

ASIC Corporations (Financial Requirements for Corporate Directors of Retail Corporate Collective Investment Vehicles) Instrument 2022/449

I, Kate Metz, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 1 July 2022

Kate Metz

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Financial Requirements for Corporate Directors of Retail Corporate Collective Investment Vehicles) Instrument 2022/449*.

2 Commencement

This instrument commences on the later of:

(a) 1 July 2022; and

(b) the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

3 Authority

This instrument is made under paragraph 926A(2)(c) of the *Corporations Act 2001* (the Act).

Note: Part 7.6 applies to a CCIV subject to the modifications set out Division 4 of Part 8B.7.

4 Repeal

This instrument is repealed on 1 October 2024.

Part 2—Declaration

5 Adequate financial resources for corporate director of a retail CCIV

Part 7.6 (other than Divisions 4 and 8) of the Act applies in relation to financial services licensees as if that Part were modified or varied by inserting the following section in its relative order in Division 3 of Part 7.6:

“912AL Adequate financial resources for corporate directors of retail CCIVs

(1) This section applies to a financial services licensee that:

(a) holds an Australian financial services licence that authorises it to operate a retail CCIV; and

(b) is not:

(i) a body regulated by APRA that is not required to comply with paragraph 912A(1)(d); or

(ii) a market participant; or

(iii) a clearing participant.

(2) A financial services licensee covered by subsection (1) that complies with this section is taken to comply with conditions (if any) of its licence that relate to:

(a) a cash needs requirement; and

(b) net tangible assets that apply because it is authorised to operate a retail CCIV; and

(c) the obligation to lodge an opinion by a registered company auditor on the financial requirements for licensees that are authorised to operate a retail CCIV to the extent the opinion is for a part of a financial year or other period during which the licensee was covered by subsection (1).

Note: The conditions on the licence may include other requirements in relation to having available adequate financial resources for the purposes of paragraph 912A(1)(d).

Cash needs requirement

(3) The licensee must:

(a) prepare a projection of the licensee’s cash flows over at least the next 12 months based on the licensee’s reasonable estimate of what is likely to happen over this period; and

(b) have the projection approved at least quarterly by the licensee’s directors as satisfying the requirements of paragraph (a); and

(c) document the calculations and assumptions used in preparing the projection, and describe in writing why the assumptions are appropriate; and

(d) update the projection of the licensee’s cash flows if:

(i) the projection ceases to cover at least the next 12 months; or

(ii) there is reason to suspect that an updated projection would differ materially from the current projection or show that the licensee was not meeting the requirements in subparagraphs (i) and (ii) of paragraph (e); and

(e) document whether, based on the projection of the licensee’s cash flows, the licensee:

(i) will have access when needed to enough financial resources to meet its liabilities over the projected term of at least the next 12 months; and

(ii) 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 the licensee is required to hold in cash or cash equivalents under subsection (8).

Net tangible assets

(4) Subject to subsection (5), the licensee must hold at all times NTA of:

(a) if subsection (5) applies or the licensee does not operate any retail CCIVs—at least the greatest of:

(i) $150,000; or

(ii) an amount of up to $5 million, being 0.5% of the average value of CCIV assets, scheme property and IDPS property of the retail CCIVs, registered schemes and IDPSs (if any) operated by the licensee; or

(iii) 10% of average corporate director, RE and IDPS revenue of the licensee;

(b) otherwise—at least the greater of:

(i) $10 million; or

(ii) 10% of average corporate director, RE and IDPS revenue of the licensee.

(5) This subsection applies if at least one of the following is satisfied in relation to each retail CCIV (if any) operated by the licensee as corporate director:

(a) all the assets of the retail CCIV are held by:

(i) a custodian appointed by the retail CCIV that:

(A) if the custodian is a financial services licensee that is authorised to provide a custodial or depository service—the licensee reasonably believes is not an incidental provider and complies with the requirements of section 912AC; and

Note 1: Section 912AC is notionally inserted by ASIC Class Order [CO 13/761].

Note 2: Certain conduct relating to CCIVs is deemed as not providing a custodial or depository service: see section 1241E.

