

[SPS 131] Superseded Policy Statement 131 Managed investments: Financial requirements

Related instruments [CO 99/558], [PF 173], [PF 188]

Chapter 5C Part 5C.2 — Managed investment schemes

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Superseded 11/3/2004: see Policy Statement 167 Licensing: Discretionary powers and transition at [PS 167.51] and Policy Statement 166 Licensing: Financial requirements [PS 166].

What this policy statement is about

In order to gain a full understanding of our policy in this area you should read all the parts of this policy statement, including the Underlying Principles and the Explanations.

[PS 131.1] This policy statement provides guidance on:

A the financial requirements that a responsible entity must satisfy to have a licence authorising it to operate a managed investment scheme; and

see [PS 131.3]–[PS 131.22]

B how to calculate net tangible assets.

see [PS 131.24]–[PS 131.30]

[PS 131.2] In addition to the financial requirements set out in this policy statement, we have given guidance on other, general, licensing requirements in Policy Statement 130 *Managed investments: Licensing* [PS 130].

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A Financial requirements of a responsible entity

Our policy

[PS 131.3] To obtain a licence authorising you to operate a managed investment scheme, you must:

- (a) satisfy us that you meet the mandatory NTA requirement in s784(2A);
- (b) have access to sufficient financial resources (including from your entitlements from scheme property, such as, fees) to meet ongoing scheme-related cash requirements which would arise under reasonably foreseeable circumstances, for a minimum of three months;
- (c) maintain appropriate professional indemnity insurance and insurance against fraud of your officers. This should cover claims up to, and in aggregate, \$5 million, or the value of scheme assets, whichever is less (unless you can demonstrate to us that such insurance is not reasonably obtainable); and
- (d) meet the general licensing requirements set out in Policy Statement 130 *Managed investments: Licensing* [PS 130].

[PS 131.4] The following paragraphs ([PS 131.5] - [PS 131.6]) describe when your financial position means that you need to appoint a third party custodian to hold the property of schemes which you operate.

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[PS 131.5] If you have less than \$5 million NTA you must use a third party custodian unless the assets of the scheme are as described in [PS 131.5A] or [PS 131.6].

[PS 131.5A] You are not required to use a third party custodian to hold assets that fall within the following categories:

- (a) physical assets which as a matter of reasonable practice can not be physically held by a custodian (such as livestock, agricultural produce, machinery or film sets);
- (b) contractual, lease or licence rights which are not assignable or only assignable with the consent of the member, other than to a new responsible entity, and any documents evidencing those contractual, lease or licence rights;
- (c) assets of trivial value;
- (d) cash held for up to three months in an audited trust account:
 - (i) pending payment to members;
 - (ii) for the purposes of working capital (such as maintenance of real property or physical assets) which is reasonably necessary to meet expected expenditures over a three month period; or
 - (iii) pending application in acquiring a mortgage and paying any fees and costs incidental to the acquisition; or
- (e) mortgages or documents of title held under a mortgage where:
 - (i) particular members have a specific beneficial or legal interest in the mortgage;
 - (ii) the mortgage was acquired after disclosure in writing to the relevant members (at the time of the acquisition) of all matters that the members and their advisers would reasonably require and expect to find to make a decision to agree to the mortgage being acquired; and
 - (iii) either of the following applies:
 - (A) the mortgage was acquired on the specific direction of the relevant members (at the time of acquisition of the interest); or
 - (B) if the members have not specifically advised the applicant that they wish to acquire the mortgage they are able to withdraw from that mortgage for a

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period of 14 days commencing on the date of disclosure; and

- (iv) the scheme does not involve the mortgage being sold prior to its discharge; or
- (f) where the scheme involves owners of interests in real property making their real property available for use as part of a serviced apartment, hotel or resort complex, cash held in a regulated trust account:
 - (i) for the purpose of refurbishment and improvement of real property associated with the scheme; or
 - (ii) for the purpose of alleviating seasonal fluctuations in payments of income from the scheme in accordance with provisions in the constitution,

provided, that no more is held than the applicant reasonably considers necessary for the stated purpose.

[Historical Note: [PS 131.5] was amended 9/2/2000 by inserting a new subclause (d)(iii) and subclauses (e) and (f).]

[PS 131.5B] For the purpose of [PS 131.5A], an audited trust account is an account styled as a trust account which is audited at least once every six months and for which the auditor's report is provided to the board or compliance committee (as appropriate) of the responsible entity.

