, has the necessary NTA.

ASLF requirement for non-standard margin lending facilities

RG 166.313 Depending on your business, you may need to meet the ASLF requirement. The ASLF requirement will apply to you if you issue a non-standard margin lending facility.

RG 166.314 Under a non-standard margin lending facility, the client transfers the title to the marketable securities provided for the loan to the client. The marketable securities are not held on trust for the benefit of the client and the client merely has the right, in the circumstances determined under the terms of the facility, to be given equivalent marketable securities. This means that the AFS licensee will need to use its own assets to meet the financial obligations to its client and it will need to carefully manage its assets and liabilities to enable it to meet its compliance obligations.

RG 166.315 We consider that the ASLF requirement is appropriate to reflect the additional risks for managing financial resources inherent in a non-standard margin lending facility. This is because it provides a more comprehensive measure of the availability of liquid assets to the AFS licensee in light of the scale of its operations and various risks to the licensee's financial resources in the current period.

Appendix 7: Foreign exchange dealers

Key points

If you are a foreign exchange dealer (and you are not a retail OTC derivative issuer), you must meet:

- the standard solvency and positive net assets requirement;
- the standard cash needs requirement;
- the standard audit requirement;
- the ASLF requirement *or* the capital requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.316 If you are a foreign exchange dealer, you must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) the standard cash needs requirement (see RG 166.35–RG 166.61 in Section B);

(c) the standard audit requirement (see RG 166.62–RG 166.68 in Section B);

(d) the standard ASLF requirement (see Section D) *or* the capital requirement (see RG 166.317–RG 166.325); and

Note: You may also need to comply with the standard ASLF requirement because of financial services that do not relate to foreign exchange contracts, and in that case you must comply with the standard ASLF requirement.

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Choosing between the ASLF requirement and the capital requirement

RG 166.317 If you are a foreign exchange dealer, you may choose to comply with the ASLF requirement, rather than having $10 million of Tier 1 capital (if this requirement applies to you). You can choose this option when you apply for your AFS licence or when you apply for a variation of your licence. You will then have to comply with the ASLF requirement at all times and not merely, for example, when it would apply because you have more than $100,000 of adjusted liabilities or certain contingent liabilities. If you choose to have $10 million of Tier 1 capital, then foreign exchange contracts will not be

counted in determining whether the ASLF requirement is triggered in your case.

Note: Foreign exchange dealers that already hold an AFS licence that includes a condition requiring them to comply with the $10 million of Tier 1 capital may apply to ASIC for a variation of their licence conditions if they wish to comply instead with the ASLF requirement.

RG 166.318 If you enter into foreign exchange contracts but do not carry on a business of entering, as principal, into foreign exchange contracts (that are financial products) in Australia, certain foreign exchange contracts are not taken into account in determining if you have at least $100,000 in adjusted or contingent liabilities and therefore are subject to the ASLF requirement. For details of the foreign exchange contracts that may be disregarded, see RG 166.320. This applies to certain foreign exchange contracts that you entered for the purposes of enabling a payment in one of the currencies under the foreign exchange contract.

Meeting the ASLF or the capital requirement

RG 166.319 If you carry on a business of entering, as principal, into foreign exchange contracts that are financial products in Australia, you must either:

(a) have $10 million of Tier 1 capital (defined as if you were an ADI); or

(b) satisfy the ASLF requirement for transacting with clients as principal in Section D of this guide.

RG 166.320 These requirements do not apply if the counterparty to each foreign exchange contract that you enter into in Australia is:

(a) an Australian ADI; or

(b) a person that has a condition in their AFS licence specifically requiring them to have $10 million of Tier 1 capital.

Note 1: For the definition of 'Tier 1 capital': see APRA's Prudential Standard APS 111 *Capital adequacy: Measurement of capital*.

Note 2: If the requirement to have $10 million of Tier 1 capital does not apply to you, the ASLF requirement in Section D may still apply to you.

RG 166.321 You can only take advantage of the options in RG 166.319 if your current liabilities, or contingent liabilities if crystallised, as counted in calculating your adjusted liabilities are under foreign exchange contracts (including foreign exchange contracts that are derivatives).

RG 166.322 If you choose to meet the ASLF requirement in Section D, you must comply with this requirement even if your liabilities plus contingent liabilities are less than $100,000 (i.e. you cannot take advantage of the exceptions in RG 166.78).

Underlying principles of the two options

RG 166.323 Our policy gives AFS licensees that are foreign exchange dealers the option (so far as is practicable under the Corporations Act) of complying with financial requirements based on the previous policy approach of the Reserve Bank of Australia (RBA). Alternatively, they can choose to meet the ASLF requirement in Section D. These licensees were subject to the RBA's former requirements before 11 March 2002. We do not see any basis for requiring such licensees to comply with more onerous financial requirements than those previously applied by the RBA (apart from the base level financial requirements in Section B), if their financial service business is limited to those activities.

RG 166.324 The requirements in this appendix apply to some AFS licensees that enter into foreign exchange contracts, but not to those that merely arrange foreign exchange contracts. For example, the requirements do not apply to licensees that only arrange for buyers and sellers to enter into foreign exchange contracts, where the counterparties are principals to the transaction. However, where the activity involves the licensee taking on the contract as principal, the requirements may apply.