(B) otherwise—satisfies the requirements of subsection (7); or

(ii) a sub-custodian appointed by such a custodian; or

(iii) an eligible custodian; or

(b) all the assets of the retail CCIV are Tier $500,000 class assets held by:

(i) the retail CCIV; or

(ii) a custodian appointed by the retail CCIV; or

(iii) a sub-custodian appointed by the custodian;

provided that:

(iv) where the person holding the assets of the retail CCIV is the retail CCIV—the licensee holds at least $500,000 NTA; or

(v) where the person holding the assets of the retail CCIV is a custodian or sub-custodian—the custodian:

(A) holds at least $500,000 NTA; or

(B) is an eligible custodian; or

(c) the only assets of the retail CCIV that are not held in accordance with paragraph (a) or (b) are special custody assets, each of which is held by:

(i) the retail CCIV; or

(ii) an eligible custodian; or

(iii) a custodian that holds at least the NTA that the licensee would be required to hold under paragraph (4)(a) or a sub-custodian appointed by such a custodian; or

(iv) a custodian or a sub-custodian appointed by the custodian if the only assets held for the retail CCIV are those mentioned in:

(A) paragraph (b) of the definition of special custody assets in subsection (11); or

(B) paragraph (c) of the definition of special custody assets in subsection (11) where the audited trust account is a regulated trust account.

(6) If:

(a) the retail CCIV has obtained a written assurance within the preceding 13 months from a custodian that holds an Australian financial services licence authorising it to provide a custodial or depository service that, at the time the assurance is given, the custodian complies with the requirements of section 912AC and is not an incidental provider; and

(b) the licensee has no reason to suspect that the custodian does not currently comply with those requirements or is an incidental provider;

the licensee is taken to have the reasonable belief referred to in sub-subparagraph (5)(a)(i)(A) in relation to the custodian.

(7) A custodian satisfies the requirements of this subsection at a time (***relevant time***) if:

(a) the retail CCIV has obtained a written assurance from the custodian within the preceding 13 months that, at the time the assurance is given, the custodian complies with the following requirements as if the custodian were a financial services licensee that was authorised to provide a custodial or depository service and was not an incidental provider:

(i) the requirements of subsections 912AC(3), (4) and (7) and paragraph 912AC(8)(a); and

(ii) if the custodian would be required to lodge a report with ASIC under subsection 912DAA(1) relating to a breach of subsections 912AC(3), (4) or (7), it must immediately notify the retail CCIV; and

(b) the licensee has no reason to suspect that the custodian does not currently comply with those requirements; and

(c) the licensee has obtained a copy of a report from a registered company auditor in respect of a period of at least 12 months ending no more than 16 months before the relevant time, that states that:

(i) in the auditor’s opinion, the custodian complied with the requirements referred to in subparagraphs 912AC(10)(a)(i) to (iii); and

(ii) following an examination of the calculations, assumptions, description, projections and document referred to in paragraph 912AC(10)(b) and prepared by the custodian for the purposes of complying with the requirements of subsection 912AC(3) as if it were a licensee authorised to provide custodial or depository services and was not an incidental provider, the auditor has no reason to believe the matters referred to in subparagraphs 912AC(10)(b)(i) to (v) apply in relation to the custodian;

other than to the extent that the requirements or matters deal with conditions of an Australian financial services licence that are not requirements under subsections 912AC(3), (4) or (7) or paragraph 912AC(8)(a), as if the custodian were a licensee authorised to provide custodial or depository services and was not an incidental provider.

(8) The licensee must hold at all times:

(a) cash or cash equivalents in an amount that is at least the greater of:

(i) $150,000; or

(ii) 50% of the amount of NTA that it is required to hold under paragraph (4); and

(b) liquid assets in an amount that is at least 100% of the required NTA.

Money that is in an account held by the licensee for the purposes of section 981B cannot be counted towards either requirement. Other cash or cash equivalents that are also liquid assets can be counted for both paragraphs (a) and (b).

Audit opinion on financial requirements

(9) The licensee must lodge with ASIC a report (the ***audit opinion***) by a registered company auditor addressed to the licensee and ASIC for each financial year of the licensee and any other period that ASIC directs in writing that states whether, during any part of the period for which the licensee was covered by subsection (1):

(a) in the auditor’s opinion, the licensee:

(i) complied with paragraph (3)(b) and subsections (4) and (8) and other financial requirements in conditions on its licence; and

(ii) had at all times a projection that purports to, and appears on its face to, comply with paragraph (3)(a); and

(iii) correctly calculated the projection in paragraph (3)(a) on the basis of the assumptions the licensee used for the projection; and

(b) following an examination of the calculations, assumptions and description prepared under paragraph (3)(c) and relied on by the licensee in complying with paragraph (3)(a), the projections prepared under paragraph (3)(a) and the document prepared under paragraph (3)(e), the auditor has no reason to believe that:

(i) the licensee did not have adequate systems for managing the risk of having insufficient financial resources to comply with subsections (4) and (8) and other financial requirements in conditions on its licence; or

Note: Paragraph 912A(1)(h) requires a licensee (other than certain bodies regulated by APRA) to have adequate risk management systems.

