



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 2

AFS Licensing Kit: Part 2— Preparing your AFS licence or variation application

July 2015

About this guide

This is a guide for applicants applying for an Australian financial services (AFS) licence or to vary their AFS licence. This guide forms Part 2 of the AFS Licensing Kit and outlines how to:

- complete the online forms FS01 *Application for AFS licence* and FS03 *Application for variation of authorisation and other conditions*; and
- prepare core proof documents.

An application for an AFS licence or a licence variation comprises the relevant application form and supporting core proof documents, with all of these documents provided to us at the same time.

Note: It is an offence under s915C(2) of the Corporations Act to provide false or misleading information to ASIC. False or misleading information in an application (including a material omission) may also be grounds to revoke any AFS licence granted based on the application.

Applicants should also read Part 1 (RG 1), which explains the process of applying for and varying an AFS licence. Applicants will need to read Part 3 (RG 3) if they are asked to send us 'additional' proof documents.

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 version was issued in July 2015 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 2, rebadged as a regulatory guide July 2007, reissued November 2007, January 2008, December 2009, May 2010, June 2012, June 2013 and July 2014
- Superseded AFS Licensing Kit Part 2, issued February 2002 (version 1), updated October 2002 (version 2), April 2003 (version 3), October 2003 (version 4), March 2004 (version 5) and September and December 2004 (version 6), revised November 2005 (version 7)

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

| | |
|--|-----------|
| Overview | 4 |
| Starting your online application..... | 4 |
| How Form FS01 is structured..... | 5 |
| How Form FS03 is structured..... | 6 |
| Using the eLicensing system..... | 7 |
| A Part A of the application: Applicant and AFS licence details | 9 |
| A1 & A2: Applicant and contact details..... | 9 |
| A3 & A4: AFS licence authorisations..... | 12 |
| Financial services | 13 |
| Financial products..... | 21 |
| Authorisation to use certain terms | 23 |
| Other issues for market participants..... | 24 |
| Trans-Tasman mutual recognition..... | 25 |
| A5: Business description | 25 |
| A6: Adding responsible managers (for variation applications) | 28 |
| B Part B of the application: AFS licensee requirements | 29 |
| B1 & B2: Organisational competence..... | 30 |
| B3: Compliance arrangements | 33 |
| B4: Representatives | 35 |
| B5: Adequacy of resources..... | 37 |
| B6: Dispute resolution..... | 38 |
| B7: Risk management | 40 |
| B8: Compensation and insurance arrangements | 41 |
| B9: Research and benefits | 43 |
| C Part C of the application: Certain complex services or products .. | 44 |
| D Part D of the application: Making declarations and certifications .. | 45 |
| E Part E of the application: Core proofs | 46 |
| What are the core proofs? | 47 |
| A5 Business Description core proof | 48 |
| People Proofs for each responsible manager | 50 |
| B1 Organisational Competence core proof | 56 |
| B5 Financial Statements and Financial Resources core proof..... | 57 |
| Appendix 1: Sample proof—Business reference for a responsible manager (part of People Proofs) | 64 |
| Appendix 2: Sample proof—B1 Table of Organisational Competence .. | 71 |
| Appendix 3: Sample proof—Cash needs requirement (part of B5 Financial Statements and Financial Resources) | 77 |
| Key terms | 83 |
| Related information | 85 |

Overview

Key points

The online AFS licence application form (Form FS01) and licence variation application form (Form FS03) are available from the ASIC website at www.asic.gov.au/afsl: see RG 2.1 and RG 2.16.

You will need to select a user name and password when you start your online application: see RG 2.3–RG 2.11 and RG 2.17–RG 2.18.

The form automatically tailors itself to your business so that you are only asked questions that might be relevant to you: see RG 2.12–RG 2.15.

Once you've started your online application you can save and resume it as many times as you like before you finalise and submit it to us. You can also print off a copy of your draft application at any time: see RG 2.2 and RG 2.20–RG 2.27.

If you are applying for a 'limited' AFS licence to provide 'limited financial services' (as defined in regs 7.6.01BA(3), 7.6.04(3), 7.8.12A(4) and 7.8.14B(3)), please read Information Sheet 179 *Applying for a limited AFS licence* (INFO 179) in conjunction with this guide.

Starting your online application

- RG 2.1 To apply for an AFS licence, or a variation to your AFS licence, go to www.asic.gov.au/afsl and click on 'Start or resume AFS licence application'. Before you start completing your online application you must read the ASIC Electronic Lodgement Protocol and agree to be bound by its terms and conditions. This protocol covers your responsibilities and ours when you lodge documents with us electronically.
- RG 2.2 One of the benefits of applying online is that you can start your application, save it as a draft and resume it as many times as you like before you finalise and submit it to us. You can also print off a copy of your draft application at any time.

ABN, ACN or ARBN

- RG 2.3 The eLicensing system will ask you to enter either your Australian Business Number (ABN), Australian Company Number (ACN) or Australian Registered Body Number (ARBN). Make sure you enter this number correctly.
- RG 2.4 You should enter your ABN if you are applying as an individual, partnership, company or any other valid ABN entity type. If you need to get an ABN you can:
- (a) apply electronically via www.business.gov.au;

- (b) phone the Business Infoline on 13 28 66 to ask for a registration package; or
 - (c) speak to your tax agent.
- RG 2.5 If you are a corporate trustee of superannuation funds you should enter your ACN or ABN, even if the individual funds have ABNs attached to them.
- RG 2.6 If you are a foreign company operating in Australia and you don't have an ABN or ACN, you should enter your ARBN.
- RG 2.7 If you are the trustee(s) of a trust, see RG 2.36–RG 2.41 for information about the ABN to use. An AFS licence cannot be held by a trust, so you cannot use the trust's ABN.
- RG 2.8 If you don't have an ABN, ACN or ARBN, you won't be able to apply for an AFS licence online. You will need to complete the paper pre-application Form FS05 *Preliminary application for an Australian financial services licence*. You can download this from our website via www.asic.gov.au/forms.

Controlling access to your application

- RG 2.9 The eLicensing system will ask you to select a user name and password so that you can control access to your online application. Your user name must have a minimum of 6 characters (all letters) and your password a minimum of 6 characters (including at least one numeric character). Both your user name and password are case-sensitive, so remember whether you have used upper or lower case.
- RG 2.10 The eLicensing system will also generate a reference number for your online application and ask you to make a note of it. The security of your online application reference number, user name and password is your responsibility.
- RG 2.11 You will need your user name, password and reference number to resume your online application at a later time. If you forget your password you can get a new one from the system using your reference number and user name. However, if you forget your user name or reference number you won't be able to resume your online application—you will need to start again.

How Form FS01 is structured

- RG 2.12 The online application form for an AFS licence, Form FS01, has five parts:
- (a) Part A is where you enter your details as the applicant and the details of a contact person, select the financial services you want to be authorised to provide and answer questions that give us a basic description of your business.

- (b) Part B is where you will be asked questions that relate to the obligations you will have as an AFS licensee and your ability to meet them.
- (c) If you have selected complex financial services or products in Part A, the eLicensing system will require responses to more detailed questions about those services or products in Part C.
- (d) In Part D, the eLicensing system will generate declarations and certifications based on your answers in Parts A and B (and C, if relevant). You will be signing these declarations when you sign a print-out of your application form.
- (e) Part E is where the system lists the core proof documents you need to provide as part of your application, as well as listing some other proof documents. If we later ask you to provide additional proof documents, these will generally be one or more of the other documents listed in Part E.

RG 2.13 The system tailors the application form to your business so that you are only asked questions about the financial services and products you are applying for. If you feel that any of the questions do not exactly fit your circumstances, you should still answer them as best you can.

RG 2.14 If you want to see all of the possible questions in Form FS01, download the sample application on our website at www.asic.gov.au/afsl or click on a link to it when you are in your online application. Looking at the sample application is particularly useful if someone else is filling out your application for you.

RG 2.15 The guidance in this guide (RG 2) generally follows the structure of Form FS01 to make it easier for you to work your way through your online application. However, Section E of this guide only covers the core proof documents you need to send us as part of your application. For guidance on the additional proofs you may be asked to provide later, you need to refer to Part 3 of the AFS Licensing Kit, which is Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3).

How Form FS03 is structured

RG 2.16 The online variation application form, Form FS03, follows the same five-part structure as Form FS01. To access it, go to the Licensees portal at www.asic.gov.au/licensees. Before you use the Licensees portal you should click on ‘How the Licensees portal works’.

RG 2.17 To enter the Licensees portal you will need your AFS licence number and the user name and password you used when you applied for your AFS licence. If you have forgotten these or you need extra ones for staff, apply for them online via the Licensees portal.

- RG 2.18 When you start your variation application the eLicensing system will fill in the details of your current licence authorisations. You will need to work your way through the various parts of Form FS03 that relate to the variation you are asking for. When you apply to vary your licence you will also make declarations and certifications and be asked to provide core proof documents as part of your application.
- RG 2.19 For more information about the process of applying to vary your AFS licence, read Section F of Part 1 (RG 1). To find out more about the various financial service and product authorisations you may want to add to your licence or the proofs you may need to provide, see the relevant sections of this guide (RG 2).

Using the eLicensing system

- RG 2.20 Forms FS01 and FS03 are both designed so that you can't progress to the next screen until you have completed the screen you are on, although you can go back to a completed screen to amend it. Your application is automatically saved to the ASIC server every time you hit 'Next'. If you are disconnected from the internet or you close out of the application, you will have saved all information up until the question you were last entering.
- RG 2.21 If you want to know more about how the application works onscreen, including screen layout and browser requirements, go to www.asic.gov.au/afs-application.
- RG 2.22 If you experience technical problems when using the eLicensing system, read the 'technical FAQs' on www.asic.gov.au/afs-application under 'Help'. You can also click on a link to them when you are working on your online application. If you are still having problems after reading the technical FAQs, call ASIC on 1300 300 630.

How to resume your online application

- RG 2.23 To resume your application for an AFS licence (FS01), go to www.asic.gov.au/afsl and click on 'Resume an unfinished application for an AFS licence'.
- RG 2.24 To resume your application to vary your AFS licence, enter the Licensees portal at www.asic.gov.au/licensees and select your Form FS03 application from your 'Work in progress' list.

How to reapply using a copy of your original application

- RG 2.25 If your application for an AFS licence is rejected at the completeness check stage, we will send you a letter explaining why we've rejected your application for lodgement. You can then reapply for an AFS licence. We will

hold your fee payment for your next application unless you write to us for a refund.