[PS 131.6] In addition to those assets described in [PS 131.5A] which we do not require to be held by a third party custodian you are not required to use a third party custodian in relation to a scheme if:

- (1) you meet the standards for holding scheme property set out in Policy Statement 133 *Managed investments: Scheme property arrangements* [PS 133]; and
- (2) your NTA is \$500,000 or more; and
- (3) all of the assets of the schemes fall within the following categories:
 - (a) real property (including mortgages over; leases over or licences in relation to real property) that will be kept for the whole duration of the scheme or, the relevant mortgage; or
 - (b) physical assets which as a matter of reasonable practice can be held by a custodian (such as valuables or precious metals);

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- (c) cash and deposits held in a regulated trust account:
 - (i) for up to six months pending its initial investment; or
 - (ii) for up to 13 months pending initial expenditure; or
- (d) assets described in [PS 131.5A].

[Historical note: Subpara (3)(a) of [PS 131.6] was amended 9/2/2000 by inserting the words “; mortgages over” between the words “including” and “leases” and adding at the end after the word ”scheme” the words “or, the relevant mortgage; or”.]

[PS 131.6A] For the purpose of [PS 131.6], a regulated trust account is:

- (a) a trust account maintained by an authorised trustee corporation under state or territory legislation;
- (b) a solicitor's trust account;
- (c) a real estate agent's trust account; or
- (d) a trust account maintained by an entity other than the responsible entity which provides protections similar to the accounts described in paragraphs (a) to (c) and which is approved by ASIC.

[Historical note: Subpara (a) of [PS 131.6A] was amended 9/2/2000 by inserting the word “corporation” between the words “trustee” and “under”.]

[PS 131.7] Any third party custodian appointed by you in relation to a scheme must be:

- (a) an entity which has at least \$5 million NTA, unless, in relation to scheme:
 - (i) it is only holding a combination of assets described in [PS 131.5A] and subparagraphs (3)(a), (b) of [PS 131.6] in which case, the custodian must have a minimum NTA of \$500,000 or such higher amount that is required of you under s784(2A); or
 - (ii) it is only holding assets described in [PS 131.5A]. In this case the custodian must have the same minimum NTA that is required of you; or
 - (iii) it is the person operating the regulated trust account described in [PS 131.6] paragraph (c) and it holds no other scheme property. In this case it does not need to meet any minimum level of NTA; or

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(b) an Australian ADI.

[PS 131.8] We have made a determination to give effect to the policy set out in [PS 131.3] paragraph (c) and [PS 131.4]–[PS 131.7]. The relevant requirements of the policy are preconditions to the issue of a licence. The determination is set out in [CO 99/558].

[PS 131.9] Consistent with the intention of the Law, we will also impose a licence condition that the responsible entity must at all times maintain the financial requirements set out in [PS 131.3]–[PS 131.7].

Underlying principles

[PS 131.10] Section 784 of the Law prescribes some financial requirements for responsible entities. In addition, the section sets out the framework within which we are to exercise our discretion in considering whether to issue a licence. The financial resource requirements of the Law and this policy collectively represent:

- (a) a demonstration of commitment by the responsible entity to operating schemes;
- (b) a level of assurance that the responsible entity has the financial capacity to operate the scheme on a continuing basis;
- (c) some protection to ensure that the scheme assets can be transferred if the custodian is removed; and
- (d) some protection for members against loss because of negligent administration or fraud by officers or agents.

[PS 131.11] The financial requirements established in this policy take into account:

- (a) the financial requirements set out in the Law;
- (b) the diversity of the types of schemes;
- (c) the need for investor protection; and
- (e) comparable regulatory regimes such as the Superannuation Industry (Supervision) Act 1993 (Cth) (SIS) for public offer superannuation funds.

Explanations

Mandatory NTA requirement

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[PS 131.12] Section 784(2A) of the Law provides that, as a pre-condition to issuing a licence, we must be satisfied that the value of your NTA is, and will be maintained at:

- (a) a minimum of \$50,000; or
- (b) an amount equal to 0.5% of those assets shown in the latest accounts of the scheme lodged with us if the value of all scheme property is greater than \$10 million.

The maximum NTA requirement is \$5 million.

