

Suspicious Matter and Breach Reporting

Background and implications

As providers of custodial and depository services, ACSA members will typically have obligations in their master custody agreements (or equivalent document) to notify a responsible entity (“**the Client**”) of material or systemic breaches of the agreement. The requirement to have such provisions in the agreement is reinforced by Regulatory Guide 133 – Managed investments and custodial or depository services: Holding assets (**RG 133**).

Further, ACSA members in the provision of custodial and depository services will hold an Australian Financial Services Licence (**AFS Licence**) authorising the provision of these services. In addition to obligations imposed on ACSA members to report significant breaches under s912D of the *Corporations Act 2001* (Cth) (**Act**), RG 133 extends the requirement such that agreements between the Client and the custodian must contain provisions to the effect that the custodian must establish and maintain adequate arrangements to ensure that if the custodian suspects a Client (also being the holder of an AFS Licence) has not met its own obligations under the Act to report a significant breach of the Client to ASIC, then the custodian will make the necessary report to ASIC within 10 business days. Such required arrangements are not the source of any obligation to make enquiries, however, the custodian may eg. in the ordinary course of business or from another source, have both the knowledge of that breach and form such a suspicion.

ACSA approach

ACSA members will generally undertake a range of enquiries on its clients which are necessary in the circumstances to ensure that client servicing needs can be met on a continuous basis. Similarly, it is market practice that the Client themselves will undertake a range of enquiries on the Custodian.

ACSA recognises that the level of ongoing engagement and interaction between ACSA members and the Clients to which it provides services will vary having regard to the nature, scale and complexity of the service offered and the relationship model adopted between the two parties. While the obligation on ACSA members does not extend to ‘making enquiries’ it is expected that the Custodian establishes and maintains adequate arrangements to ensure that it can and will report to ASIC in the appropriate circumstance.

In meeting this requirement ACSA generally expects that its members will have in place systems and processes to demonstrate adequacy of arrangements. ACSA considers that making use of adequate training programs which are reasonably designed to ensure that employees are familiar with their respective obligations is an important component of these systems and processes. This may take the form of:

- Induction program’s for new employees and / or employees subject to a change in role
- Ongoing training programs that reflect changes in the regulatory environment, changes in the member’s organisational structure or recognition of change within individual client relationships.

In addition to any training programs developed, ACSA members may use a combination of other mechanisms to evidence appropriate systems and processes are in place. These may include, but are not necessarily limited to any know your customer requirements or ongoing customer due diligence requirements under the *Anti Money Laundering and Counter-Terrorism Financing Act 2006*.

While the arrangements themselves may differ between member organisations, ACSA expects that members empower their employees to escalate any concerns with line management or compliance for further consideration.

Ref ASIC RG 133.96 and RG 133.100 – RG 133.105