- RG 2.26 You can reapply using a copy of your original Form FS01 so that you won't have to start again from scratch. You can make a copy by going to www.asic.gov.au/afsl and clicking on 'Resume an unfinished application for an AFS licence'. You will need your application reference number, user name and password to resume your initial application. Select 'Copy Application' from the left-hand menu and data from your original application form will be copied to a new application with a new reference number.
- RG 2.27 If your application to vary your AFS licence is rejected at the completeness check stage, we will follow the same process and you will also be able to reapply using a copy of your original Form FS03. To do this, go to the Licensees portal (you will need your licence number, user name and password to do this) and select your original Form FS03 from the 'Forms Submitted' section. Select 'Copy Application' from the left-hand menu and data from your original variation application form will be copied to a new variation application with a new application number.
- RG 2.28 If you reapply for an AFS licence or to vary your AFS licence, we won't use any previously emailed copies of your core proofs to assess your application. You will need to send us new core proof documents as part of your new application. Please ensure that you rectify any deficiencies we identified in your original core proof documents before you reapply.

A Part A of the application: Applicant and AFS licence details

Key points

All applicants for an AFS licence must complete Part A of the application: see RG 2.29–RG 2.30.

Part A asks questions about you, your business and the financial services and products you want to provide: see RG 2.32–RG 2.156.

- RG 2.29 All applicants for an AFS licence must complete Part A of the online application. You will need to provide:
- (a) your details as the applicant for the AFS licence; as well as
 - (b) the details of a person we can contact during the application process and afterwards.
- RG 2.30 In Part A you will also be asked questions about:
- (a) the financial services and products you want to be authorised to provide under your licence; and
 - (b) your proposed business and how it will operate.
- RG 2.31 Throughout this guide we refer to particular sections of the *Corporations Act 2001* (Corporations Act). All section references are to the Corporations Act, unless otherwise stated. You can find a copy of the Corporations Act at www.comlaw.gov.au.

A1 & A2: Applicant and contact details

Applicant details

- RG 2.32 You will need to select whether you are applying for an AFS licence as an individual, partnership, company, trustees of a trust or ‘other’ entity and fill in your entity name and details. If someone else is filling out the application for you, they need to fill in your entity name and the details that will appear on your AFS licence.
- RG 2.33 If you are an individual with a registered business name, you must apply as an individual at A1.1—you cannot apply for an AFS licence using your business name. Your AFS licence will be in your name as an individual. You should provide your business name at A1.5, however it will not appear on your AFS licence.

- RG 2.34 If you are a company, the name and details of your directors and secretary will be pre-filled from our public database when you enter your ABN or ACN.
- RG 2.35 If you are applying as an 'other' type of entity, we may ask you to provide more information in an A1 additional proof (Entity Details). The additional proofs are explained in RG 3.
- RG 2.36 An AFS licence cannot be held by a trust, so if you are the trustee(s) of a trust (e.g. a family, business or private trust), you must apply in your own name(s) and not in the name of the trust. For example, you should apply in the name of 'John Smith' or 'ABC Pty Ltd', or (where there is more than one trustee) 'The Trustees of ABC Trust' and not as 'ABC Trust'. For more information see RG 2.37–RG 2.41.

Sole trustee of a trust

- RG 2.37 If you are the sole trustee of a trust, when prompted in the application form to select whether you are applying for an AFS licence as an individual, partnership, company, trustees of a trust or 'other' entity, you should select the type of entity that you are (e.g. company or individual).
- RG 2.38 If you are a company, you should enter the ACN or ABN of the company on the application form at A0.2 and select 'company' at A1.1.
- RG 2.39 If you are an individual, you should enter your ABN on the application form at A0.2 and select 'individual' at A1.1. If you do not already hold an ABN in your own name, you will need to obtain one and apply using the new ABN. The ABN cannot be held in the name of 'The Trustee of ABC Trust'.

Multiple trustees of a trust

- RG 2.40 Where a trust has two or more trustees, the trustees of the trust are together a notional person that can apply for an AFS licence. This notional person must have an ABN in order to apply (e.g. the ABN might be held in the name 'The Trustees of ABC Trust'). In this case you should enter the ABN held by the group of trustees on the application form at A0.2. The entity type you should select at A1.1 is 'trustees of a trust—a collection of persons who act together as trustee of a trust'. (In this context the term 'persons' includes individuals and companies.)

Partnership of trustees of more than one trust

- RG 2.41 A partnership made up of the trustees of two or more trusts can apply for an AFS licence (e.g. 'The Trustee of ABC Trust and The Trustee for DEF Trust'). In this case you should enter the ABN of the partnership on the application form at A0.2. The entity type you should select at A1.1 is 'partnership'.

If you operate under a business name

- RG 2.42 Your business name must be registered on ASIC's Business Names Register. For more information on how to register your business name, see Regulatory Guide 235 *Registering your business name* (RG 235), available at www.asic.gov.au/rg.
- RG 2.43 You are responsible for ensuring that your business name is not misleading and that it complies with the restrictions under the Corporations Act on using certain terms such as 'stockbroker', 'futures broker' and 'insurance broker'. For more information on these restricted terms, see RG 2.115–RG 2.123.
- RG 2.44 If you will be using more than one registered business name, you must provide details for each business name you will be using.

Applicant's contact person

During the application process

- RG 2.45 During the application process we will direct any questions and correspondence about your application to the contact person you nominate at A2.1. The contact person can be you (as the applicant), one of your officers or employees, or another person who is preparing the application on your behalf, such as your lawyer, accountant or licensing consultant.

On an ongoing basis

- RG 2.46 At A2.3 you will also need to nominate a person we can contact after your licence is granted. For example, we might contact you to tell you about prospective changes that could affect your licence and business. This ongoing contact person can be the same person you nominate at A2.1.
- RG 2.47 As an AFS licensee you must keep the details of your ongoing contact person (including their email address) up-to-date by notifying us of any changes using Form FS20 *Change of details for an Australian financial services licence*, available via the Licensees portal at www.asic.gov.au/licensees.

If you are applying to vary your AFS licence

- RG 2.48 The questions you will be asked at A1 and A2 are different on the variation application.
- RG 2.49 At A1 you will be asked to select whether you are applying to vary:
- (a) the 'authorisation conditions' on your licence (i.e. your financial service and/or product authorisations);
 - (b) the 'other conditions' on your licence (e.g. key person or standard licence conditions); or

(c) both.

RG 2.50 If you are varying the ‘other conditions’ on your licence, at A2 the system will provide a free-text box to type in so that you can explain to us which conditions you want to vary and why you should be allowed to do this.

RG 2.51 If you are varying your ‘authorisation conditions’, the system will fill in the current authorisations on your licence. You need to add any new services and/or products by clicking on them. If you want to remove any services or products, click on them to de-select them. For help with answering the questions at A3 and A4, see RG 2.52–RG 2.126.

A3 & A4: AFS licence authorisations

RG 2.52 At A3 and A4 you will be asked to select the financial services and products you want to be authorised to provide under your AFS licence. Choosing your licence authorisations is one of the most important steps in applying for an AFS licence. Your authorisations affect:

- (a) the financial services you can provide under your AFS licence and any financial products those services may relate to;
- (b) the obligations you will have as an AFS licensee; and
- (c) whether you can use certain restricted terms (e.g. ‘stockbroker’, ‘insurance broker’).

RG 2.53 The rest of the questions you will be asked in your application will be triggered by your answers in this section of your application, as well as the answers you give at A5 to describe your business. You will need to provide core proofs to demonstrate that you have the competence, resources and processes in place to be able to provide the services and products you have selected. The core proofs are explained in Section E. We may also ask you to provide additional proofs before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

RG 2.54 You should read RG 2.57–RG 2.126 and work out which authorisations you will need before you answer the questions at A3 and A4. If you don’t choose the right authorisations you may not be authorised to provide the financial services and products you want to provide. You may find it useful to:

- (a) first, identify which financial services you will provide (e.g. ‘Provide financial product advice’, ‘Deal in a financial product’); then
- (b) identify each financial product those financial services may cover (e.g. superannuation, general insurance, derivatives).

RG 2.55 You will not necessarily want, or need to be authorised to provide, the same financial services for each financial product. For example, you can choose to

provide advice relating to superannuation, securities and derivatives, and provide dealing services in relation to superannuation only.

- RG 2.56 If you are applying to vary your AFS licence by varying your service and/or product authorisations, make sure all of the services and products you want to be authorised for have been selected, not just the new ones.

Financial services

- RG 2.57 At 3.1 you will be asked whether you are a recognised accountant applying for a ‘limited’ AFS licence. A limited AFS licence will allow you to provide ‘limited financial services’ as defined in reg 7.6.01BA(3).

- RG 2.58 At A3.2 you will be asked to select one or more financial services from the following list:

- (a) Provide Financial Product Advice (commonly referred to as ‘advising’);
- (b) Deal in a Financial Product (commonly referred to as ‘dealing’);
- (c) Make a Market for a Financial Product;
- (d) Operate a Registered Scheme;
- (e) Provide a Custodial or Depository Service;
- (f) Provide Traditional Trustee Company Services.

Provide Financial Product Advice

Types of financial product advice

- RG 2.59 Financial product advice may be:
- (a) *personal advice*—this is defined in s766B(3). Generally, you will be giving personal advice if you have considered, or a reasonable person might expect you to have considered, one or more of the client’s objectives, financial situation and needs;
 - (b) *general advice*—this is defined in s766B(4). It covers all financial product advice that is not personal advice; or
 - (c) *class of product advice*—this is defined in regs 7.6.01BA(3), 7.6.04(3), 7.8.12A(4) and 7.8.14B(3) as financial product advice about a class of products that does not include a recommendation about a specific product in the class.
- RG 2.60 For more *information on financial product advice* and the distinction between personal and general advice, see Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) and Regulatory Guide 175

Licensing: Financial product advisers—Conduct and disclosure (RG 175), which are available on our website at www.asic.gov.au/rg.