(ii) the licensee failed to comply with paragraph (3)(c); or

(iii) the licensee will not have access when needed to enough financial resources to meet its liabilities over the projected term of at least the next 12 months; or

(iv) the licensee 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 the licensee is required to hold in cash or cash equivalents under subsection (8); or

(v) the assumptions the licensee adopted for its projection in paragraph 3(a) were unreasonable.

(10) The audit opinion must be lodged:

(a) for each financial year of the licensee—with the balance sheet that the licensee is required to lodge under section 989B; and

(b) for any period of time that ASIC directs—by no later than the date ASIC directs in writing the audit opinion to be lodged.

(11) In this section:

***adequately secured*** means, in relation to a financial services licensee:

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

(i) the financial product is:

(A) regularly traded on:

(I) a financial market (as defined in subsection 767A(1) and disregarding subsection 767A(2)) operated by a market licensee or a financial services 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; or

(II) an approved foreign market; or

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

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

(ii) the market value of the financial product is:

(A) if the financial product is a debt instrument—at least 109% of the amount owing; or

(B) otherwise—at least 120% of the amount owing; 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; or

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

***adjusted assets*** means, in relation to a financial services licensee, the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M if the licensee were a reporting entity:

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

(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; and

(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; and

(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; and

(e) plus the amount of any eligible undertaking that is not an asset.

Note: Chapter 2M applies to a CCIV subject to the modifications set out in Division 4 of Part 8B.4.

***adjusted liabilities*** means, in relation to a financial services 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 Chapter 2M if the licensee were a reporting entity:

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

(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; and

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

(d) plus the value of any assets that are encumbered (other than assets that are encumbered merely to support a guarantee provided by the licensee) 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; and

(e) plus the maximum potential liability of any guarantee provided by the licensee other than a guarantee limited to an amount recoverable out of any assets of a retail CCIV operated by the licensee.

***amount*** of an eligible undertaking means the amount that remains payable in accordance with the undertaking at the relevant time despite any amount previously paid under the undertaking less any amount that would be repayable as a liability by the licensee if money were paid.

***approved foreign market*** has the meaning given by section 9.

Note: The definition of approved foreign market is notionally inserted by *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669.*

***average corporate director, RE and IDPS revenue*** means:

(a) for a financial services licensee in its first financial year, the licensee’s forecast of its corporate director, RE and IDPS revenue from the calculation date for the remainder of the first financial year pro-rated to a 12 month period; and

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

(i) estimate of its corporate director, RE and IDPS revenue for the second financial year to date; and

(ii) forecast of its corporate director, RE and IDPS revenue for the remainder of the second financial year; and

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

(i) the aggregate of the licensee’s:

(A) estimate of its corporate director, RE and IDPS revenue for the third financial year to date; and

(B) forecast of its corporate director, RE and IDPS revenue for the remainder of the third financial year; and

(ii) the licensee’s corporate director, RE and IDPS revenue for its second financial year; and

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

(i) the aggregate of the licensee’s:

(A) estimate of its corporate director, RE and IDPS revenue for the current financial year to date; and

(B) forecast of its corporate director, RE and IDPS revenue for the remainder of the current financial year; and

(ii) the licensee’s corporate director, RE and IDPS revenue for the last preceding financial year; and

(iii) the licensee’s corporate director, RE and IDPS revenue for the second preceding financial year.

***average value of CCIV assets, scheme property and IDPS property*** means, in relation to CCIVs, registered schemes and IDPSs operated by a financial services licensee, the greater of:

(a) the current value of CCIV assets, scheme property and IDPS property; and

(b) the value of CCIV assets, scheme property and IDPS property in the following circumstances:

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

(A) the value of CCIV assets, scheme property and IDPS property at the end of each calendar month since the calculation date; and

(B) the forecast value of CCIV assets, scheme property and IDPS property 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 CCIV assets, scheme property and IDPS property at the end of each calendar month since the calculation date; and

(B) the forecast value of CCIV assets, scheme property and IDPS property 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 CCIV assets, scheme property and IDPS property at the end of each calendar month since the beginning of the second preceding financial year; and

(B) the forecast value of CCIV assets, scheme property and IDPS property at the end of each calendar month for the remainder of the current financial year.