Note: Before 11 March 2002, persons who were merely arranging for others to enter foreign exchange contracts were not required by the RBA to be authorised dealers. The RBA also did not require persons who only entered into contracts with authorised foreign exchange dealers to themselves be authorised and therefore they did not have to meet the requirement for $10 million of Tier 1 capital. We have taken the same approach.

RG 166.325 Consistent with the approach of the RBA before 11 March 2002, the requirements in this appendix do not apply to foreign exchange contracts entered into outside Australia.

Appendix 8: Retail OTC derivative issuers

Key points

If you are a retail OTC derivative issuer, you must meet:

- the standard solvency and positive net assets requirement;
- a tailored cash needs requirement;
- a tailored audit requirement;
- an NTA requirement—including complying with certain reporting triggers—which replaces the ASLF requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.326 If you are a retail OTC derivative issuer, you must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) a tailored cash needs requirement (see RG 166.327–RG 166.331);

(c) a tailored audit requirement (see RG 166.332–RG 166.334);

(d) an NTA requirement—including complying with certain reporting triggers—which replaces the ASLF requirement (see RG 166.233–RG 166.357); and

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note: The financial requirements for retail OTC derivatives issuers are set out in ASIC Instrument 2022/705.

The tailored cash needs requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

RG 166.327 As a retail OTC derivative issuer, you must:

(a) prepare, in each March, June, September and December, a rolling projection of your cash flows over at least the next 12 months based on your reasonable estimate of revenues and expenses over this term;

(b) have the cash flow projection approved by your board of directors, or other governing body, as being based on your reasonable estimate of revenue and expenses over the period;

(c) document the calculations and assumptions used in preparing the cash flow projection, and describe in writing why they are appropriate;

(d) update the cash flow projection if there is reason to suspect an updated projection would show you were not meeting the financial requirements applying to you;

(e) demonstrate, based on the cash flow projection, that you will have access when needed to enough financial resources to meet your liabilities over the projected term, including any additional liabilities you project may be incurred during that term;

(f) demonstrate, based on the cash flow projection, that you will have in cash or cash equivalents, at all times to which the projection relates, an amount equal to or greater than the amount you are required to have in cash or cash equivalents under the NTA requirement: see RG 166.233–RG 166.357; and

(g) make the cash flow projection available to ASIC upon request.

Underlying principles of the tailored cash needs requirement

RG 166.328 Cash flow projections are an important tool to help ensure that retail OTC derivative issuers can meet anticipated expenses. The requirement for a rolling 12-month cash flow projection that addresses expected operating expenses should, in many cases, result in a higher level of focus and governance around cash flow forecasting and cash planning. We acknowledge that these projections are only as sound as the assumptions on which they are based and the rigour with which they are prepared.

RG 166.329 For this reason, we think it is important for your directors to review your cash flow projections. We believe that longer cash flow projections can help your directors identify potential cash flow problems at an earlier stage, providing the opportunity to take corrective action.

RG 166.330 Cash flow projections will also need to be updated when material changes occur to the assumptions on which they are based.

RG 166.331 We may ask for a copy of your cash flow projections at any time. Projections that are prepared with the requisite detail can help us more fully understand the workings of any issuer in distress.

The tailored audit requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

RG 166.332 All AFS licensees must give ASIC an audit report under s989B(3) for each financial year that includes information about compliance with the financial requirements that apply to you: see Section B. If you do not have to provide an audit report under s989B(3), you must still give ASIC an audit report about compliance with the financial requirements. You must also give ASIC this information if we request it for a specified period at another time: see s912C(2).

Note: For the form of this compliance report, see s912AB(11) as notionally applying under ASIC Instrument 2022/705.

RG 166.333 As a retail OTC derivative issuer, the information you must include in your audit report reflects the financial requirements that apply to you: see ASIC Instrument 2022/705.

RG 166.334 Your audit report must include statements by a registered company auditor addressed to you and ASIC that, for the relevant period:

(a) in the auditor's opinion, you:

(i) complied with any financial requirements applying to you;

(ii) had, at all times, cash flow projections that purported to, and on their face appeared to, comply with RG 166.327; and

(iii) correctly calculated the cash flow projections based on the assumptions you based them on; and

(b) following an examination of the documents you relied on to create your cash flow projections, the auditor has no reason to believe that:

(i) you did not satisfy s912A(1)(h) of the Corporations Act for managing the risk of having insufficient funds to meet any financial requirements applying to you;

(ii) you failed to:

(A) prepare cash flow projections as required;

(B) have these projections approved by your board or governing body;

(C) document the calculations used in creating the cash flow projections and explain why they are appropriate; and/or

(D) update the cash flow projection if there is reason to suspect an updated projection would show you were not meeting the financial requirements applying to you; and

(iii) the assumptions you used to create the cash flow projections were inappropriate.

Note: We refer to the auditor statements in RG 166.334(a) as 'positive assurance' and the statements in RG 166.334(b) as 'negative assurance'. We expect that when giving negative assurance for the purposes of RG 166.334(b), the auditor will take into consideration any information from the audit for positive assurance.