- RG 2.61 At A4.1.1 you will be asked to select your financial product advice authorisation(s) from the following list:
- (a) Provide Financial Product Advice—this authorisation will cover both personal and general advice to both wholesale and retail clients; **or**
 - (b) Provide General Financial Product Advice Only—this authorisation will cover general advice to both wholesale and retail clients (i.e. it does not cover personal advice); **or**
 - (c) Provide General Financial Product Advice Only To Wholesale Clients—this authorisation will only cover general advice to wholesale clients (i.e. it does not cover personal advice or general advice to retail clients); and/or
 - (d) Provide Class of Product Advice—this authorisation will only cover financial product advice about the six product classes listed in the definition of ‘limited financial services’ in regs 7.6.01BA(3), 7.6.04(3), 7.8.12A(4) and 7.8.14B(3).

You can only choose **one** of (a), (b) or (c). If you are a recognised accountant under reg 7.6.01BA(3) and answered ‘yes’ to question 3.1, you can select (a) and/or (d).

- RG 2.62 The terms *retail clients* and *wholesale clients* are defined in s761G.

Choosing your financial products

- RG 2.63 You will then be asked at A4.1.2 to select the financial product(s) that you want to advise on.

- RG 2.64 The range of financial products regulated under the financial services regime is relatively broad. To help you select your authorisations, see the 11 broad financial product categories and the product tips in RG 2.104.

Deal in a Financial Product

- RG 2.65 *Dealing* in a financial product is defined in s766C. You will be dealing if you do any of the following, either as principal or as an agent of another person:

- (a) apply for, acquire, issue, vary or dispose of a financial product; or
- (b) in relation to securities or managed investment interests, underwrite the securities or interests.

The terms *acquire*, *dispose* and *issue* are defined in s761A and 761E.

RG 2.66 Dealing also includes ‘arranging’ for another person to do any of the above activities (this is commonly referred to as ‘arranging’). For example, if you have the authority to bind your client when applying for a product, you will generally be ‘dealing’ and not ‘arranging’. However, if you merely display brochures and provide no other services to bring about a transaction, you will generally only be arranging. For more information on dealing and arranging, see RG 36.

Types of dealing services

RG 2.67 At A4.2.1 you will be asked to select **either**:

- (a) Deal in a financial product (i.e. dealing)—select this authorisation if you will be dealing, or dealing and arranging; **or**
- (b) Arrange for a person to deal in a financial product (i.e. arranging)—select this authorisation if you will only be arranging. If you choose arranging you will not be able to deal as principal or as an agent of another person.

In the application you can only choose dealing or arranging because dealing includes arranging.

RG 2.68 At A4.2.2 you will be asked to select the particular types of dealing or arranging services that you want to be authorised for. You can choose **one or more** of the following:

- (a) Issue, apply for, acquire, vary or dispose of a financial product—this authorisation generally applies to product issuers, such as responsible entities, life companies, fund managers and general insurers. However, it can apply to anyone who wants to provide any of these types of dealing or arranging services as principal or as an agent; and/or
- (b) Apply for, acquire, vary or dispose of a financial product on behalf of another—select this authorisation if you intend to provide any of these types of dealing or arranging services on behalf of another person); and/or
- (c) Underwrite an issue of securities or interests in managed investment schemes—this includes interests in both unregistered and registered managed investment schemes.

RG 2.69 If you want to be authorised for dealing on behalf of another person and arranging for another person to issue financial products, the application won’t let you select these as separate authorisations because it assumes that your dealing authorisation will include arranging for another person to deal. You need to select A4.2.1.1 (dealing) and then A4.2.2.1 (Issue, apply for, acquire, vary or dispose of a financial product). This authorisation will cover both dealing on behalf of another person and arranging for another person to issue financial products.

Choosing your financial products

- RG 2.70 You will then be asked at A4.2.3 to select the financial products that you want to deal in.
- RG 2.71 The range of financial products regulated under the financial services regime is relatively broad. To help you select your authorisations, see the 11 broad financial product categories and the product tips in RG 2.104.
- RG 2.72 The dealing authorisations available on a limited AFS licence are ‘Arrange for a person to deal in a financial product – Issue, apply for, acquire, vary or dispose of a financial product – Self-managed superannuation fund’ and/or ‘Arrange for a person to deal in a financial product – Apply for, acquire, vary or dispose of a financial product – Self-managed superannuation fund’.

Make a Market for a Financial Product

- RG 2.73 *Makes a market* is defined in s766D. You will be making a market if you regularly quote prices at which you will buy or sell financial products, and other persons could reasonably expect to be able to regularly sell to you, or buy from you, financial products at the prices you have quoted.
- RG 2.74 If you select this financial service authorisation at A3.2, you will be asked at A4.3.1 what financial products you want to be authorised to make a market for. The options include foreign exchange contracts, derivatives, bonds and debentures and ‘other financial products’. If you select the ‘other financial products’ category at A4.3.1, we may ask you for further information about the financial products you intend to make a market for. If you make a market for securities, you need to select ‘other financial products’.
- RG 2.75 Selecting ‘Make a Market for a Financial Product’ at A3.2 will also trigger further questions in Part C of your application.

Other related authorisations you may need

- RG 2.76 If you are making a market, you are likely to also be providing other financial services. For example, you will typically also be dealing in a financial product (e.g. issuing and acquiring a financial product). If so, you will need to select the dealing authorisation at A3.2.
- RG 2.77 If you are making a market for over-the-counter (OTC) products (e.g. OTC derivatives), you should also consider whether you need to be authorised to provide financial product advice (e.g. if you will be advising the counterparty to the contract). If so, you will need to select the advising authorisation at A3.2.

Operate a Registered Scheme

- RG 2.78 If you will be the responsible entity of a registered scheme, you will be *operating a registered scheme*. A registered scheme is a managed investment scheme that is registered with ASIC under s601EB.
- RG 2.79 To operate a registered scheme, you must be a public company that holds an AFS licence authorising you to do so: see s601FA.

Unregistered schemes

- RG 2.80 You don't need the 'Operate a Registered Scheme' authorisation if you will operate a managed investment scheme that is not, and does not need to be, registered with ASIC.
- RG 2.81 Unregistered schemes include investor directed portfolio services (IDPSs) and managed discretionary account (MDA) services covered by ASIC's class order relief. To provide IDPS and MDA services, you will still need the financial service authorisation for dealing and, if relevant, for advising and/or providing a custodial or depository service. You will need to select these at A3.2. For more information on IDPS and MDA services, see Regulatory Guide 148 *Investor directed portfolio services* (RG 148) and Regulatory Guide 179 *Managed discretionary account services* (RG 179).

Choosing what type of registered scheme you will operate

- RG 2.82 At A4.4.1 you will be asked to select whether you want to be licensed to operate:
- (a) Named scheme(s)—these are specific schemes that will be named on your licence; and/or
 - (b) Scheme(s) of a particular asset kind(s)—if you select this authorisation, what will appear on your licence is not the individual scheme name(s) but the particular kind(s) of asset or business they invest in. You can be authorised to operate more than one kind of scheme.
- RG 2.83 If you select scheme(s) of a particular asset kind you won't have to apply to vary your licence every time you want to register a scheme of that kind. However, you should only apply for this authorisation if you can demonstrate that you have the organisational competence and the capacity (e.g. systems and resources) to operate schemes with assets or businesses of that type: see Section D of Regulatory Guide 105 *Licensing: Meeting the general obligations* (RG 105). Otherwise, you should apply to operate a named scheme.

Kinds of registered scheme

- RG 2.84 At A4.4.2 you will be asked to select what kind(s) of scheme you want to operate. Even if you apply to operate a named scheme, you still need to select what kind of scheme that named scheme is.
- RG 2.85 Where you intend to operate a scheme that is made up of more than one asset kind, you need to select each particular asset kind that is relevant to the scheme. However, if you hold assets that are only ‘incidental property’ (as defined in Pro Forma 209 *Australian financial services licence conditions* (PF 209)), you don’t need to select an asset kind for these assets. ‘Incidental property’ covers certain assets necessary or incidental to the effective operation of your registered scheme that are a small proportion of assets of the scheme, as well as certain liquid financial assets held for a short period, and derivatives for certain limited purposes.
- RG 2.86 The following are the kinds of scheme you can apply for authorisation to operate:
- (a) Derivatives—this covers schemes that hold derivatives for hedging or other purposes, other than as incidental property;
 - (b) Direct real property—this includes listed property trusts, serviced strata schemes and stable property trusts or syndicates;
 - (c) Film schemes—this covers schemes with the sole purpose of producing and/or exploiting a cinematograph film (as defined in the *Copyright Act 1968*);
 - (d) Financial assets—this covers schemes that hold cash, cheques, orders for payment of money, bills of exchange, promissory notes, securities, deposit products and interests in managed investment schemes, but does not include derivatives;
 - (e) IDPS-like—this covers IDPS-like services provided through a registered scheme under Chapter 5C of the Corporations Act. For more information see RG 148;
 - (f) Mortgages—this covers both pooled mortgage schemes and contributory mortgage schemes. For more information see Regulatory Guide 144 *Mortgage investment schemes* (RG 144);
 - (g) Primary production—this covers aquaculture, cattle breeding, forestry, horse breeding, horticulture, livestock grown for fleece, ratites (ostriches/emus), tea trees, viticulture or other specialised schemes; and
 - (h) Time-sharing schemes—for further information see Regulatory Guide 160 *Time-sharing schemes* (RG 160).

Other authorisations that you may need

- RG 2.87 When you operate a registered scheme, you will generally also be carrying on dealing activities (e.g. issuing interests in the scheme and perhaps dealing in scheme investments that are financial products). Most applicants who apply to operate a registered scheme will also need the dealing authorisation. For example, if you operate a managed investment scheme that holds derivatives to hedge your scheme asset holdings, you will generally need an authorisation to deal in derivatives.
- RG 2.88 You may also need to be authorised to provide financial product advice, depending on how you distribute interests in your scheme.
- RG 2.89 If you need the advising or dealing authorisations, you need to select these at A3.2.

When to register your scheme(s)

- RG 2.90 Before you can register the scheme(s) you are applying to be authorised for, you need to lodge your AFS licence application and be assessed as having the organisational competence and capacity to operate those scheme(s).
- RG 2.91 If you are, we will send you a draft licence. After you receive your draft licence, you have up to four months to register your scheme(s) with us. You should not lodge your scheme documents with us before you receive a draft licence.
- RG 2.92 If we agree to register the scheme(s) and you have met the licensing requirements and agreed to the draft licence conditions, we will grant your licence and register the scheme(s) on the same day.
- RG 2.93 For more information about registering schemes see our website at www.asic.gov.au/mis.