[PS 131.13] The Law requires that we must be satisfied of this before we can issue a licence to you. Accordingly, before we issue you with a licence, you must provide evidence sufficient to satisfy us that you do have, and will maintain, the required NTA level. You can provide this evidence either with your application or after receiving the conditional letter of offer (as a variation to your Form 701). We will include as conditions of your licence that you:

- (a) must notify us of any material change (this condition is discussed at [PS 130.63]); and
- (b) will continue to meet the mandatory NTA requirement.

[PS 131.13A] The requirements of the Law that you must meet certain NTA requirements is supported by a licence condition that you must continue to meet those requirements. This means that you need to periodically check both the amount of NTA you have and the amount of NTA you are required to hold (this is determined by reference to the value of scheme property and whether you act as custodian of scheme property). How often these figures need to be checked will depend on your individual circumstances. At a minimum the figures should be checked if events occur which might lead a reasonable person to question whether you, the responsible entity, continue to meet the requirements. You should check these figures with sufficient regularity so that you can satisfy us that at any given point in time, you continue to meet the NTA requirements. The compliance plan for your schemes should make adequate provision for ensuring compliance with this licence condition.

[PS 131.14] Section 784(2D) provides that ASIC may exempt an applicant from the mandatory requirements of s784(2A). The Commission is not given power to delegate this decision. The Commission will grant an exemption only in exceptional circumstances.

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In due course, the Commission may consider issuing guidelines on when it will grant such an exemption.

Scheme-related cash needs

[PS 131.15] We believe that a responsible entity for a scheme should have sufficient liquid assets, or access to liquid assets, to ensure continued operation of the scheme. In addition to the mandatory NTA requirement described in [PS 131.12], we will impose a licence condition that you must have access to sufficient financial resources (including from your entitlements from scheme property, such as fees) to meet ongoing scheme-related cash requirements which would arise under reasonably foreseeable circumstances, for a minimum of three months. The licence condition establishes a flexible test for the amount of liquid assets clearly linked to the size and nature of the scheme. Scheme-related cash requirements will need to be determined by the responsible entity based on its forecast of the maximum expenditure that it reasonably foresees it could incur in operating registered schemes. Examples of expenditure that a responsible entity could incur in operating registered schemes might include the costs of ongoing legal services, back-office staff costs, or the costs of maintaining office equipment. Scheme-related cash requirements will not include costs that will be borne by a scheme. If amounts are to be expended by the responsible entity and then will be reimbursed by the scheme, the responsible entity needs to be able to cover the time difference from expenditure to reimbursement.

Insurance

[PS 131.16] In any business there is a risk of funds or assets being misappropriated by employees, owners and other parties. When an entity is managing another person's money or assets, the risk and impact of fraud may increase. Therefore, we will require as a licence condition, that a responsible entity must have and maintain adequate insurance protection against loss arising from negligent administration or fraud by its officers.

[PS 131.17] The insurance requirements set out in this policy statement take into account:

- (a) mandatory professional indemnity insurance requirements under the SIS regime and in other jurisdictions, such as the United States and Canada (which have mandatory broker bond and/or insurance requirements); and

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- (b) professional indemnity requirements in Australia (eg Australian Stock Exchange Ltd).

[PS 131.18] We have not prescribed standard insurance policy requirements, but we have set the lesser of \$5 million or the value of scheme assets as the minimum cover. In other respects, it is up to the directors of the responsible entity, and the auditor of the responsible entity, to assess whether the terms of the cover are adequate. Maintaining the required insurance is also a licence condition.

[PS 131.19] You will not be required to obtain this insurance if you can demonstrate to us, at the time of your licence application, that it is not reasonably obtainable.

Custody-related financial resources

[PS 131.20] Generally, a custodian (whether it is you or a third party custodian) must have at least \$5 million NTA. This ensures that a custodian is an entity of some substance and also that it has sufficient financial resources to enable assets to be transferred if it is removed. This could happen, for example, if it breaches its duty.

[PS 131.21] Not all custodians must maintain \$5 million NTA. This recognises that, in certain circumstances:

- (a) it would be unreasonably costly for operators of schemes to retain a custodian which can meet the \$5 million financial resources 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 types of assets due to custodial failure is less than for others, and there is a low risk of misappropriation in relation to those asset types.

The amount of NTA which is required in order to hold different asset classes has changed since this policy was first introduced. We will continue to monitor the application of custodial capital requirements.