The NTA requirement

Note: Retail OTC derivative issuers need not meet the ASLF requirement for transacting with clients as principal in Section D. Instead, you must meet the NTA requirement in RG 166.233–RG 166.357.

RG 166.335 As a retail OTC derivative issuer, you must have at all times NTA of the greater of:

(a) $1 million; or

(b) 10% of your average revenue.

RG 166.336 You must have 50% of the required NTA in cash or cash equivalents (excluding any other cash or cash equivalents that are held in respect of any liability or obligation to clients) and 50% in liquid assets.

RG 166.337 You must report your NTA position, together with detailed working, to ASIC as part of your annual submission by completing the transaction *Submit Australian financial services licence annual financial statements* through the ASIC Regulatory Portal as required under s989B of the Corporations Act.

Definitions for the NTA requirement

RG 166.338 Some definitions for calculating the required NTA for retail OTC derivative issuers are included in Section E: see RG 166.185–RG 166.188. Relevant definitions include:

(a) average revenue;

(b) cash or cash equivalents;

(c) eligible provider; and

(d) liquid assets.

Underlying principles of the NTA requirement

RG 166.339 It is important for retail OTC derivative issuers to maintain adequate financial resources to ensure that equity owners have a financial incentive to comply with the Corporations Act and are sufficiently invested in the business to take measures to see that it succeeds.

RG 166.340 Derivatives businesses are exposed to the risk of financial expense or loss due to operational failures (e.g. information technology system malfunction or documentation errors). You should have an adequate level of financial resources to help cover operational risk.

RG 166.341 Setting the required level of NTA at the greater of $1 million or 10% of your average revenue helps ensure that, as your business grows, and your operational risk exposure consequentially increases, you have a corresponding level of financial resources.

RG 166.342 To ensure that your financial resources can be used effectively to meet unexpected losses and expenses, the required NTA must be held in a highly liquid form. Having 50% of the required NTA in cash or cash equivalents (excluding cash in client segregated accounts or other cash held in respect of any liability or obligation owed to clients) and 50% in liquid assets ensures that you can use these financial resources as and when required.

RG 166.343 The NTA requirement provides a financial buffer that decreases the risk of a disorderly or non-compliant wind-up if your business fails. The required minimum amount of NTA reflects the contemporary costs of administering the type of financial services business carried on by retail OTC derivative issuers.

RG 166.344 It also aligns Australia more closely with comparable regulatory regimes for retail OTC derivative issuers in leading financial centres.

RG 166.345 The simpler NTA requirement (rather than the more complex requirements in Section D) means that compliance costs for issuers should be lower and compliance should be easier for ASIC to verify.

What are the reporting triggers?

Notifiable events

RG 166.346 If you have less than the required NTA, or the amount of NTA you hold decreases from an amount greater than 110% of the required NTA to a lower amount (each being a 'notifiable event' under ASIC Instrument 2022/705), you must lodge a report with ASIC that specifies your NTA as at the date of the report:

(a) within 3 business days after becoming aware of the notifiable event; and

(b) on the first business day of every month, unless as at the last day of the preceding month your NTA was greater than 110% of the required NTA.

Additional requirements if you have less than the required NTA

RG 166.347 If you have less than 100% of the required NTA, you will be in breach of your AFS licence conditions. You must replenish your NTA to above 100%. If you do not do this within 2 months of the date the deficiency arose, you must notify your clients about the deficiency. For the prescribed form of this notification, see Table 16.

RG 166.348 This notification should be placed prominently on the main page (homepage) of your website and be communicated to each client by email or by letter. If your trading platform allows for electronic alerts or similar, we would also expect you to use this to provide the notification to clients. However, we will not accept ongoing notifications of this type as a means of dealing with an NTA deficiency for any sustained length of time: see RG 166.351–RG 166.352.

RG 166.349 You must also not enter into any transactions with clients that could give rise to any further liabilities, contingent liabilities or other financial obligations until your board of directors, or other governing body, has certified in writing that, having conducted reasonable inquiries into your financial position, there is no reason to believe that, you may fail to meet any other of your AFS licence conditions or obligations under s912A of the Corporations Act, including the base level financial requirements in Section B of this guide.

Having 75% or less of required NTA

RG 166.350 If you have 75% or less of the required NTA, you must not under any circumstances enter into any transactions with clients that could give rise to any further liabilities, contingent liabilities or other financial obligations.

What happens if you breach the NTA requirement?

RG 166.351 If you have less than the required NTA, you will be in breach of your AFS licence obligations. We consider any failure to meet the NTA requirement, or any of the other financial requirements in this guide, should be regarded as a reportable situation that is reportable to ASIC under s912DAA. You should also consider whether the breach is a material change or significant event that must be notified to clients in accordance with s1017B.

Note: For more information on reportable situations, see RG 78.

RG 166.352 We may take action against you for a breach of the NTA requirement to protect clients and preserve the fair and efficient operation of financial markets.