Provide a Custodial or Depository Service

- RG 2.94 *Custodial or depository service* is defined in s766E. You generally don't need an authorisation to provide custodial or depository services if you only operate a registered scheme or a regulated superannuation fund, or if you only hold a basic deposit product or client money under Part 7.8 of the Corporations Act: see s766E(3) and reg 7.1.40.
- RG 2.95 At A4.5.1 you will be asked whether your custodial or depository service will be operated as either:
- (a) an IDPS; or
 - (b) a custodial or depository service that is not an IDPS.

IDPSs

- RG 2.96 You should only select this authorisation if you will be an IDPS operator under Class Order [CO 02/294] *Investor directed portfolio services*. If you will be a badged or dual IDPS operator who will not be responsible for performing the custody functions for the IDPS (i.e. you will only provide reporting and transaction services), generally you won't need the 'Provide a Custodial or Depository Service' authorisation. See RG 148 for the definition of an IDPS and our policy and licensing requirements in relation to IDPSs.

Custodial or depository services that are not an IDPS

- RG 2.97 This authorisation covers all other types of custodial or depository service, including those provided by:
- (a) professional custodians;
 - (b) incidental providers; or
 - (c) MDA operators or external MDA custodians.

For more information on our policy and licensing requirements for MDA services, see RG 179.

Incidental providers of custodial or depository services

- RG 2.98 Even if you are only an incidental provider of custodial or depository services (see 'Key terms'), you still need the 'Provide a Custodial or Depository Service' authorisation. While we impose different financial requirements for incidental providers, this doesn't change the need for you to be authorised to provide those services. For more information on the financial requirements for incidental providers, see Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) at Appendix 4.

Other authorisations you may need

- RG 2.99 If you provide a custodial or depository service, you are also likely to be dealing (e.g. applying for, or acquiring a financial product on behalf of another person). If so, you will need to select the dealing authorisation at A3.2.

Provide Traditional Trustee Company Services

- RG 2.100 *Traditional trustee company services* is defined in s601RAC(1).
- RG 2.101 Only a trustee company listed in the Corporations Regulations 2001 (Corporations Regulations) can provide traditional trustee company services. A trustee company must be a body corporate and be prescribed as a trustee company under the Regulations. At A4.8 you will be asked whether you are prescribed by the Regulations as a trustee company for the purposes of the

Corporations Act. If you are not prescribed under the regulations as a trustee company, and wish to be so, you **will need to** apply to the Minister.

- RG 2.102 Traditional trustee company services include:
- (a) preparing wills, trust instruments and powers of attorney;
 - (b) applying for probate of a will;
 - (c) establishing and operating common funds; and
 - (d) acting as a trustee of any kind, or as an executor or administrator of an estate.

Financial products

- RG 2.103 In the application, the financial product authorisations are grouped under 12 broad categories based on the definitions in s761A and 764A. Before you select your product authorisations, you need to think about each particular product you will be providing and what category it fits under. We encourage you to carefully check the definitions.
- RG 2.104 The following broad categories are designed to cover all types of financial products:
- (a) deposit and payment products—this includes basic deposit, non-basic deposit and non-cash payment products;
 - (b) derivatives;
 - (c) foreign exchange contracts;
 - (d) general insurance;
 - (e) government debentures, stocks or bonds;
 - (f) life products—this includes any products issued by a registered life insurance company that are backed by one or more of its statutory funds;
 - (g) managed investment schemes (including simple managed investment schemes as defined in reg 1.0.02)—this includes interests in both registered and unregistered schemes;
 - (h) retirement savings accounts;
 - (i) securities;
 - (j) superannuation—this includes self-managed superannuation funds and a client’s existing superannuation holding;
 - (k) margin lending facilities—this includes standard margin lending facilities and non-standard margin lending facilities;
 - (l) miscellaneous financial facilities.

Tips on some products and the categories they fit under

Consumer credit insurance

- RG 2.105 Some consumer credit insurance products are underwritten by both a general insurance company and a life insurance company. If you want to provide services in relation to these products, you will need authorisations for both ‘general insurance’ and ‘life products’. You can limit your authorisations to only these products (i.e. you can be authorised to deal in general insurance and life products limited to consumer credit insurance).

Derivatives and foreign exchange contracts

- RG 2.106 In some cases, a product can be both a ‘derivative’ and a ‘foreign exchange contract’ (as defined in s761A and 761D). However, for the purposes of AFS licence authorisations, we have redefined ‘derivative’ so that it no longer includes derivatives that are foreign exchange contracts. For more information see the definitions in PF 209.
- RG 2.107 If you want to provide derivatives that are foreign exchange contracts you need to select the ‘foreign exchange contracts’ product authorisation, not the ‘derivatives’ authorisation (unless you want to provide other types of derivative as well).

MDA services

- RG 2.108 MDA services generally fit under both the ‘managed investment schemes’ and ‘miscellaneous financial facility’ categories. Depending on the nature of your business, you can select to be authorised under either or both of these categories.

Warrants

- RG 2.109 Warrants, depending on their type, can fit under the ‘securities’, ‘derivatives’ or ‘miscellaneous financial facility’ categories. If you want to provide warrants, you need to look at the features of the particular product in question to work out which product authorisation you need to select.
- RG 2.110 Managed investments warrants are generally covered by the ‘derivatives’ category.

Margin lending facilities

- RG 2.111 A margin lending facility is defined in s761EA to include a standard margin lending facility and a non-standard margin lending facility.
- RG 2.112 If you want to provide a financial service in relation to margin lending facilities, you will need to look at the features of the facility and work out whether you need to select a standard margin lending facility authorisation or

a non-standard margin lending facility authorisation. Where you provide financial services in relation to both standard margin lending facilities and non-standard margin lending facilities, you will need to select both categories.

Miscellaneous financial facilities

- RG 2.113 This is not a ‘catch-all’ category. It only covers products that don’t fit into categories (a)–(k) in RG 2.104.
- RG 2.114 We expect that applicants will only select ‘miscellaneous financial facility’ in rare situations. If you select this category, we may ask you for an A4 additional proof (Miscellaneous Financial Facility Statement) explaining why the particular product you want to provide does not fall under any of the other product categories. The additional proofs are explained in Part 3 (RG 3).

Authorisation to use certain terms

- RG 2.115 Under s923B, AFS licensees are restricted from using certain terms to describe their financial services business unless they are expressly authorised to do so under a condition on their AFS licence.
- RG 2.116 These restrictions apply to the following (or similar) terms:
- (a) ‘stockbroker’ or ‘share broker’;
 - (b) ‘futures broker’;
 - (c) ‘insurance broker’ or ‘insurance broking’;
 - (d) ‘general insurance broker’; and
 - (e) ‘life insurance broker’.
- RG 2.117 At A3.4 you will be asked if you want to use any of these terms. You can only be authorised to use them (or similar terms) if you select the dealing service authorisation at A3.2 and then the appropriate dealing activities and products at A4.2. Depending on the particular term, other eligibility criteria may also apply.
- RG 2.118 You don’t have to use them, even if you meet the eligibility criteria in RG 2.120–RG 2.123. For example, if you intend to be a financial planner authorised to advise and deal in general insurance, you don’t have to use the term ‘general insurance broker’ if you don’t want to.
- RG 2.119 If you have said ‘yes’ at A3.4, you will be asked at A4.6 which of the terms (or similar terms) you want to use.

‘Stockbroker’ or ‘sharebroker’

- RG 2.120 To be eligible to use these terms, you must be:
- (a) applying to provide financial services in securities; and
 - (b) a member participant of a licensed market that covers dealings in securities (e.g. Australian Securities Exchange, SIM Venture Securities Exchange, National Stock Exchange of Australia, Asia Pacific Exchange).

‘Futures broker’

- RG 2.121 To be eligible to use this term, you must be:
- (a) applying to provide financial services in derivatives; and
 - (b) a member participant of a licensed market that covers dealings in derivatives (e.g. Australian Securities Exchange).

‘Insurance broker’, ‘insurance broking’, ‘general insurance broker’ and ‘life insurance broker’

- RG 2.122 To be eligible to use these terms, you must be applying to deal in:
- (a) general and/or life insurance products (for ‘insurance broker’ and ‘insurance broking’);
 - (b) general insurance products (for ‘general insurance broker’); or
 - (c) life insurance products (for ‘life insurance broker’).
- RG 2.123 You must also act on behalf of the intending insured (i.e. the client), as opposed to acting on behalf of the insurance company.

Other issues for market participants

- RG 2.124 At A3.3.1 you will be asked whether you want to provide financial services under your licence as a Principal Trader only. This term is defined in PF 209 and refers to a participant in the ASX market or Chi-X market whose right to participate in the relevant market is limited to trading on its own behalf. To be a principal trader, you need both:
- (a) an AFS licence; and
 - (b) to be admitted as a participant by ASX Limited or Chi-X Australia Pty Limited.
- RG 2.125 If your business is solely as a principal trader, you are likely to need the financial service authorisations for making a market and dealing. You can select these authorisations at A3.2.

- RG 2.126 At A3.3.2 you will be asked whether you want to be subject to the licence condition requiring a market participant (e.g. stockbroker) to assume responsibility for the acts or omissions of a nominee company subsidiary. This condition allows your nominee company (which must be a wholly-owned subsidiary) to take advantage of the exemption under reg 7.6.01(1)(v).

Trans-Tasman mutual recognition

- RG 2.127 Under the *Trans-Tasman Mutual Recognition Act 1997* (TTMR Act), an ‘Authorised Financial Adviser’ or ‘Registered Financial Adviser’ may apply for an AFS licence following submission of a notice under s18 of the TTMR Act.
- RG 2.128 At A3.5 you will be asked whether you will be making a declaration to ASIC for recognition under the TTMR Act. Once ASIC determines whether the notice complies with the TTMR Act, you will be able to submit an application for an AFS licence requesting authorisations similar to those held under your New Zealand licence.
- RG 2.129 If you are applying under s18 of the TTMR Act, your education and your experience will be taken to meet the requirements of RG 105. However, you will still have to submit a full AFS licence application.

A5: Business description

- RG 2.130 At A5 you will be asked about your proposed business activities so that we can understand how your business will work and the relevance of the licence authorisations you have selected. Your answers will trigger questions in Part B of the application and may trigger further questions in Part C.
- RG 2.131 You must provide an A5 Business Description core proof to support this part of your application, whether you are applying for your initial licence or applying to vary either the ‘authorisation conditions’ or ‘other conditions’ on your licence. This core proof must be specific to your business: see RG 2.265–RG 2.271 for more detail.