[PS 131.21A] Serviced strata schemes and mortgage syndicates not involving nominees are examples of contractual based schemes where the contractual rights (or leases) involved may, by their nature, be unable to be misappropriated or assigned without the investors' consent. Further

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types of contractual rights which may be of the type described in [PS 131.5A] para (b) may include:

- licences of copyright in a film scheme;
- the right in some agricultural schemes to enter the land and cultivate, harvest and remove the produce; or
- the right to receive interest on a mortgage or rent from a real property syndicate.

[PS 131.21B] Generally, the effect of our policy set out in [PS 131.4] – [PS 131.7] is that you will be required to use a third party custodian to hold certain types of scheme property unless your NTA is over a specified amount. The amount of NTA which you need to have in order to hold various types of scheme property is summarised in the following table.

<i>Asset types</i>	<i>Minimum NTA required by the RE</i>
physical assets which can not practically be held by a custodian (such as livestock, agricultural produce, machinery or film props); contractual, lease or licence rights which are not assignable or not assignable without the consent of the member (other than to a new responsible entity); assets of trivial value; cash held for up to three months in an audited trust account pending payment to members or for working capital or for application in acquiring a mortgage and paying any fees and costs incidental to the acquisition; mortgages or documents of title held under a mortgage in certain	\$50,000 (ie self custody permitted)

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<p>circumstances; or</p> <p>cash held in a regulated trust account for refurbishment or improvement of property associated with a serviced apartment, hotel or resort complex or for alleviating seasonal fluctuations in certain circumstances</p> <p>See [PS 131.5A]</p>	
<p>real property held for the duration of the scheme;</p> <p>physical assets which practically can be held by a custodian; or</p> <p>cash held in a regulated trust account for up to six months pending initial investment or moneys received from members and held for up to 13 months pending initial expenditure.</p>	<p>\$500,000 (provided that <i>all</i> scheme property falls into these categories or those set out above - otherwise \$5 million)</p>
<p>All other assets</p>	<p>\$5 million</p>

[*Historical note:* [PS 131.21B] was amended 9/2/2000 by inserting in the table after the phrase “assets of trivial value;” the word “or”; and inserting after the phrase “working capital” the words “or for application in acquiring a mortgage and paying any fees and costs incidental to the acquisition;

mortgages or documents of title held under a mortgage in certain circumstances; or
cash held in a regulated trust account for refurbishment or improvement of property associated with a serviced apartment, hotel or resort complex or for alleviating seasonal fluctuations in certain circumstances
See [PS 131.5A].”.]

[PS 131.22] When the reduced amount of custodial financial resources applies, the custodian must still meet the standards for holding scheme property which are set out in Policy Statement 133 *Managed investments: Scheme property arrangements* [PS 133].

[PS 131.23] Before we give you a licence under s784, you must satisfy us that you will be able to meet our policy on custody related financial resources. Meeting this policy on a continuing basis is also a licence condition.

B How to calculate NTA

Our policy

[PS 131.24] We consider that “adjusted liabilities” in s784(2C) means liabilities subject to those adjustments we determine.

[PS 131.25] The adjustments which we have determined are those inclusions and exclusions set out in the Annexure of this policy statement.

[PS 131.25A] In calculating NTA for custodians or guarantors, we require that adjustments be considered on the same basis as for responsible entities. In addition, in satisfying yourself whether a custodian has the required amount of NTA, you may accept a guarantee in substitution for NTA on the same basis that we will accept a guarantee as described in [PS 131.26]. This means that you will need to obtain a statutory declaration or a copy of the statutory declaration from the guarantor of the custodian in terms similar to that required in Pro Forma 173 [PF 173].

[PS 131.26] For the purpose of s784(2C), we will approve guarantees that meet the following three requirements:

- (a) they are given by an Australian ADI. We will also consider accepting the following, on a case by case basis:
 - (i) guarantees from foreign banks which are regulated under Basle Committee standards; and
 - (ii) guarantees provided by a parent entity or a sibling entity of a responsible entity. We have allowed an entity which is not an Australian ADI or financial institution to give a guarantee to a subsidiary in circumstances where the guarantor had NTA of over \$50 million and was a disclosing entity. We will consider when we may accept such guarantees over time in the light of experience. However, at this stage, we would envisage approving or maintaining approval of guarantees only from entities that have more than \$50 million NTA and which are disclosing entities.
- (b) the guarantee is a guarantee of performance of all of the obligations of the responsible entity in relation to the operation of registered schemes and includes as obligation of the guarantor to

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the responsible entity to provide financial resources as required;
and

- (c) the responsible entity provides a statutory declaration in the form of Pro Forma 173 [PF 173].