Table 16: Prescribed form for notifying your clients of inadequate NTA

[**Issuer name**]

[*Date*]

Notification to clients: Inadequate net tangible assets (NTA)

We wish to inform you as our client that we are in breach of the requirement under our Australian financial services (AFS) licence to have NTA of the greater of:

- $1 million; or
- 10% of our average revenue.

We have been in breach of this requirement for over 2 months.

Our NTA as at the date of this notification, [*insert current NTA*], is less than our required NTA of [*insert required NTA*].

Why we are notifying you

As we have had inadequate NTA for over 2 months, we are required by law, as modified by the Australian Securities and Investment Commission (ASIC), to notify our clients of this.

Risks of having inadequate NTA

The purpose of the financial requirements under our AFS licence (including the NTA requirement above) is to help ensure that:

- we have sufficient financial resources to conduct our financial services business in compliance with relevant laws;
- there is a financial buffer that decreases the risk of a disorderly or non-compliant wind-up if our business fails; and
- there are incentives for the owners of our business to comply with their obligations through risk of loss.

Source: ASIC Regulatory Guide 166 *AFS licensing: Financial requirements* (RG 166).

You should consider the risk of continuing to trade with us, given that we do not have the minimum financial resources required under our AFS licence to carry on the business of a retail OTC derivative issuer.

Underlying principles of the reporting requirements

RG 166.353 The reporting requirements for retail OTC derivative issuers aim to balance:

(a) the benefits of allowing issuers to use their financial resources to respond to operational incidents and contingencies;

(b) the importance of ensuring issuers still maintain adequate financial resources to operate a business in compliance with the Corporations Act;

(c) ensuring clients and ASIC are informed of material, adverse changes to an issuer's financial position; and

(d) establishing a framework to provide strong incentives to rectify any breach of the NTA requirement in an expeditious manner.

RG 166.354 We understand that AFS licensees may occasionally draw on some of the required NTA to meet unexpected expenses or losses arising from operational risk. However, this is nevertheless a contravention of the financial requirements that triggers reporting and notification requirements as outlined in RG 166.346–RG 166.352. Meanwhile, the requirement to notify us when your NTA falls from 110% to a lower amount or is less than the required NTA gives us early warning that you may be experiencing financial difficulty. Having this advance knowledge will allow us to monitor and ensure you remain in compliance with your licence conditions.

RG 166.355 If you draw down too far on your NTA, in breach of the NTA requirement, we want to ensure there are appropriate incentives for you to replenish those funds in a timely manner, as part of your breach rectification process. Accordingly, if you fail to replenish your NTA to 100% of the required NTA within 2 months, you must notify your clients of the deficiency through a prescribed disclosure. This ensures that your clients are informed about your non-compliance with the NTA requirement while you replenish your funds.

RG 166.356 We also want to ensure that, while you may dip into your NTA in certain circumstances, this action is escalated to the most senior levels of your business so that your ongoing solvency and your ability to comply with your legal obligations is assessed in detail.

RG 166.357 As a safety net, if your NTA falls to below 75% of the required NTA, you must not under any circumstances enter into any transactions with clients that could give rise to further liabilities, contingent liabilities or other financial obligations.

Appendix 9: CSF intermediaries

Key points

If you are a CSF intermediary, you must meet:

- the standard solvency and positive net assets requirement;
- a tailored cash needs requirement;
- a tailored audit requirement;
- the standard surplus liquid funds (SLF) requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.358 A CSF intermediary must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.31–RG 166.34 in Section B);

(b) a tailored cash needs requirement (see RG 166.359–RG 166.360 and Table 17);

(c) a tailored audit requirement (see RG 166.363–RG 166.365);

(d) the surplus liquid funds (SLF) requirement where you hold client money or property valued at $100,000 or more (see Section C); and

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note: A CSF intermediary that is also a responsible entity, IDPS operator, licensed custodial or depository service provider (except certain incidental providers), or that is subject to s912AB (as notionally inserted by ASIC Instrument 2022/705), is not required to comply with the financial resource requirements that ordinarily apply to CSF intermediaries. This is because they are subject to equivalent requirements under the relevant legislative instrument for the other type of licensee: see s912AH(1) (as notionally inserted by *ASIC Corporations (Financial Requirements for CSF Intermediaries) Instrument 2017/339*).

The tailored cash needs requirement

Note: This requirement replaces the standard cash needs requirement in Section B of this guide.

RG 166.359 You must meet the tailored cash needs requirement for CSF intermediaries. You will need to prepare a cash flow projection (see Table 17) that covers a period of at least 12 months—that is, you must assess your cash needs over at least a 12-month forward period.

RG 166.360 You must update your cash flow projection when:

(a) those cash flows cease to cover at least the next 12 months; or

(b) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 in Table 17.

RG 166.361 Your board or governing body, or you (if a natural person), must approve the cash flow projection at least quarterly.