Your clients

- RG 2.132 You will need to identify whether your clients are *retail clients* and/or *wholesale clients*. These terms are defined in s761G.
- RG 2.133 In some cases ‘professional investors’ (previously known as ‘sophisticated investors’ under the old Corporations Act) will fall under the definition of wholesale clients: see s761G(7)(d).

- RG 2.134 If you identify that you will have retail clients, we expect that you will have a greater focus on consumer protection through, for example, your dispute resolution procedures and your compensation arrangements. The types of clients you have can also affect the licence conditions we put on your AFS licence.
- RG 2.135 Some applicants, such as principal traders, have told us that they do not have clients. If you believe that you do not have clients, you should select ‘wholesale clients’ in your application.

Bodies regulated by APRA

- RG 2.136 At A5.3 you will be asked whether you are, or have applied to be, a body regulated by the Australian Prudential Regulation Authority (APRA). APRA is responsible for the prudential regulation of banks, life insurers, general insurers, the superannuation industry, building societies, credit unions and friendly societies.
- RG 2.137 If you are a subsidiary or a related body corporate of a body regulated by APRA, you should answer ‘no’.
- RG 2.138 If you have applied to become a body regulated by APRA but your application has not yet been approved, you should answer ‘yes’. You should also answer ‘yes’ if you have applied to vary your existing APRA authorisation (e.g. you are a trustee of a superannuation fund who has applied to be authorised to operate a public offer superannuation fund), but your application has not yet been approved. In both cases we will assess your AFS licence application and send you a draft AFS licence, but we won’t grant your final AFS licence until your APRA application has been approved.

Activities that may trigger financial requirements

- RG 2.139 Your AFS licence will include conditions that you meet certain minimum financial requirements. The financial requirements that will apply to you will depend on the nature, scale and complexity of your business.
- RG 2.140 These financial requirements will not apply if you are a body regulated by APRA. However, if you hold a registrable superannuation entity (RSE) licence from APRA and are authorised to operate registered managed investment schemes, these requirements will apply.
- RG 2.141 At A5.2 you will be asked about how you will transact with clients under your AFS licence. These questions are designed to help us identify which financial requirements will apply to you. To find out which financial requirements apply to various types of activities see RG 166, which is available at www.asic.gov.au/rg.

- RG 2.142 For the final wording of the conditions that may be imposed on your AFS licence see PF 209, which is available at www.asic.gov.au/pro-formas.

If you transact with clients as principal

- RG 2.143 If you are likely to have liabilities or contingent liabilities to clients of \$100,000 or more (in total) from transactions you enter into with them as principal, you should answer 'yes' at A5.2.1. For example, you are likely to be in this position if you are a market maker or underwriting securities or managed investment products. You are also likely to be in this situation if you are an issuer of non-standard margin lending facilities.

- RG 2.144 In this case you will generally need to meet the adjusted surplus liquid funds (ASLF) financial requirements in Section D of RG 166. However, if your only liabilities to clients are under debentures you issue under Chapter 2L, you won't need to meet the ASLF requirements: see RG 166.78(b).

If you hold client money or property in excess of \$100,000

- RG 2.145 If you will be holding client money or other client property to a total value of more than \$100,000 in a trust account, or you will have the power to dispose of client money or property to a total value of more than \$100,000, you should answer 'yes' at A5.2.3.2. In this case you will generally need to meet the surplus liquid funds (SLF) financial requirements in Section C of RG 166.
- RG 2.146 When calculating whether you will be holding \$100,000 or more, you can exclude certain insurance premiums you will receive from clients: see RG 166.70(a).

If you operate an IDPS

- RG 2.147 If you will be providing services as an IDPS operator under RG 148, you should answer 'yes' at A5.2.4. You will need to meet the net tangible assets (NTA) financial requirements in Appendix 3 of RG 166.

General insurance underwriting agent or broker acting under a binder

- RG 2.148 At A5.4 you will be asked whether you will be acting as a general insurance underwriting agent, or a general insurance broker acting under a binder. This includes acting under an agency agreement, binder or any other arrangement under which you can act on behalf of an insurer in accepting risks. If you will be conducting this type of business, you will be asked additional questions in Part C about these activities.

Description and size of your business

- RG 2.149 At A5.5 you will be asked to select up to four activities that best describe the type of business you will be operating. For example, you might select 'Financial

Planner’, ‘General Insurance Multi Agent’ and ‘Superannuation Service Provider’ to describe your financial planning business. You need to make sure that you order your selections so that the activity you will spend most of your time doing is first and the activity you will spend least time on is last.

- RG 2.150 If you select activities such as ‘Stockbroker / Sharebroker’ or ‘Futures Broker’ at A5.5, this does not automatically entitle you to use these terms to describe your business. The use of these and other similar terms is restricted under s923B. For more information on applying to be authorised to use these and other similar restricted terms, see RG 2.115–RG 2.123.
- RG 2.151 At A5.6 you will be asked about the size of your business. These questions are designed to help us determine what arrangements you should have in place to meet your licensee obligations under s912A. Your answers at A5.6 are not binding. However, if you are not sure what the size of your business will be, you should either estimate the size or rely on forecasted estimates for your first year of operation.
- RG 2.152 If you are a responsible entity or superannuation trustee, when estimating the size of your business don’t include the assets and revenue of your managed investment scheme(s) or superannuation fund(s).

A6: Adding responsible managers (for variation applications)

- RG 2.153 If you are completing a variation application (Form FS03) and you are applying to vary your financial services and/or product authorisations, you will be asked at A6 whether you are adding any new responsible managers for the variation you are applying for.
- RG 2.154 If you answer ‘yes’, you must complete and submit Form FS20, as well as Form FS03. Form FS20, which is available via the Licensees portal, is used to notify ASIC of changes to details of an AFS licence. When you complete Form FS20 you will be asked questions at B and C about your responsible managers. For help with answering these questions, see RG 2.166–RG 2.180.
- RG 2.155 You must also provide People Proofs for each new responsible manager with your Form FS20. For a brief explanation of the People Proofs, see RG 2.164–RG 2.165. For more detailed information on them, see Section E.
- RG 2.156 If you are applying to vary only the ‘other conditions’ on your licence, you won’t be asked anything at A6.

B Part B of the application: AFS licensee requirements

Key points

In Part B of the application you will be asked questions about the obligations you will have as an AFS licensee: see RG 2.157.

The questions you are asked will depend on the answers you provided in Part A: see RG 2.158.

You will need to support some of your Part B answers with core proof documents: see RG 2.159 and Section E.

- RG 2.157 The questions in Part B of the application cover the obligations you will have as an AFS licensee. In Part B you may be asked about:
- (a) your organisational competence and the processes you have in place to maintain it;
 - (b) your compliance arrangements;
 - (c) the training, supervision and monitoring of your representatives;
 - (d) the adequacy of your financial, human and information technology resources;
 - (e) your dispute resolution system;
 - (f) your risk management procedures;
 - (g) your compensation and insurance arrangements; and
 - (h) your product and market research and any benefits your representatives will receive.
- RG 2.158 The questions you are asked will depend on the answers you provided about your business in Part A. For example, if you are a body regulated by APRA, you won't be asked questions about the adequacy of your resources (at B5) or your risk management systems (at B7). However, if you are an RSE licensee authorised to operate registered management investment schemes, you will be asked about your resources and, if the risk does not relate solely to your operation of a regulated superannuation fund, you will be asked about your risk management systems.
- RG 2.159 You will need to support some of your Part B answers with core proof documents. These are explained in Section E. We may also ask you to send us additional Part B proofs before we can complete our assessment of your application. Additional proof documents are explained in detail in Part 3 (RG 3).

B1 & B2: Organisational competence

- RG 2.160 Before we can grant you an AFS licence, you need to demonstrate that you have the organisational competence for the financial services and products you are asking to be authorised for under your licence. To do this, you need to nominate in your application the people you will depend on for your organisational competence. These people are your responsible managers and you will be asked at B1 about their role, qualifications, training and experience.
- RG 2.161 Your responsible managers must have the necessary knowledge and skills to carry out their roles. The five options for demonstrating appropriate knowledge and skills are explained in Section C of RG 105.
- RG 2.162 To support your answers in this part of your application you will need to provide a B1 Organisational Competence core proof indicating which of the five options in RG 105 each responsible manager meets and detailing their experience and qualifications relevant to each authorisation you've selected. This core proof is explained in detail in Section E. If you are completing a variation application that involves varying your service or product authorisations, or key person condition, you will also need to provide this core proof.
- RG 2.163 You must also have processes in place for maintaining your organisational competence, as well as measures to ensure your responsible managers are of good fame and character. You will be asked about this at B2. We expect that you will have documented your processes in some form: see RG 105.7–RG 105.8. Using a documented process can help you show that you know whether or not you are complying with your obligations. How often you review your compliance will depend on how often your business changes and on staff turnover.
- RG 2.164 To support your answers in this part of your application you will need to provide the People Proofs for each responsible manager. Please send the People Proofs by email to licensing.afslproofs@asic.gov.au. The size limit of each email we will accept is 10Mb. If necessary, to meet size limits, please send multiple emails containing proofs. Make sure that you include the applicant name and application reference number in the subject line of your email.
- RG 2.165 These proofs include:
- (a) a scanned, signed copy of the Statement of Personal Information;
 - (b) scanned copies of qualification certificates;
 - (c) a scanned copy of a bankruptcy check;
 - (d) a scanned copy of a national criminal history check;

- (e) scanned copies of two business references (at least one of these should be from someone external to your organisation), and

Note: Business references are not required if you are applying for a limited AFS licence between 1 July 2013 and 30 June 2016 and your nominated responsible manager(s) are ‘recognised accountants’ as defined in reg 7.6.01BA(3).

- (f) if you are applying for a limited AFS licence and your nominated responsible manager(s) are recognised accountants, a scanned copy of their Certificate of Public Practice or Public Practice Certificate: see INFO 179 for more guidance.

This core proof is explained in detail in Section E.

Answering the questions at B1

Nominating your responsible managers

- RG 2.166 The people you nominate in your application must have the knowledge and skills to ensure you discharge your obligations as a licensee.
- RG 2.167 You should only nominate someone as a responsible manager if they are directly responsible for significant day-to-day decisions about the ongoing provision of financial services under your licence.
- RG 2.168 For more information on nominating your responsible managers, see Section B of RG 105.