***calculation date*** means, in relation to a financial services licensee, the day on which the licensee is first authorised to operate a retail CCIV, registered scheme or IDPS.

***cash or cash equivalents*** means:

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

(b) 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; and

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

(d) a commitment by an eligible provider to provide cash upon 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.

***clearing participant*** means a participant as defined in section 761A in relation to a clearing and settlement facility (CS facility), where that facility is the licensed CS facility operated by:

(a) ASX Clear Pty Limited ACN 001 314 503 (***ASX Clear***), and the participant is required to comply with, and complies with, the operating rules of ASX Clear that impose financial requirements, taking into account any waiver of those requirements by ASX Clear; or

(b) ASX Clear (Futures) Pty Limited ACN 050 615 864 (***ASX Clear (Futures) Pty Limited***), and the participant:

(i) restricts its financial services business to participating in that CS facility and incidental business; and

(ii) is required to comply with, and complies with, the operating rules of ASX Clear (Futures) Pty Limited that impose financial requirements, taking into account any waiver of those requirements by ASX Clear (Futures) Pty Limited.

***corporate director, RE and IDPS revenue*** means, in relation to a financial services licensee:

(a) the licensee’s revenue (within the meaning given by the accounting standards); and

(b) to the extent it is not the licensee’s revenue (within the meaning of the accounting standards)—any amount paid or payable out of the assets of the retail CCIVs for the performance of the obligations imposed on the licensee as a corporate director in connection with the retail CCIVs it operates, even if those obligations are performed by another entity (including asset management, investment management, property management, scheme administration and custodial and trustee services); and

(c) if the licensee also operates a registered scheme—to the extent it is not the licensee’s revenue (within the meaning of the accounting standards), any amount paid or payable out of scheme property for the performance of the obligations imposed on the licensee as a responsible entity in connection with the registered schemes it operates, even if those obligations are performed by another entity (including asset management, investment management, property management, scheme administration and custodial and trustee services); and

(d) if the licensee also operates an IDPS—to the extent it is not the licensee’s revenue (within the meaning of the accounting standards), any amount paid or payable out of IDPS property for the performance of the obligations imposed on the licensee as an operator of an IDPS, even if those obligations are performed by another entity.

Note: An amount under paragraphs (b), (c) or (d) excludes any audit fees paid or payable to an auditor engaged to meet any audit requirements under the Act.

***cross-invested shares*** means shares acquired by a retail CCIV, in respect of any of its sub-funds, that are referable to another of its sub-funds.

***eligible custodian*** means:

(a) an Australian ADI; or

(b) a market participant or a clearing participant; or

(c) a sub-custodian appointed by a person referred to in paragraph (a) or (b).

***eligible provider*** means:

(a) an Australian ADI; or

(b) 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 or an agency or instrumentality of such a government; or

(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; or

(d) an CS facility licensee within the meaning of section 761A; or

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

***eligible undertaking*** means, in relation to a financial services licensee:

(a) an enforceable and unqualified undertaking by an eligible provider, expressed to be irrevocable without the written consent of ASIC, to pay, on written demand by the licensee, a certain amount (disregarding any part previously paid or any amount that would be repayable as a liability by the licensee if money were paid); or

(b) an undertaking approved in writing by ASIC as an eligible undertaking.

***excluded assets*** means, in relation to a financial services licensee:

(a) intangible assets (including, for the avoidance of doubt, a deferred tax asset); and

(b) receivables from, or assets invested in, any person who:

(i) is an associate of the licensee; or

(ii) was an associate of the licensee 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 operated by the licensee; and

(c) any of the following:

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

(ii) assets invested in a superannuation product in respect of which the licensee or an associate may exercise any form of power or control; or

(iii) shares the licensee holds in a CCIV; and

(d) receivables from a trustee of a trust in respect of which the licensee or an associate may exercise any form of power or control;

but, despite anything in the paragraphs above, does not include the following:

(e) a receivable mentioned in paragraph (b) or (d):