Table 17: The tailored cash needs requirement for CSF intermediaries

Requirement	You must meet all these requirements
Projection	**1** Prepare a projection of your cash flows over at least the next 12 months based on your reasonable estimate of what is likely to happen over this term. Note: You can take into account, for example, the following factors in preparing your projection if you reasonably believe they are likely to be available: assets you hold at the time the projection starts that can be used to pay your liabilities; and inflows you may receive, including income from your business, amounts that you may borrow (e.g. under an overdraft), and amounts that you may receive from an eligible provider under an eligible undertaking. **2** Document your calculations and assumptions on which the projection is based, and describe in writing why they are the appropriate assumptions. Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business. **3** Update your projection of cash flows when: (a) those cash flows cease to cover the next 12 months; or (b) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 below. **4** Have your cash flow projection approved by the board of directors at least quarterly as satisfying the requirements in this cash needs requirement.
Financial resources	**5** Document whether, based on your projection of cash flows, you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 12 months, including any additional liabilities you project will be incurred during that term. **6** Document whether, based on the projection of your cash flows, you will hold at all times during the period to which the projection relates, an amount in cash within the extended meaning in ASIC Instrument 2017/339. This amount required is equal to or greater than 5% of the greater of: (a) the cash outflow for the projected period of at least the next 12 months (if the projection covers a period other than 12 months, the cash outflow must be adjusted to produce a 12-month average); or (b) your actual cash outflow for the most recent financial year of at least 360 days for which you have prepared a profit and loss statement. **7** Hold at all times in cash the amount referred to in item 6 above.

Underlying principles of the tailored cash needs requirement

RG 166.362 We consider that meeting the requirement for 12-month projections is sound business practice. A CSF intermediary without adequate cash could give rise to significant disruptions for issuer clients and could also put at risk compliance with its obligations in relation to investors. The requirement for a cash buffer reflects Option 1 as set out in Table 4.

The tailored audit requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

RG 166.363 All AFS licensees must give ASIC an audit report under s989B(3) for each financial year that includes information about compliance with the financial requirements that apply to them: see Section B. If you do not have to provide an audit report under s989B(3), you must still give ASIC an audit report about compliance with the financial requirements. You must also give ASIC this information if we request it for a specified period at another time: see s912C(2).

Note: For the form of this compliance report applying to licensees generally, see PF 209, condition 28.

RG 166.364 As a CSF intermediary, the information you must include in your audit report reflects the financial requirements that apply to you: see s912AH as notionally inserted by ASIC Instrument 2017/339.

RG 166.365 Your audit report must include statements by a registered company auditor addressed to you and ASIC that, for the relevant period:

(a) in the auditor's opinion, you:

(i) complied with the requirements to have the cash flow projection approved by the board at least quarterly, the requirement to hold at all times the amount you are required to hold in cash, and any other financial requirements applying to you;

(ii) had, at all times, a cash flow projection (covering at least the following 12 months) that purported to, and on their face appeared to, demonstrate your solvency; and

(iii) correctly calculated the cash flow projections based on the assumptions you used for the projection; and

(b) following an examination of the calculations, assumptions and description used in preparing the cash flow projection, including the document prepared under items 5 and 6 in Table 17, the auditor has no reason to believe that:

(i) you did not have adequate systems for managing the risk of having insufficient financial resources to meet any financial requirements applying to you;

(ii) you failed to document the calculations and assumptions used in preparing the cash flow projections and describe why they are appropriate;

(iii) you will not have access when needed to enough financial resources to meet your liabilities over the projected term of at least 12 months or that you will not hold at all times during the period to which the projection relates, in cash, an amount equal to or greater than the current amount you are required to hold in cash; and

(iv) the assumptions you adopted for your cash flow projections were unreasonable.

Note: We refer to the auditor statements in RG 166.365(a) as 'positive assurance' and the statements in RG 166.365(b) as 'negative assurance'. We expect that when giving negative assurance for the purposes of RG 166.365(b), the auditor will take into consideration any information from the audit for positive assurance.

Appendix 10: Corporate directors of retail CCIVs

Key points

If you are a corporate director of a retail CCIV, you must meet:

- the standard solvency and positive net assets requirement;
- a tailored cash needs requirement;
- a tailored audit requirement;
- a net tangible assets (NTA) requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.366 A corporate director of a retail CCIV must meet:

(a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);

(b) a tailored cash needs requirement (see RG 166.370–RG 166.371);

(c) a tailored audit requirement (see RG 166.373–RG 166.375);

(d) a net tangible assets (NTA) requirement with requirements for holding cash or cash equivalents and holding liquid assets (see RG 166.376–RG 166.396); and

(e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note: The financial requirements for corporate directors of a retail CCIV, responsible entities and IDPS operators are set out in ASIC Instrument 2023/647.

RG 166.367 Corporate directors of a retail CCIV must meet the tailored financial requirements in this appendix. Corporate directors are responsible for compliance with the Corporations Act and the operation of the CCIV. We therefore look at the corporate director when determining whether the tailored financial resource requirements in relation to the operation of a retail CCIV are met.

RG 166.368 If you are required as a licensee to have assets to meet financial requirements under ASIC Instrument 2023/647, you can also count those assets for another applicable financial requirement. If multiple financial requirements apply based on the financial products and services you offer, you will need to satisfy the highest requirement. For example, in addition to meeting the NTA requirement for the corporate director of a retail CCIV, you might also be subject to at least one other NTA requirement under Appendices 4–9. If this is the case, you will need to satisfy the NTA requirement with the highest dollar value.