Number of responsible managers

- RG 2.169 You can nominate up to 15 responsible managers. The appropriate number of responsible managers will depend on the nature, scale and complexity of your business. In the case of a large business, we expect that there will be several responsible managers. In the case of a small business, we recognise that there may only be one responsible manager, but generally we expect that a licensee will have at least two responsible managers.

Nominating only one responsible manager

- RG 2.170 If you are nominating only one responsible manager, you will need to be able to demonstrate that you have a documented risk management strategy in place to ensure you will continue to meet your organisational competence obligations if your responsible manager is unavailable at any time. For example, you will need to have procedures in place to ensure that your business could continue operating even if the sole responsible manager is unexpectedly unavailable.
- RG 2.171 If you are applying for a licence as an individual you must nominate yourself as the sole responsible manager.

Key person AFS licence condition

RG 2.172 If a licensee is heavily dependent on the expertise of one or more responsible managers, we refer to these people as ‘key persons’ and will usually name them on the licence in a ‘key person condition’. This includes where a limited licensee has only one responsible manager who is a recognised accountant.

RG 2.173 If we put a key person condition on your licence, you will have additional obligations. These will include:

- (a) notifying us if your key person leaves or is about to leave your business; and
- (b) nominating another suitably qualified person to take over from them. If the key person is a recognised accountant, and they leave between 1 July 2013 and 30 June 2016, you will need to replace that key person with another recognised accountant.

For more information on key person conditions see RG 105.83–RG 105.84 and condition 3 of PF 209.

Responsible managers acting on behalf of multiple AFS licensees

RG 2.174 If you nominate a person who is already a responsible manager for another licensee, you will need to be able to demonstrate in your B1 Organisational Competence core proof that this person will actually be able to spend enough time fulfilling their duties as your responsible manager. This core proof is explained in Section E.

Role of responsible managers

RG 2.175 You will be asked at B1.4 to select the role that best describes each responsible manager’s duties in your organisation. When you are asked at B1.5.1 how much time a responsible manager will spend on ‘duties related to the provision of financial services’, you should include in your estimation the time that the responsible manager will spend on all of the activities that they may undertake in connection with your financial services business, including the day-to-day administration of your business.

Experience

RG 2.176 You will be asked at B1.7 to select a category for each responsible manager that best describes their overall experience. We generally classify a ‘small entity’ as meeting two or more of the following requirements at the end of the last financial year:

- (a) net assets less than \$5 million;
- (b) gross revenue of less than \$5 million;

- (c) less than 20 current employees.

Otherwise, we consider the entity to be a ‘medium to large entity’.

Five options for demonstrating appropriate knowledge and skills

- RG 2.177 At B1.9 you will be asked to select which of the five options for demonstrating knowledge and skills each responsible manager meets. The five options are explained in Section C of RG 105. Each option includes a skills component (which considers the responsible manager’s past experience) and a knowledge component (which generally requires completion of a relevant qualification and/or training).
- RG 2.178 If you select ‘Other demonstration of knowledge and skills’ (i.e. Option 5), you will need to provide a submission on the responsible manager’s experience in your B1 Organisational Competence core proof. This core proof is explained in Section E.
- RG 2.179 If you apply for a limited AFS licence between 1 July 2013 and 30 June 2016, the skills component will not apply to your nominated responsible managers who are recognised accountants: see INFO 179 for more guidance.

Answering the questions at B2

Good fame and character

- RG 2.180 At B2.1 you will be asked about your processes for ensuring that your responsible managers are of good fame and character. Some factors that may indicate a person is not of good fame and character include:
- (a) whether the person has been convicted of serious fraud within the last 10 years;
 - (b) where the person has held an AFS licence that was suspended or cancelled; or
 - (c) whether a banning order or disqualification order has previously been made against the person: see s913B(4).

B3: Compliance arrangements

Compliance and conflicts management arrangements

- RG 2.181 You must have compliance measures in place to meet the AFS licensee obligations: see Section C of Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104). You must also have adequate arrangements for managing conflicts of interest that may arise in relation to your financial services

business: see s912A(1)(aa). Our policy on managing conflicts of interest is set out in Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181).

- RG 2.182 We expect you to establish and maintain compliance measures and conflicts management arrangements that are appropriate to the nature, scale and complexity of your business. In many cases there may be a number of possible ways for you to comply with these obligations. We expect that you will have documented your processes and procedures in some form: see RG 104.21–RG 104.23 and RG 181.44.
- RG 2.183 We may ask you to provide more information in a B3 additional proof (Compliance Arrangements and/or Managing Conflicts of Interest). The additional proofs are explained in Part 3 (RG 3).

Outsourcing

- RG 2.184 At B3.2 you will be asked whether you will outsource any substantial activities under your AFS licence. You should only answer ‘yes’ if you will be outsourcing any parts of your financial services business (e.g. training of representatives or part of your compliance function). Don’t answer ‘yes’ if the activities you will be outsourcing are not related to your financial services business (e.g. professional advice outsourced to lawyers).
- RG 2.185 If you outsource activities under your AFS licence, under the Corporations Act you will still be responsible for complying with all of your AFS licensee obligations in relation to them: see s769B and RG 104.30–RG 104.32. For example, if you outsource the training of your representatives, you will still be responsible for ensuring that your representatives are competent and adequately trained.
- RG 2.186 If you are going to outsource any of your activities under your AFS licence (whether or not within your corporate group), we expect that you will have appropriate processes in place to ensure that you:
- (a) have taken due skill and care in choosing a suitable service provider;
 - (b) will monitor their ongoing performance; and
 - (c) can deal effectively with any breaches of the outsourcing agreement or actions that lead, or might lead, to a breach of your licensee obligations.
- RG 2.187 We may ask you to provide more information in a B3 additional proof (Outsourcing Statement). The additional proofs are explained in Part 3 (RG 3).

ASIC-registered auditor

- RG 2.188 At B3.3 you will be asked whether you have appointed an ASIC-registered auditor or firm of auditors. You will generally need to appoint an ASIC-

registered auditor within one month of being granted an AFS licence: see s990B(1).

- RG 2.189 If you have already appointed an auditor because you are a public company, you don't need to reappoint the auditor—just provide your auditor's details at B3.3.1.
- RG 2.190 If you have not appointed an auditor and you are not a public company, you must:
- (a) appoint an ASIC-registered auditor within a month of being granted your licence; and
 - (b) notify us of the appointment within 14 days by completing Form FS06 *Appointment of an auditor of an Australian financial services licensee*, available from the Licensees portal at www.asic.gov.au/licensees.
- RG 2.191 If you have provided the name of your auditor at B3.3.1, you don't need to notify us using Form FS06.
- RG 2.192 You can check whether your auditor is registered with us by searching our Professional Registers at www.asic.gov.au/search or asking your auditor for their ASIC registration details. A registered company auditor is also an ASIC-registered auditor.
- RG 2.193 If you are granted a limited AFS licence, the audit requirements 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 INFO 179 for more guidance.

B4: Representatives

- RG 2.194 Your 'representatives' are the people who act on your behalf. They can include people who are:
- (a) internal to your organisation (i.e. employees and directors); and/or
 - (b) external to your organisation (i.e. authorised representatives authorised to act on your behalf).
- RG 2.195 Don't confuse the term 'representatives' with 'responsible managers'. Your responsible managers are the people you nominated at B1 as directly responsible for the significant day-to-day decisions about your financial services business. Your representatives are the people who provide financial services or otherwise act on your behalf.

Monitoring, supervision and training

- RG 2.196 You must monitor and supervise the activities of your representatives (including authorised representatives) to ensure they are complying with the financial services laws. You must also ensure they are properly trained and competent to provide the financial services you are applying to be authorised for, and will continue to be so: see s912A(1)(ca) & (f) and Section E of RG 104.
- RG 2.197 The questions you will be asked at B4 are designed to show us whether you have adequate arrangements in place to comply with these obligations. We expect that you will have documented your processes and procedures in some form: see RG 104.21–RG 104.23. We may ask you to provide a B4 additional proof (Program for Monitoring, Supervision and Training of Representatives). The additional proofs are explained in Part 3 (RG 3).
- RG 2.198 If your representatives (including authorised representatives) provide financial product advice to retail clients, we have set minimum training standards: see Section E of RG 104 and Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).
- RG 2.199 We have not specified minimum training standards for other financial services. It is your responsibility to determine the appropriate knowledge and skills your representatives (including authorised representatives) need to have in order to competently perform their tasks and functions: see RG 104.79–RG 104.80.
- RG 2.200 You must keep up-to-date and accurate records of the training undertaken by each of your representatives: see reg 7.6.04(1)(d).

Authorised representatives

- RG 2.201 At B4.2 you will be asked about your authorised representatives. For a person to be your authorised representative, they must be authorised under s916A or 916B to provide financial services on your behalf.
- RG 2.202 After you receive your AFS licence you will generally need to notify us of the appointment of your authorised representatives within 15 business days: see s916F. You can appoint an authorised representative or financial adviser through ASIC Connect. [ASIC Connect](#) is our online service for interacting with ASIC's registers. You will need to create an account with a user name and password or log in with your [AUSkey](#). AUSkey is optional, and you don't need to use one to access our services. You can still use a user name and password to log in to ASIC's online services. Your password is not the ASIC Key that we send you. An ASIC Key is a unique number associated with an AFS licence used in ASIC Connect. Once you have signed up for an ASIC Connect account, you need to enter the ASIC Key. This authorises

ASIC to link information about your AFS licence to your ASIC Connect account and allows you to lodge online transactions.

Financial advisers

- RG 2.203 After you receive your AFS licence you will generally need to notify us of the appointment of your financial advisers within 30 business days: see s922L(2). You can appoint a financial adviser through [ASIC Connect](#). ASIC Connect is our online service for interacting with ASIC's registers. You will need to create an account with a user name and password or log in with your [AUSkey](#). AUSkey is optional, and you don't need to use one to access our services. You can still use a user name and password to log in to ASIC's online services. Your password is not the ASIC Key that we send you. An ASIC Key is a unique number associated with an AFS licence used in ASIC Connect. Once you have signed up for an ASIC Connect account, you need to enter the ASIC Key. This authorises ASIC to link information about your AFS licence to your ASIC Connect account and allows you to lodge online transactions.