[PS 131.26A] A guarantor may limit its liability to a certain amount. If so we will accept that amount as a substitute for an equivalent amount of total assets that would otherwise be required when calculating net tangible assets.

[PS 131.26B] When we approve a guarantee we will do so using [PF 188].

Underlying principles

[PS 131.27] The underlying principles for setting minimum financial resources are explained in [PS 131.10]. To meet these objectives, calculating the NTA for a responsible entity or custodian must be:

- (a) easily understood;
- (b) not subject to manipulation; and
- (c) based on accepted accounting principles.

Explanations

[PS 131.28] Section 784(2C) defines NTA by referring to the latest accounts lodged with us, and includes any guarantees approved by us. We interpret “lodged accounts” to include those accounts lodged with Form 701. This means that you must lodge with the Form 701 a balance sheet prepared as if it were required to be lodged as part of the financial statements under Chapter 2M. The balance sheet must be signed by two directors certifying that the balance sheet has been prepared in accordance with the requirements of Chapter 2M on the basis that the company is a reporting entity. If you have lodged audited financial statements under the Law within the last 12 months, you may elect not to lodge further accounts for the purpose of the licence application.

[PS 131.29] [paragraph deleted 2/6/1999].

[PS 131.30] An Australian bank may, for example, be the parent company of a responsible entity. In this case, the responsible entity could

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rely on a guarantee from that bank when assessing whether it meets the NTA requirements.

[PS 131.31] We may review the terms of the guarantee at the time of licensing or afterwards.

Key terms

[PS 131.32] In this policy statement, a reference to:

“APRA” is to the Australian Prudential Regulation Authority;

“ASIC” is to the Australian Securities and Investments Commission;

“Australian ADI” is to an Australian ADI as defined in s9 of the Law;

“the Law” is to the Corporations Law;

“NTA” is to net tangible assets;

“scheme” is to a registered managed investment scheme or to a proposed registered managed investment scheme;

“responsible entity” is to a responsible entity of a scheme; and

“s782” (for example) is to a section of the Law.

Related information

[PS 131.33]

Headnotes

Financial requirements, financial resources, dealers licence, net tangible assets, demonstration of commitment, financial capacity, minimum financial resources requirements, operating capacity, cash requirements, custody related financial resources, definition of NTA, bank guarantees, insurance requirements, professional indemnity insurance, insurance against fraud.

Class orders and pro formas

[CO 99/558], [PF 173], [PF 188]

Policy statements and practice notes

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Policy Statement 89 *Trustees and representatives: Approvals for prescribed interest schemes* [PS 89]

Policy Statement 130 *Managed investments: Licensing* [PS 130]

Policy Statement 132 *Managed investments: Compliance plans* [PS 132]

Policy Statement 133 *Managed investments: Scheme property arrangements* [PS 133]

Policy Statement 134 *Managed investments: Constitutions* [PS 134]

Policy Statement 135 *Managed investments: Transitional issues* [PS 135]

Policy Statement 136 *Managed investments: Discretionary powers and closely related schemes* [PS 136]

Legislation

s784, 784(2A), 784(2B), 784(2C), 784(2D)

Superannuation Industry (Supervision) Act 1983 (Cth)

Policy proposal papers

Licensing a responsible entity

Financial requirements of a responsible entity

Compliance plans for managed investment schemes

Scheme property arrangements

Constitutional issues

Transitional issues

Exemptions and modifications

Media and information releases

[IR 98/9], [IR 98/10], [IR 99/18]

Annexure: Calculation of NTA

[PS 131.34] This Annexure to Policy Statement 131 sets out how net tangible assets should be calculated.

How to calculate NTA

[PS 131.35] Section 784(2C) of the Law defines net tangible assets as meaning total tangible assets of the applicant, including any guarantee approved by ASIC, less any adjusted liabilities as shown in the latest accounts of the applicant lodged with ASIC. Paragraph [PS 131.28] explains what this means for licence applicants. After you have obtained a licence, your licence will contain conditions about ongoing compliance with NTA requirements. For the purposes of ASIC licence conditions, NTA must be calculated on the basis of assets and liabilities as they would appear if a balance sheet were made up for lodgment as part of a financial report under Chapter 2M at the time of calculation on the basis that the licensee is a reporting entity. However this does not mean that any additional valuation of scheme property or of the assets and liabilities of the licensee is necessary because calculation is required. The frequency of valuation of scheme property, for example, is determined by the scheme's constitution.