RG 166.369 If you are a corporate director and also a responsible entity and/or an IDPS operator, please also see Appendices 2 and 3.

The tailored cash needs requirement

Note: This requirement replaces the standard cash needs requirement in Section B of this guide.

RG 166.370 You must meet the tailored cash needs requirement for AFS licensees authorised as a corporate director of a retail CCIV. You will need to prepare a cash flow projection (see Table 18), which covers a period of at least 12 months—that is, you must assess your cash needs over at least a 12-month forward period.

RG 166.371 You must update your cash flow projection when:

(a) those cash flows cease to cover the next 12 months;

(b) there is a material change; or

(c) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 in Table 18.

RG 166.372 Your board must approve the cash flow projection at least quarterly.

Table 18: The tailored cash needs requirement for corporate directors of a retail CCIV

Requirement	You must meet all these requirements
Projection	**1** Prepare a projection of your cash flows over at least the next 12 months based on your reasonable estimate of what is likely to happen over this term. Note: You can take into account, for example, the following factors in preparing your projection if you reasonably believe they are likely to be available: assets you hold at the time the projection starts that can be used to pay your liabilities; and inflows you may receive, including income from your business, amounts that you may borrow (e.g. under an overdraft), and amounts that you may receive from an eligible provider under an eligible undertaking. **2** Document your calculations and assumptions on which the projection is based, and describe in writing why they are the appropriate assumptions. Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business. **3** Update your projection of cash flows when: (a) those cash flows cease to cover the next 12 months; (b) there is a material change; or (c) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 below. Note: A 'material change' is a change for which it would be reasonable for you to plan by updating your cash flow projection. **4** Have your cash flow projection approved by the board of directors at least quarterly as satisfying the requirements in this cash needs requirement.

Requirement	You must meet all these requirements
Financial resources	**5** Document whether, based on your projection of cash flows, you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 12 months, including any additional liabilities you project will be incurred during that term. **6** Document whether, based on the projection of your cash flows, you will hold at all times during the period to which the projection relates, in cash or cash equivalents, an amount equal to or greater than the current amount you are required to hold in cash or cash equivalents: see RG 166.376–RG 166.396.

The tailored audit requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

RG 166.373 All AFS licensees must give ASIC an audit report under s989B(3) of the Corporations Act for each financial year that includes information about compliance with the financial requirements that apply to you: see Section B. If you do not have to provide an audit report under s989B(3), you must still give ASIC an audit report about compliance with the financial requirements. You must also give ASIC this information if we request it for a specified period at another time: see s912C(2).

Note: For the form of this compliance report applying to AFS licensees generally, see PF 209, condition 28.

RG 166.374 As an AFS licensee that is a responsible entity, the information you must include in your audit report reflects the financial requirements that apply to you: see ASIC Instrument 2023/647.

RG 166.375 The audit report must include statements by a registered company auditor addressed to you and ASIC that, for the relevant period:

(a) in the auditor's opinion, you:

(i) complied with any requirements applying to you and had the cash flow projection approved by the board at least quarterly, the NTA requirement and any other financial requirements applying to you;

(ii) had, at all times, cash flow projections (covering at least the following 12 months) that purported to, and on their face appeared to, demonstrate your solvency; and

(iii) correctly calculated the cash flow projections based on the assumptions you used for the projection; and

(b) following an examination of the calculations, assumptions and description used in preparing the cash flow projection, including the

document prepared under items 5 and 6 in Table 18, the auditor has no reason to believe that:

(i) you did not have adequate systems for managing the risk of having insufficient financial resources to meet any financial requirements applying to you;

(ii) you failed to document the calculations and assumptions used in preparing the cash flow projections and describe why they are appropriate;

(iii) you will not have access when needed to enough financial resources to meet your liabilities over the projected term of at least 12 months or that you will not hold at all times during the period to which the projection relates, in cash or cash equivalents, an amount equal to or greater than the current amount you are required to hold in cash or cash equivalents; and

(iv) the assumptions you adopted for your cash flow projections were unreasonable.

Note: We refer to the auditor statements in RG 166.375(a) as 'positive assurance' and the statements in RG 166.375(b) as 'negative assurance'. We expect that when giving negative assurance for the purposes of RG 166.375(b), the auditor will take into consideration any information from the audit for positive assurance.

The NTA requirement

RG 166.376 If you are a corporate director of a retail CCIV, you must meet the NTA requirement in Table 19 that applies to you. This requirement also applies in relation to any registered schemes or IDPS you operate: see Appendices 2 and 3.

Note: Changes to the NTA requirement will commence on 1 July 2027. The minimum financial thresholds in the requirement (see the dollar amounts referred to in RG 166.377, RG 166.381, Table 19, RG 166.383 and RG 166.391) will be increased to reflect inflation since 2013 (when they were last amended). In addition, annual indexation will be introduced to help ensure the thresholds continue to reflect their real value over time. For more information, see *ASIC Corporations (Amendment) Instrument 2026/708*.

RG 166.377 Our position is that you must meet the NTA requirements in Table 19 at all times while you hold an authorisation for the relevant financial products and services, even during periods where you are not actively offering that product or service. If at any time you do not currently operate any retail CCIVs, registered schemes or IDPS, as applicable), you will still need to meet your NTA requirement (of at least $150,000).