(i) to the extent that it is adequately secured; or

(ii) to which all of the following apply:

(A) 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;

(B) no part of the consideration in relation to the transaction is, in substance, directly or indirectly invested in the licensee;

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

(iii) to which all of the following apply:

(A) 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;

(B) 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 were not at the time of the investment expected to take place;

(C) 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;

(D) the total value of the receivables under this subparagraph is not more than 60% of the adjusted liabilities of the licensee disregarding this subparagraph; or

(iv) to which ASIC has given its consent in writing to the licensee treating the receivable as not being an excluded asset; or

(v) to the extent that it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of or in relation to:

(A) a superannuation entity; or

(B) an IDPS; or

(C) a registered scheme; or

(D) a retail CCIV;

to the extent that the receivable:

(E) exceeds amounts invested by the entity, IDPS, scheme or retail CCIV 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, scheme or retail CCIV to:

(I) the licensee; or

(II) a body corporate the licensee or the retail CCIV controls; or

(III) a body corporate that controls the licensee or the retail CCIV; or

(IV) a body corporate that the licensee’s or the retail CCIV’s controller controls; and

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

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

(f) a right-of-use asset arising under a lease; and

(g) an asset mentioned in paragraph (c) to the extent it is a managed investment product or a share in a retail CCIV unless any part of the amount invested is, in substance, directly or indirectly invested in the licensee.

***first financial year*** means, in relation to a financial services licensee, the financial year in which the calculation date occurs.

***IDPS*** has the same meaning as in ASIC Class Order [CO 13/763].

***IDPS property*** means, in relation to an IDPS, property acquired or held through the IDPS, other than property held by a client of the IDPS.

***incidental provider*** has the same meaning as in section 912AC.

***liquid assets*** means, in relation to a financial services licensee:

(a) cash or cash equivalents other than a commitment of the kind referred to in paragraph (d) of the definition of cash or cash equivalents; and

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

that are free from encumbrances and, in the case of receivables, free from any right of set-off.

***market participant*** means a participant as defined in section 761A in relation to a financial market:

(a) where that market is operated by any of the following:

(i) ASX Limited ACN 008 624 691; or

(ii) Cboe Australia Pty Limited ACN 129 584 664; or

(iii) FEX Global Pty Ltd ACN 124 127 224 (FEX market); or

(iv) National Stock Exchange of Australia Limited ACN 000 902 063; or

(v) Australian Securities Exchange Limited ACN 000 943 377 (ASX 24 market); or

(vi) Sydney Stock Exchange Limited ACN 080 399 220; or

(b) and the participant:

(i) in all cases—is required to comply with, and complies with, the rules of the ASIC Market Integrity Rules (Capital) 2021, taking into account any waiver by ASIC; and

(ii) in the case of ASX market—restricts its financial services business to participating in the ASX 24 market and incidental business; and

(iii) in the case of FEX market—restricts its financial services business to participating in the FEX market and its incidental business.

***NTA*** means adjusted assets minus adjusted liabilities.

***operate****,*in relation to a retail CCIV, meansto operate the business and conduct the affairs of the retail CCIV, as the corporate director of the retail CCIV.

***regulated trust account*** means:

(a) a trust account maintained by a licensed trustee company within the meaning of Chapter 5D or the Public Trustee of a State or Territory; or

(b) a trust account maintained by 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; or

(c) a trust account maintained by a real estate agent under the law of a State or Territory; or

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

***special custody assets*** means, in relation to a retail CCIV operated by a financial services licensee, any of the following:

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

(b) funds received from members of the retail CCIV within the previous 6 months held in a regulated trust account by the retail CCIV; or

(c) cash held for up to 3 months in an account with an Australian ADI styled as a trust account that is audited at least once every 6 months by a registered company auditor where the auditor’s report states that in the auditor’s opinion the account has been operated in accordance with the trust:

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

(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; or

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

(e) assets of trivial value; or

(f) mortgages or documents of title held by the retail CCIV under a mortgage where:

(i) particular members of the retail CCIV have a specific beneficial or legal interest in the mortgage; and

(ii) the mortgage was acquired after disclosure in writing to the relevant members (at the time of the acquisition) of all information that would have been required to be in a Product Disclosure Statement if an offer of shares in the retail CCIV conferring rights in connection with that mortgage had been made immediately prior to the mortgage; and

(iii) either:

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

(B) the members are able to withdraw from that mortgage for a period of 14 days commencing on the date of disclosure under subparagraph (ii); and

(iv) it is not reasonable to expect that the mortgage will be sold prior to its discharge; or

(g) a derivative and any contractual right (the margin repayment right) for the payment of any balance owing to the retail CCIV in relation to dealings in derivatives including margining those dealings through transactions in a deposit taking facility notified to the retail CCIV or licensee if all of the following apply:

(i) the retail CCIV or licensee has directed in writing the other party (the ***counterparty***) to the derivative or, in case of a derivative acquired through a financial market, the market participant acting for 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 retail CCIV or licensee are to be made only: and

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

(B) to an eligible custodian (a ***Complying Custodian***) or a custodian (a ***Complying Custodian***) that meets the requirements under subparagraph (6)(a)(iii) or a sub-custodian (a ***Complying Custodian***) appointed by such a custodian; or

(C) as the Complying Custodian directs;

(ii) if there is a margin repayment right held as assets of the retail CCIV, the retail CCIV or licensee has directed in writing the person liable to pay the balance to which the right relates that any amounts payable to or at the direction of the retail CCIV or licensee that affect the amount of the balance to which the margin repayment rights relate are to be made only to a Complying Custodian or as directed by a Complying Custodian; and

(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 subparagraphs (i) and (ii) within one business day and is given authority to require the counterparty or market participant to provide:

(A) written confirmation that the direction remains in effect; and

(B) reasonable access on each business day in the place where the person given the direction is located to information about all transactions under the derivative, the acquisition or disposal of the derivative and transactions affecting the amount of the balance in relation to the margin repayment right to which the direction relates for at least one month after the transaction, acquisition or disposal; and

(iv) the Complying Custodian has contracted in writing with the retail CCIV or licensee to:

(A) require the provision of, and where obtained, keep for 7 years a copy of records to which access is given under subparagraph (iii) to it of all transactions under the derivative, the acquisition or disposal of the derivative or any transactions affecting the amount of the balance in relation to the margin repayment right to which the direction relates; and

(B) check whether it appears that:

(I) those transactions comply with the direction a copy of which has been given to the Complying Custodian under subparagraph (iii); and

(II) the Complying Custodian has been given copies of authorisations for those transactions that comply with requirements for confirming the identity of the person providing authorisation and the process of authorisation notified to the Complying Custodian in writing by the retail CCIV or licensee; and

(III) a transaction has been entered in response to every authorisation a copy of which has been given to the Complying Custodian where the authorisation appears to meet the retail CCIV’s or licensee’s requirements notified to the Complying Custodian in writing;

and, if not, notify the retail CCIV or licensee in writing and keep a copy of the notification for 7 years; or

(h) 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 all of the following apply:

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

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

(iv) the retail CCIV or licensee has given a written direction to:

(A) the issuer of the security, interest or associated chose in action; and

(B) any counterparties that may be liable to pay or arrange to pay the holder of the security, interest or associated chose in action;

that any payments that are to be made to the retail CCIV or licensee under the security, interest or associated chose in action must be paid to a Complying Custodian, or as that Complying Custodian directs in writing; and

(v) any certificates or other title documents and copies of the written directions are held by the Complying Custodian or by a person acting on its behalf, and the Complying Custodian has authority to require the issuer and any such counterparty to confirm in writing that the direction remains in effect; and

(vi) the Complying Custodian has contracted in writing to keep for 7 years a copy of records relating to the security, interest or associated chose in action that are available to it relating to the acquisition or disposal of the security, interest or associated chose in action or transactions under the security, interest or associated chose in action; and

(vii) the Complying Custodian has contracted in writing to check whether it appears that:

(A) those transactions comply with the direction a copy of which has been given to the Complying Custodian under subparagraph (v); and

(B) the Complying Custodian has been given copies of authorisations for those transactions that comply with requirements for confirming the identity of the person providing authorisation and the process of authorisation notified to the Complying Custodian in writing by the retail CCIV or licensee; and

(C) a transaction has been entered in response to every authorisation a copy of which has been given to the Complying Custodian where the authorisation appears to meet the retail CCIV’s or licensee’s requirements notified to the Complying Custodian in writing;

and, if not, notify the retail CCIV or licensee in writing and keep a copy of the notification for 7 years; or