[PS 131.36] “Adjusted liabilities” means total liabilities (as shown in the latest accounts of the applicant lodged with ASIC), plus those adjustments determined by ASIC as set out at [PS 131.37] – [PS 131.41] and minus:

- (a) any subordinated debt approved by ASIC;
- (b) any ADI undertakings, except to the extent that the payment of any amount under the undertaking gives rise to an obligation, actual or contingent, on the part of the responsible entity to pay any part of that amount to any person or an obligation of any other person to pay money secured over property of the responsible entity.

[PS 131.36A] ADI undertakings, as referred to in [PS 131.36], means the amount of a financial commitment provided by an Australian ADI, in the form of an undertaking to pay the amount of the financial commitment to the responsible entity, characterised by the following:

- (a) the undertaking is enforceable and unqualified;

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- (b) the undertaking is to pay on written demand by the responsible entity, except to the extent that payment has previously been made by the ADI to the responsible entity under the undertaking;
- (c) the undertaking remains operative (even if, for example the responsible entity ceases to hold a securities dealers licence or ceases to be a responsible entity of registered schemes) until ASIC has consented in writing to the cancellation of the undertaking or the undertaking is discharged by payment to the responsible entity of the maximum amount payable under the undertaking (either upon request of the responsible entity or at the ADI’s initiative).

[PS 131.37] Subject to [PS 131.37A] and [PS 131.37B], the adjustments referred to in [PS 131.36] are:

- (a) amounts owing from, or invested in, any associate; and
- (b) amounts owing from, or invested in, any:
 - (i) trust, managed investment scheme or prescribed interest undertaking; or
 - (ii) regulated superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme within the meaning of the Superannuation Industry (Supervision) Act 1993 (“superannuation scheme”)

in respect of which the applicant or an associate may exercise any form of power or control.

[PS 131.37A] The amounts referred to in [PS 131.37(a)] and [PS 131.37(b)] are not to be treated as adjustments for the purpose of [PS 131.6] to the extent that those amounts are:

- (a) adequately secured; or
- (b) owing from a disclosing entity (other than a registered scheme of which the applicant is the responsible entity) that has NTA (as defined in this annexure) of:
 - (i) more than \$50 million; or
 - (ii) at least four times the amount owing

whichever is the greater as shown in the most recent accounts of the disclosing entity lodged with ASIC; or

- (c) owing by way of fees from, or under rights of reimbursement for expenditure by the responsible entity out of property of a superannuation scheme, a registered scheme or a prescribed

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interest undertaking to which an approved deed relates (“the Scheme”) provided that that amount:

- (i) exceeds amounts invested or lent directly or indirectly by the Scheme in the applicant or a group entity (except that this proviso does not apply to amounts held on deposit with an Australian ADI in the ordinary course of its banking business); and
- (ii) if owing by way of fees, represents no more than fees owing for the last three months; and
- (iii) if under rights of reimbursement for expenditure by the responsible entity, has not been owing for more than 3 months.

[PS 131.37B] The amounts referred to in [PS 131.37(b)] are not to be treated as adjustments for the purposes of [PS 131.36] to the extent that those amounts are invested in;

- (a) a registered scheme,
- (b) a prescribed interest undertaking to which an approved deed relates, or
- (c) a superannuation scheme,

unless any part of the amount invested, is in substance, directly or indirectly, invested in, or lent to, the applicant.

[PS 131.38] “Associate” has the meaning set out in Div 2 of Part 1.2 of the Law, and includes the meaning set out in s13 and 15 of the Law.

[PS 131.39] An amount is “adequately secured” if it is secured by:

- (a) an enforceable charge over securities (other than securities of the responsible entity or any group entity) for which there exists an active market and the market value of these securities always equals not less than 105% of the particular amount owing; or
- (b) a registered first mortgage over real estate that has a fair market valuation at least equal to the amount owing.

[PS 131.40] An “Active Market” is taken to exist for:

- (a) securities, promissory notes or bills of exchange traded in a recognised market in which independent, bona fide offers to buy and sell are regularly made, so that a price reasonably related to the last sales price or current bona fide competitive bid and offer

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quotations can be determined promptly and where payment will be received within the customary period; and

- (b) any security which ASIC has approved in writing.