B5: Adequacy of resources

- RG 2.204 You must be able to demonstrate that you have sufficient financial, human and technological resources available to you to:
- (a) provide the financial services you are applying for under your AFS licence, and
 - (b) carry out supervisory arrangements: see s912A(1)(d).
- RG 2.205 If you anticipate growth in your business, you must be able to demonstrate how your capacity will grow to match business growth.
- RG 2.206 If you are regulated by APRA you do not need to demonstrate that you have sufficient financial, human and technological resources. However, if you are an RSE licensee authorised to operate registered managed investment schemes, you must demonstrate this.

Financial resources

- RG 2.207 Our policy on financial requirements is set out in RG 166. The financial requirements that will apply to you will depend on the nature, scale and complexity of your business. To help you work out which requirements apply, refer back to RG 2.139–RG 2.147. You should also see Table 1 in RG 166.

- RG 2.208 To support this part of your application, you must provide the B5 Financial Statements and Financial Resources core proof. This is explained in detail in Section E.

Human and technological resources

- RG 2.209 Our policy on the non-financial resources you should have available (i.e. the human and technological resources) is set out in Section F of RG 104. What we consider to be adequate resources will vary from one applicant to another and will depend on the nature, scale and complexity of your business.
- RG 2.210 You may be asked to provide one or more B5 additional proofs (Human Resources Capacity Statement and/or Information Technology Capacity Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

B6: Dispute resolution

- RG 2.211 If you have applied to provide financial services to retail clients, you must have a dispute resolution system in place: see s912A(1)(g) and s912A(2). Your dispute resolution system must consist of both:
- (a) an internal dispute resolution procedure (IDR) that satisfies the requirements set out in Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165); and
 - (b) membership of an ASIC-approved external dispute resolution (EDR) scheme or schemes that cover complaints about all of the financial services to be provided under your AFS licence.
- RG 2.212 You will be asked questions about your dispute resolution system if you selected at A5.1 that you will have retail clients.
- RG 2.213 We may also ask you to provide a B6 additional proof (Dispute Resolution System Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

Internal dispute resolution procedure

- RG 2.214 Under our requirements for IDR procedures, set out in detail in RG 165, you must:
- (a) have IDR procedures that cover the majority of complaints clients make;
 - (b) adopt the definition of ‘complaint’ in Australian Standard (AS) ISO 10002-2006 *Customer satisfaction—Guidelines for complaints handling in organisations* when handling complaints;
 - (c) satisfy the Guiding Principles in Section 4 of AS ISO 10002-2006 and comply with Section 5.1—Commitment, Section 6.4—Resources,

Section 8.1—Collection of Information and Section 8.2—Analysis and evaluation of complaints in AS ISO 10002-2006;

- (d) provide a final response within 45 days, which involves writing to the complainant informing them of the outcome of their complaint (or if this is not possible, the reasons for delay), their right to complain to EDR and the name and contact details of the relevant EDR scheme to which they can complain; and
- (e) appropriately document your IDR procedures.

Note: AS ISO 10002-2006 is available for purchase from www.saiglobal.com/shop.

External dispute resolution scheme(s)

- RG 2.215 Before you apply for your AFS licence you must belong to one or more EDR schemes that:
- (a) are approved by ASIC; and
 - (b) cover complaints about all of the financial services to be provided under your AFS licence (other than complaints that may be dealt with by the Superannuation Complaints Tribunal).
- RG 2.216 If you need to belong to one or more EDR schemes but you don't have these in place at the time you apply for your licence, we will assess your application but we cannot grant your final licence until you have the necessary arrangements in place. We will ask for details of your EDR scheme(s) membership when we send you your draft licence. The EDR schemes approved by us are listed in Table 1.
- RG 2.217 You must have a person in your organisation who is responsible for liaising with the EDR scheme(s) you belong to. At B6.2.1 you need to select the role that best describes this person.
- RG 2.218 At B6.2.2 you will be asked to enter details (e.g. membership number and commencement date) for all EDR schemes of which you are a member. Some EDR schemes do not provide membership numbers and, in this case, you may leave this field blank. If you don't have a formal commencement date, you should use the date on which you became a member of, or were first covered by, the EDR scheme(s).

Table 1: Approved EDR schemes

| EDR scheme | Contact details |
|--|--|
| Financial Ombudsman Service (FOS) | Phone: 1300 780 808 (toll free) Website: www.fos.org.au Email: info@fos.org.au |
| Credit and Investments Ombudsman Ltd (CIO) | Phone: 1800 138 422 Website: www.cio.org.au Email: info@cio.org.au Fax: (02) 9273 8440 |

Superannuation Complaints Tribunal

RG 2.219 If the Superannuation Complaints Tribunal (SCT) covers complaints about all of the financial services you are applying to be authorised to provide, you don't need to join an approved EDR scheme: see s912A(2)(b). However, if some, but not all, of the financial services you are applying for are covered by the SCT, you must also join an approved EDR scheme for the services that are not covered by the SCT: see Section A of RG 165.

RG 2.220 If some, or all, of the financial services you are applying for are covered by the SCT, you should still answer 'yes' at 6.2 (i.e. you are a member of one or more approved EDR schemes).

The contact details of the SCT are:

Superannuation Complaints Tribunal
Phone: 1300 780 808 (toll free)
Website: www.sct.gov.au
Email: info@sct.gov.au
Fax: (03) 8635 5588

B7: Risk management

RG 2.221 You must be able to demonstrate that you have adequate processes for managing risks associated with your business: see s912A(1)(h). Our policy on risk management systems is set out in Section D of RG 104.

RG 2.222 We may ask you to provide a B7 additional proof (Risk Management System Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

RG 2.223 If you are a body regulated by APRA, you do not need to demonstrate that you have adequate processes. However, if you are an RSE licensee authorised to operate managed investments schemes, and the risk does not relate solely to your operation of a regulated superannuation fund, you must demonstrate this.

Establishing adequate risk management systems

- RG 2.224 A risk management system is not necessarily a computer system. Some applicants have misunderstood this and answered ‘no’ at B7.1 when in fact they did have risk management processes in place.
- RG 2.225 We expect your risk management processes to be tailored to your financial services business. You will need to identify and address the risks associated with your particular business. For example, if you are a small business with only one responsible manager, your risk management processes should address what will occur if that person is unexpectedly unavailable. Or if you operate a managed investment scheme, your risk management processes should identify and address operational risks related to the loss of, or damage to, scheme property.

B8: Compensation and insurance arrangements

- RG 2.226 If you have applied to provide financial services to retail clients, you will need to have arrangements in place for compensating those clients for loss they suffer if you breach your obligations under the Corporations Act. The primary way to comply with this obligation is to have professional indemnity insurance cover: see s912B, reg 7.6.02AAA, condition 29 of PF 209 (for responsible entities and IDPS operators) and CO 04/194 (for MDA operators). Our policy on compensation and insurance arrangements is set out in Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (RG 126).
- RG 2.227 You will be asked questions about your compensation and insurance arrangements if you selected at A5.1 that you will have retail clients.
- RG 2.228 We may also ask you to provide a B8 additional proof (Compensation Capacity Statement) when we send you your draft licence and a ‘requirements letter’ listing any outstanding matters you need to finalise before we can grant your final licence: see RG 1.59. The additional proofs are explained in Part 3 (RG 3).

Professional indemnity insurance

- RG 2.229 B8.1 asks whether you are required to have adequate professional indemnity insurance. You do not need to have professional indemnity insurance if:
- (a) you have alternative arrangements approved in writing by ASIC: see Section D of RG 126 and RG 2.232–RG 2.235;
 - (b) you are a general insurance company, life insurance company or an authorised deposit-taking institution regulated by APRA: see Section E of RG 126; or

- (c) you are related to one of the APRA-regulated entities listed in RG 2.229(b) and have a guarantee from the APRA-regulated entity that has been approved by ASIC: see Section E of RG 126 and RG 2.236.

RG 2.230 B8.1.1 asks if you already have professional indemnity insurance that complies with our policy on compensation and insurance arrangements. Our policy on what we consider to be adequate insurance is set out in Sections C and D of RG 126.

RG 2.231 It can take several weeks or longer to obtain professional indemnity insurance, so start organising it early. If you need professional indemnity insurance but you don't have it in place at the time you apply for your licence, we will assess your application but we cannot grant your final licence until you have the necessary arrangements in place. We will ask for details of your insurance policy when we send you your draft licence.

How to apply for ASIC approval of alternative arrangements

RG 2.232 If you wish to apply for ASIC approval of alternative arrangements, you will need to apply in writing to applications@asic.gov.au. In deciding whether to approve alternative arrangements, we will consider the same factors used to assess adequacy of professional indemnity insurance: see Section D of RG 126.

RG 2.233 Applications for approval should address the following issues:

- (a) which licensee(s) will be covered by the arrangements (e.g. do the arrangements cover a group of related licensees or an industry sector?);
- (b) how the arrangements meet the criteria for assessing adequate professional indemnity insurance under the Corporations Regulations (see Section C of RG 126);
- (c) any benefits, risks or costs to retail clients arising from the licensee(s) using these arrangements as opposed to professional indemnity insurance; and
- (d) any circumstances particular to the licensee(s) or the industry sector that make these arrangements more appropriate than professional indemnity insurance.

RG 2.234 We will generally ask for an expert's report (e.g. actuarial report) to be submitted with the application to assess whether the arrangements give no less protection than professional indemnity insurance.

RG 2.235 It will take time to assess alternatives submitted to us for approval so start the application process early. If you wish to rely on alternative arrangements but have not obtained ASIC approval at the time you apply for your licence, we will assess your licence application but we cannot grant your final licence until you have obtained the necessary approval.

Applying for ASIC approval of a guarantee from an APRA-regulated entity

- RG 2.236 If you wish to apply for ASIC approval of a guarantee from an APRA-regulated entity, you will need to apply in writing to applications@asic.gov.au. In deciding whether to approve a guarantee, we will consider the same factors used to assess adequacy of professional indemnity insurance: see Section D of RG 126.
- RG 2.237 It will take time to assess guarantees submitted to us for approval so start the application process early. If you wish to rely on a guarantee but have not obtained ASIC approval at the time you apply for your licence, we will assess your licence application but we cannot grant your final licence until you have obtained the necessary approval.