(i) a deposit taking facility with an Australian ADI or a body (a ***foreign ADI***) 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 if the retail CCIV or licensee reasonably considers that holding the deposit taking facif ility by another person would raise unreasonable operational difficulties or be impracticable where all of the following apply:

(i) the issuer of the deposit taking facility and the retail CCIV or licensee have a written arrangement under which the issuer would not be likely to make any payments that are to be made under the facility to a person not approved by a Complying Custodian and which authorises the issuer to disclose at any time whether the arrangement remains current to the Complying Custodian; and

(ii) a copy of the written arrangement is held by the Complying Custodian; and

(iii) the Complying Custodian has reasonable access on each business day that the issuer is open for business to information about transactions for at least 2 years before that business day using the facility and access to all the information that the retail CCIV or licensee has a right to be given or is given in relation to the facility; and

(iv) the Complying Custodian has agreed to keep for 7 years all records relating to transactions under the facility to which access is given under subparagraph (iii); and

(v) the Complying Custodian has agreed to check whether it appears that:

(A) those transactions comply with the arrangement, a copy of which has been given to the Complying Custodian under subparagraph (ii); and

(B) the Complying Custodian has been given copies of authorisations for those transactions that comply with requirements for confirming the identity of the person providing authorisation and the process of authorisation notified to the Complying Custodian by the retail CCIV or licensee in writing; and

(C) a transaction has been entered in response to every authorisation, a copy of which has been given to the Complying Custodian where the authorisation appears to meet the retail CCIV’s or licensee’s requirements notified to the Complying Custodian in writing;

and, if not, notify the retail CCIV or licensee in writing and keep a copy of the notification for 7 years; or

(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 where:

(i) the use of the facility for payments is intended by the licensee to be limited to the making of payments to a Complying Custodian who has been engaged to hold the assets of the retail CCIV and persons that the licensee or its agents believe are members of the retail CCIV; and

(ii) the licensee does not permit any payments to be made from the facility except to the Complying Custodian, as directed by the Complying Custodian or in accordance with instructions made by a person that, except with the consent in writing of ASIC:

(A) carries on a business consisting of or including maintaining registers of members of retail CCIVs under Chapter 2C and Division 3 of Part 8B.2; and

(B) is not the licensee or its related body corporate; and

(C) the licensee reasonably believes has net assets of at least $250,000 as its net assets would appear in a balance sheet if lodged under Chapter 2M at that time or it appeared that the person has such net assets on the basis of its balance sheet most recently lodged under Chapter 2M; and

(D) the licensee reasonably believes has not and will not provide an instruction for a payment that results in the licensee being required to lodge a report under subsection 912D(1B); or

(k) a deposit taking facility with an Australian ADI or a foreign ADI where the issuer of the deposit taking facility:

(i) is a Complying Custodian who holds other assets of the retail CCIV; and

(ii) has agreed to ensure that staff that are involved with the provision of custodial services and not involved in the provision of banking services check whether each transaction complies with requirements for confirming the identity of the person providing authorisation and the process of authorisation notified to the Complying Custodian by the licensee in writing; and

(iii) keeps a copy of the records of each transaction including how it was authorised and any notification given under subparagraph (ii) for 7 years; or

(l) any chose in action that is not a financial product that is not reasonably practicable to assign other than to the relevant member or members of the retail CCIV or together with other property that is covered by any of paragraphs (a) to (k).

***Tier $500,000 class assets*** means, in relation to a 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 relevant sub-fund or the relevant mortgage; and

Note: The duration of a sub-fund is the time for which it is registered.

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

(c) funds held in a regulated trust account by the retail CCIV which were received from members of the retail CCIV within the following periods:

(i) if held for the purposes of the initial investment as part of the assets of the retail CCIV—the previous 6 months; or

(ii) if held pending payment of expenses of the retail CCIV—the previous 13 months; and

(d) special custody assets.

***value of CCIV assets, scheme property and IDPS property*** means, in relation to a financial services licensee at a time, the aggregate of:

(a) the value of the assets of the retail CCIVs operated by the licensee, excluding the value of any cross-invested shares, where value is determined as follows:

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

(ii) in the case of any other assets of the retail CCIV—the market value at that time; and

Note: The value of cross-invested shares is excluded to avoid double counting since the value of the assets underlying those shares is already included.

(b) 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 value is determined as follows:

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

(ii) in the case of any other scheme property—its market value at that time; and

(c) the market value of the IDPS property of the IDPSs operated by the licensee.”.