[PS 131.41] A “group entity” is any entity which controls the applicant or any entity controlled by any entity which controls the applicant.

Underlying principles

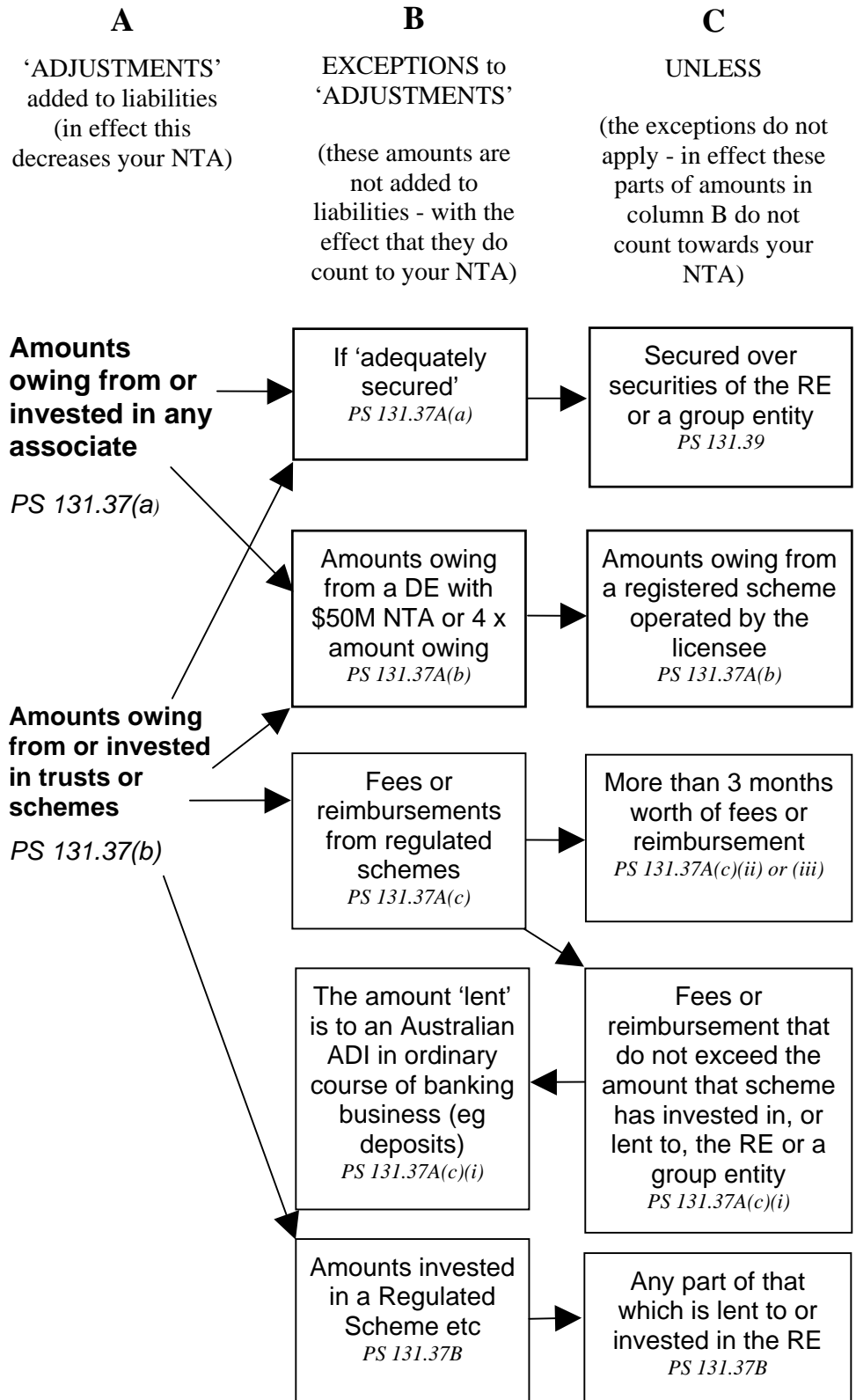
[PS 131.42] The underlying principles of our approach to calculating NTA are explained in [PS 131.27]. In addition to those matters, the focus of this schedule is to ensure that NTA is calculated in a way that:

- (a) prevents NTA from being created artificially by moving funds between group members,
- (b) seeks to ensure that NTA is available in circumstances when it will be needed most.