RG 166.378 When determining the 0.5% average value of fund assets, you must calculate the required amount of NTA based on:

(a) the value of assets of all sub-funds in retail CCIVs you operate as a corporate director;

(b) if you are also the responsible entity of a registered scheme, the value of all scheme property and other assets of schemes you operate as a responsible entity; and

(c) if you are also an IDPS operator, the value of all IDPS property.

Note: You do not need to include the value of fund assets of any scheme, IDPS or retail CCIV you no longer operate.

RG 166.379 In determining the value of the assets, the following apply:

(a) The value of the assets will generally be the amount that would be recognised in a balance sheet for members under Ch 2M as if, at that time, such a balance sheet was being prepared (and by reference to the meaning of assets of a sub-fund in s1233H) but excluding cross-invested shares. This amount should reflect the carrying value of the asset. For example, for assets such as property, plant and equipment, the carrying amount would be the value of the asset minus accumulated depreciation and impairment losses.

(b) The 'gross value' of the assets is to be used rather than the net value. For an asset that is subject to a liability, such as a property that is subject to a mortgage, you must use the amount that would be shown in a balance sheet for that asset and are not permitted to deduct the amount of a liability that is connected to an asset.

(c) For the avoidance of doubt, the assets in a sub-fund of a retail CCIV that has wholesale clients as members should be included when calculating the value of sub-fund assets.

RG 166.380 When determining the 10% of average licensee revenue test, the revenue is all of your revenue as a licensee (within the meaning given by the accounting standards). This also includes any amounts paid or payable to agents for services provided on your behalf in relation to any scheme, IDPS or retail CCIV you operate as licensee.

RG 166.381 Of the required NTA (as applicable to you), you must hold:

(a) cash or cash equivalents valued at—at least the greater of:

(i) $150,000; or

(ii) 50% of the required NTA; and

(b) liquid assets to the amount of required NTA—this may include cash or cash equivalents, other than a commitment to provide cash from an eligible provider that can be drawn down within 5 business days upon request, and will not expire within the next 6 months.

Table 19: NTA requirements for corporate directors of a retail CCIV (including where the corporate director is also a responsible entity or IDPS operator)

Type of corporate director	NTA requirement
You are a corporate director only **OR** You are a corporate director and also a responsible entity or IDPS operator **AND** You satisfy any of the requirements relating to custody in RG 166.383(a)–RG 166.383(d).	**1** You must hold at all times minimum NTA of the greater of: (a) $150,000; or (b) 0.5% of the average value of fund assets (based on all CCIV assets **OR** all CCIV assets, scheme property or IDPS property, as applicable) up to $5 million NTA; or (c) 10% of your average revenue.
You are a corporate director only **OR** You are a corporate director and also a responsible entity or IDPS operator **AND** You do not satisfy any of the requirements relating to custody in RG 166.383(a)–RG 166.383(d).	**2** You must hold at all times minimum NTA of the greater of: (a) $10 million; or (b) 10% of your average revenue. Note: A person that is only acting as a corporate director, or who only holds the money or property of a retail CCIV, is not performing a custodial or depository service: see s1241E. Regulation 8B.5.10 of the Corporations Regulations imposes responsibility on the corporate director for ensuring that minimum standards for custodians for CCIVs are satisfied.

Note: See the note under RG 166.376 for information about the changes to the NTA requirement that will commence on 1 July 2027.

Definitions for the NTA requirement

RG 166.382 Definitions for calculating the required NTA for corporate directors are in Section E: see RG 166.99–RG 166.184. Relevant definitions include:

(a) average revenue;

(b) average value of fund assets;

(c) calculation date;

(d) cash or cash equivalents;

(e) eligible provider;

(f) first financial year;

(g) fund assets;

(h) liquid assets;

(i) revenue; and

(j) value of fund assets.

Requirements relating to custody

RG 166.383 You must meet the NTA requirement in item 2 of Table 19 unless any of the following requirements are satisfied:

(a) all assets of the retail CCIVs (and any scheme property of registered schemes and IPDS property of IDPS) you operate are held by a custodian (or a sub-custodian appointed by that custodian) who you reasonably believe meets the financial requirements for AFS licensees authorised to provide a custodial or depository service other than as an incidental provider (see Appendix 4), or by an eligible custodian;

(b) all assets of the retail CCIVs (and any scheme property of registered schemes) you operate are Tier $500,000 class assets, each of which are held by the CCIV (in relation to retail CCIV assets) or a custodian appointed by you (or a sub-custodian appointed by that custodian), and:

(i) if the CCIV holds assets of the retail CCIV (or you as licensee hold the scheme property of the registered scheme), the retail CCIV (or you as the holder of the scheme property) have at least $500,000 NTA; or

(ii) if a custodian or sub-custodian holds the assets of the retail CCIV (or scheme property of the registered scheme), the custodian has at least $500,000 NTA, or is an eligible custodian; or

(c) the only assets of a retail CCIV (or scheme property of a registered scheme or IPDS property of an IDPS) not held under RG 166.383(a) or RG 166.383(b) are special custody assets, each of which is held by:

(i) in relation to a retail CCIV—the retail CCIV and in relation to a registered scheme or IDPS—you as licensee; and/or

(ii) a custodian that has the level of NTA that you are required to have (or a sub-custodian appointed by that custodian) or an eligible custodian;

(iii) a custodian (or sub-custodian appointed by that custodian) and the assets fall within:

(A) paragraph (a), (c) or (f) of the definition of 'special custody assets'; or

(B) paragraph (d) of the definition of 'special custody assets' where the trust account is a regulated trust account; or

(d) you do not currently operate any retail CCIVs (or registered schemes or IDPS).