Explanations

[PS 131.43] The intention of this Annexure is that the matters set out in [PS 131.37] (a) and (b) are added to liabilities of the applicant, with the effect that this reduces the applicant’s NTA. Paragraphs [PS 131.37A] and [PS 131.37B] set out circumstances where amounts which would otherwise be added to liabilities are not added to liabilities. The effect of this is that these amounts do count towards the applicant’s NTA. The following diagram shows how this works in application.

What adjustments are added to liabilities



SUPERSEDED POLICY STATEMENT 131: MANAGED INVESTMENTS – FINANCIAL REQUIREMENTS

[PS 131.44] The intention of [PS 131.37B] is that the value of investments in regulated schemes can count towards the NTA of the applicant unless any part of that investment is, in turn, invested in or lent to the applicant. To allow investments in those schemes to be reinvested in, or lent to, the applicant might be used as a device to artificially inflate the NTA of the applicant. The intention of the paragraph 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 the applicant.

[*Historical note:* Annexure replaced 3/11/1999. The Annexure formerly read:

Annexure: Calculation of NTA

[PS 131.34] This Annexure to Policy Statement 131 sets out how net tangible assets should be calculated.

How to calculate NTA

[PS 131.35] Section 784(2C) of the Law defines net tangible assets as meaning total tangible assets of the applicant, including any guarantee approved by ASIC, less any adjusted liabilities as shown in the latest accounts of the applicant lodged with ASIC. [PS 131.28] explains what this means for licence applicants. After you have obtained a licence, your licence will contain conditions about ongoing compliance with NTA requirements. For the purposes of ASIC licence conditions, NTA must be calculated on the basis of assets and liabilities as they would appear if a balance sheet were made up for lodgment as part of a financial report under Chapter 2M at the time of calculation on the basis that the licensee is a reporting entity. However this does not mean that any additional valuation of scheme property or of the assets and liabilities of the licensee is necessary because calculation is required. The frequency of valuation of scheme property, for example, is determined by the scheme's constitution.

[PS 131.36] “Adjusted liabilities” means total liabilities (as shown in the latest accounts of the applicant lodged with ASIC), minus any subordinated debt approved by ASIC plus those adjustments determined by ASIC. These adjustments are set out in [PS 131.37]–[PS 131.40].

[PS 131.37] The adjustments referred to in [PS 131.36] are:

- (a) amounts owing from any associate; and
- (b) amounts owing from any:
 - (i) trust, managed investment scheme or prescribed interest undertaking; or
 - (ii) regulated superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme within the meaning of the Superannuation Industry (Supervision) Act 1993 (“superannuation scheme”)

in respect of which the applicant or an associate may exercise any form of power or control;

except to the extent the amounts referred to in paragraph (a) or (b) are:

- (c) adequately secured; or
- (d) owing from a disclosing entity that has NTA (as defined in this annexure) of:

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- (i) more than \$50 million; or
- (ii) at least four times the amount owing

whichever is the greater as shown in the most recent accounts of the entity lodged with ASIC; or

- (e) owing by way of fees from, or under rights of reimbursement for expenditure by the responsible entity out of property of a superannuation scheme, a registered scheme or a prescribed interest undertaking to which an approved deed relates (“the Scheme”) provided that that amount:
 - (i) exceeds amounts invested or lent directly or indirectly by the Scheme in the applicant, in any entity which controls the applicant or in any entity controlled by any entity which controls the applicant; and
 - (ii) if owing by way of fees, represents no more than fees owing for the last three months; and
 - (iii) if under rights of reimbursement for expenditure by the responsible entity, has not been owing for more than 3 months.

[PS 131.38] “Associate” has the meaning set out in Division 2 of Part 1.2 of the Law, and includes the meaning set out in s13 and 15 of the Law.

[PS 131.39] An amount is “adequately secured” if it is secured by:

- (a) an enforceable charge over securities for which there exists an active market and the market value of these securities always equals not less than 105% of the particular amount owing; or
- (b) a registered first mortgage over real estate that has a fair market valuation at least equal to the amount owing.

[PS 131.40] An “Active Market” is taken to exist for:

- (a) securities, promissory notes or bills of exchange traded in a recognised market in which independent, bona fide offers to buy and sell are regularly made, so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and where payment will be received within the customary period; and
- (b) any security which ASIC has approved in writing.]