Note 1: For the definition of 'eligible custodian', 'special custody assets' and 'Tier $500,000 class assets', see RG 166.172 and RG 166.182–RG 166.183 in Section E.

Note 2: For additional details on the NTA requirements, see ASIC Instrument 2023/647.

RG 166.384 If you have obtained written assurance within the preceding 13 months from a custodian that is authorised to provide custodial or depository services that, at the time the assurance is given, it complies with the financial requirements for custodians that are not incidental providers (see Appendix 4), you are taken to have the reasonable belief referred to in RG 166.383(a) in relation to that custodian.

RG 166.385 If the custodian is not an AFS licensee authorised to provide a custodial or depository service, you must meet the NTA requirement in item 2 of Table 19 unless you have received:

(a) written assurance within the preceding 13 months from the custodian regarding its compliance with the financial requirements that apply to custodians that are authorised to provide custodial or depository services other than as incidental providers; and

(b) a report from a registered company auditor in respect of a period of at least 12 months, confirming the custodian's compliance with these requirements on terms reflecting the audit report required for AFS licensees.

RG 166.386 The audit report must be received upon appointment in the first instance and must apply to a period not more than 16 months before the date it is received by you.

Note: Operating a CCIV or holding assets of a CCIV does not constitute a custodial or depository service under s766E: see s1241E. Therefore, custodial or depository services authorisation is not required in order to provide these services.

RG 166.387 If you are relying on holding a reasonable belief that a custodian meets financial requirements for custodians to meet a lower NTA requirement and at any time you are aware of information that makes you suspect that the financial requirements for custodians will not be met by the custodian, you will need to obtain further confirmation and, where appropriate, an audit report addressing compliance with the financial requirements, before you will be taken to have the reasonable belief.

Underlying principles of the NTA requirement

RG 166.388 The NTA requirement generally aims to:

(a) ensure that you have adequate financial resources to meet your operating costs (e.g. the costs of ensuring compliance with the Corporations Act) throughout the life of the retail CCIV;

(b) align your interests and the interests of the retail CCIV shareholders by ensuring that you are an entity of substance and that your shareholders have sufficient equity in the business to have a real incentive to ensure its success; and

(c) provide some level of assurance that, if you do fail, there is sufficient money available for the orderly transition to a new corporate director.

RG 166.389 The financial requirements for corporate directors take into account the need for investor confidence and assessment of comparable regulatory regimes in leading financial centres. The NTA requirement for a corporate director of a retail CCIV is aligned with the NTA requirement imposed on responsible entities, with the necessary adjustments to reflect the CCIV's sub-fund structure.

RG 166.390 We will not require the NTA calculation to address market or credit risks to assets. NTA is a measure of general financial standing. It includes non-current assets and is not specifically a measure of capacity to meet financial obligations.

Cash or cash equivalents

RG 166.391 The requirement to hold at least 50% of the required NTA (disregarding any additional amount required by the requirements relating to custody) in cash or cash equivalents (with a minimum of $150,000) aims to help you to meet expenditure in unanticipated situations over the coming 6-month period. The required NTA to be held as liquid assets should be realisable within 6 months so you can continue to meet your liabilities over the 12-month period.

RG 166.392 As one of the purposes of this requirement is to ensure money is available for situations that are unanticipated, it is imperative that a portion of this money be available at call, with the balance being available in the short term.

Use of custodian or sub-custodian

RG 166.393 The purpose of our policy is to ensure that the custodian or person holding assets on behalf of the custodian:

(a) is an entity of some substance; and

(b) has sufficient financial resources to enable assets to be transferred if it ceases to be a custodian.

RG 166.394 This recognises that, in certain circumstances:

(a) it would be unreasonably costly or impracticable for retail CCIVs to retain a custodian that can meet the NTA requirement;

(b) the custodial systems for some retail CCIVs need not be as sophisticated as for other CCIVs; and

(c) the prospect of loss of certain asset types due to custodial failure is less than for others because:

  (i) the risk can be addressed adequately by appropriate controls involving oversight by a person other than the corporate director; and

  (ii) there is a low risk of misappropriation of those asset types.

RG 166.395 Generally, the effect of our policy is that, to hold certain types of assets of a retail CCIV, a custodian that satisfies RG 166.393 must be used unless the required NTA of the corporate director is over a specified amount.

RG 166.396 For those assets for which a reduced amount of custodial financial requirements applies under your AFS licence as a corporate director, you must still ensure that the custodian meets the minimum standards set out in reg 8B.5.10 of the Corporations Regulations.