B9: Research and benefits

- RG 2.238 If you have applied to be authorised to provide financial product advice to retail clients, you will be asked at B9 about the nature of your product research and your approved or recommended product list. These questions relate to your obligation to provide personal advice that is appropriate to the objectives, financial situation and/or needs of your retail clients.
- RG 2.239 We may also ask you to provide a B9 additional proof (Research Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

C Part C of the application: Certain complex services or products

Key points

If you selected certain complex financial services or products in Part A of your application, you will be asked further questions about those services or products in Part C: see RG 2.240.

You may also need to provide additional Part C proofs relating to these services or products: see RG 2.241.

RG 2.240 If, in Part A of your application, you select one or more of the following services or products, you will be asked further questions in Part C that are aimed at making sure you have the capacity to provide these services or products:

- (a) Custodial or Depository Service;
- (b) Operate a Registered Managed Investment Scheme;
- (c) Make a Market;
- (d) Derivatives;
- (e) Foreign exchange contracts;
- (f) Horse racing syndicate;
- (g) Life products;
- (h) Insurance underwriting;
- (i) Managed discretionary account services;
- (j) Margin lending facilities.

RG 2.241 You may also need to provide additional Part C proofs relating to these services or products. These proofs are explained in detail in Part 3 (RG 3).

D Part D of the application: Making declarations and certifications

Key points

Part D of the application generates declarations and certifications based on your answers in Parts A and B (and C, if relevant): see RG 2.242–RG 2.244.

You will be signing these declarations when you sign a print-out of your application: see RG 2.245–RG 2.247.

- RG 2.242 The eLicensing system automatically generates declarations and certifications relevant to your application, based on your answers in Parts A, B and C. You will be required to sign these declarations and certifications when you print the Form FS01 or FS03.
- RG 2.243 The declarations and certifications fall into the following categories:
- general declarations made by all applicants (see RG 2.244);
 - a declaration specific to bodies regulated by APRA; and
 - specific certifications relating to answers given in Parts A, B and C.
- RG 2.244 The general declarations include that:
- you have taken reasonable steps to ensure that, to the best of your knowledge, the information supplied in, and with, your application is complete and accurate;
 - if granted an AFS licence, you will comply with your AFS licence obligations;
 - you acknowledge that we may take action to verify that the statements and certifications you have made in your application are not false or misleading; and
 - you acknowledge that you have read the ASIC Electronic Lodgement Protocol and agree to be bound by its terms and conditions.
- RG 2.245 Make sure you read all of the declarations and certifications carefully and that they are consistent with your answers in the application before you sign the Form FS01 or FS03. Making false declarations is a criminal offence and may be grounds for us to refuse to grant you an AFS licence or to later cancel your licence.
- RG 2.246 Remember that the declarations and certifications apply at the time you are making your application and not to the time when you might commence business in the future.
- RG 2.247 We may conduct surveillances of licensees to verify that certifications and declarations are correct.

E Part E of the application: Core proofs

Key points

Part E of forms FS01 and FS03 lists the core proof documents you need to submit as part of your application, as well as listing some other proof documents we may require: see RG 2.248–RG 2.249 and RG 2.255–RG 2.374.

If we later ask you to provide additional proof documents, these will generally be one or more of the other proofs listed in Part E of your Form FS01 or FS03 print-out: see RG 2.253.

- RG 2.248 You will need to include relevant core proof documents as part of your licence or variation application. Which core proof documents you will need to submit will depend on the complexity of the financial services and products you apply for as well as our analysis of your business and the market you propose to operate in.
- RG 2.249 When you submit Form FS01 or FS03 online, you must immediately also send us:
- (a) a scanned signed print-out of the relevant form and copies of the core proof documents outlined in RG 2.255 or RG 2.256. You should email these to licensing.afslproofs@asic.gov.au; and
 - (b) a cheque by post if you haven't already paid the application fee by BPAY. If you will be paying by cheque, please advise us of this in the email containing the scanned signed print-out and the copies of your core proof documents.
- RG 2.250 The core proofs should be emailed to licensing.afslproofs@asic.gov.au. The size limit of each email we will accept is 10 MB. If necessary, to meet size limits, please send multiple emails containing proofs. Make sure that you include the applicant name and application reference number in the subject line of each email.
- RG 2.251 If you don't apply online, you must post the signed paper application form we tailored to you, together with your core proofs and your cheque for payment (if you have not paid the fee by BPAY).
- RG 2.252 We won't begin to assess your application until it is complete—that is, until we receive your scanned signed printout of Form FS01 or FS03, the copies of your core proof documents, and your payment (or email advice that you have sent a cheque). If you do not send us all of these documents at the same time, we will reject your application and you'll need to re-apply.
- RG 2.253 You should keep a copy of your signed print-out of Form FS01 and originals of your core proof documents for your own records.

RG 2.254 In some cases, we may need to ask you to send us additional proof documents before we can complete our assessment of your application. You'll need to make sure we receive these **within 10 business days** of our request. Additional proof documents will generally be one or more of the proof documents listed in Part E of your Form FS01 or FS03 print-out. However, we may need to ask you for other proof documents not listed on your print-out if, for example, you haven't selected your authorisations properly. Part 3 (RG 3) explains in detail the specific information your additional proof documents must include.

What are the core proofs?

AFS licence application

RG 2.255 For an AFS licence application (Form FS01), the core proof documents are:

- (a) A5 Business Description;
- (b) People Proofs for each responsible manager;
- (c) B1 Organisational Competence—this includes a Table of Organisational Competence and, if relevant, a Submission on Responsible Manager's Competence; and
- (d) B5 Financial Statements and Financial Resources—you don't need to send us this proof if you are a body regulated by APRA; however, if you are an RSE licensee authorised to operate registered managed investment schemes, you will need to send us the proof.

Variation application

RG 2.256 For a variation application to vary your service or product authorisations, or key person condition, (Form FS03), the core proof documents are:

- (a) A5 Business Description; and
- (b) B1 Organisational Competence.

RG 2.257 For a variation application to vary the other conditions on your licence (also Form FS03), the only core proof document is the A5 Business Description.

Information required

RG 2.258 This section of RG 2 (i.e. Section E) explains in detail the specific information your core proof documents must include.

RG 2.259 Note that if you are applying to vary your licence, your core proof documents should cover all of the services and products that will be provided under your licence, not just the variation you are requesting. Even

if you have previously given these core proof documents to us as part of an earlier licence application, you must still provide them as part of your variation application and they must be up-to-date.

RG 2.260 The information in your core proof documents must be tailored to your business. For example, if you are part of a corporate group, your core proofs should cover your specific AFS licence obligations, as distinct from being standardised proofs that generally relate to licensees within your corporate group.

RG 2.261 If you provide generic and/or outdated core proofs, this may delay the processing of your AFS licence application or we may not even accept them.

How to send your proofs

RG 2.262 Each core or additional proof document should be labelled with the following information:

- (a) your name;
- (b) application number;
- (c) document name and relevant number (e.g. 'B1 core proof: Organisational Competence—Submission on Responsible Manager's Competence');
- (d) the date the proof was prepared;
- (e) its status (if applicable) (e.g. 'Draft', 'Commercial-in-Confidence'); and
- (f) the number of pages.

RG 2.263 Please email the core proof documents to licensing.afslproofs@asic.gov.au. Make sure that you include the applicant name and reference number in the subject line of your email. If you don't have access to email, you can post the proof documents to us.

RG 2.264 We'll scan your proof documents into our document imaging system and then destroy them, so if you can't email the proofs to us, only send us copies of your proofs, not your original documents.

A5 Business Description core proof

RG 2.265 You must provide this core proof if you are:

- (a) applying for an AFS licence;
- (b) varying the financial service and/or product authorisations on your AFS licence; or
- (c) varying the 'other conditions' on your AFS licence (e.g. key person or standard licence conditions).

- RG 2.266 We need this information so that we can understand how your business will work and the relevance of the licence authorisations you have selected (including any new ones).
- RG 2.267 This core proof includes an overview of your business and an organisational chart.

Overview of your business

- RG 2.268 At a minimum, the description of your business must include:
- (a) the financial services and products you will provide, including details of the particular types of products involved. For example:
 - (i) if you will be operating a managed investment scheme, the types of asset(s) the scheme services hold (e.g. whether it will issue stapled securities, whether it will operate as a hedge fund); and/or
 - (ii) if you will be dealing in or advising on derivatives or foreign exchange contracts, the particular products this involves (e.g. exchange traded options, OTC transactions, trading warrants, contracts for difference);
 - (b) how you will generate income from providing those financial services and products (e.g. whether you will charge a fee-for-service, receive commissions, use a buy–sell spread);
 - (c) the proportion of your total income that you estimate each type of financial service and product will generate;
 - (d) how quickly you anticipate your business will grow;
 - (e) who your typical client(s) will be for each type of financial service and product you will provide, whether they will typically be retail and/or wholesale clients, and what their typical financial goal(s) in using your services or product will be (e.g. investing in long-term growth assets, hedging risks, speculating);
 - (f) if you are a product issuer, the distribution channels you will use to distribute your products (e.g. authorised representatives, other AFS licensees);
 - (g) how you will deliver those financial services and products to your clients—that is, who will provide the services and by what means (e.g. through a call centre, face-to-face interviews, internet);
 - (h) whether your business will operate from a location other than your principal place of business (e.g. other offices within Australia or within other countries). If so, indicate where the other locations are and describe the services that will be provided and how will you supervise and monitor compliance across these different locations; and

- (i) whether some of your financial service-related functions will be outsourced. If so, describe the functions that will be outsourced, how and who will perform these functions, and in what location.

RG 2.269 If your business involves complex or unusual products, transactions or arrangements, you may want to include a diagram to help explain your business.

RG 2.270 If you are applying for a limited AFS licence, there will be some differences in the information required in your A5 Business Description core proof: see INFO 179 for more guidance.

Organisational chart

RG 2.271 As part of this core proof you must also provide an organisational chart illustrating the overall structure of your business and clearly identifying:

- (a) the number of employees and authorised representatives in each functional area;
- (b) the position(s) held by each of your responsible managers;
- (c) the person responsible for monitoring ongoing compliance with your AFS licence obligations, and their reporting lines;
- (d) the person responsible for reporting breaches of your AFS licence obligations directly to ASIC (e.g. under s912D); and
- (e) if applicable, the relationship between you, as the applicant entity, and any ultimate holding company or other companies in your corporate group.

RG 2.272 If you are applying for an AFS licence as a partnership, in this proof also provide the names of all the partners in the partnership.

RG 2.273 If you are applying for an AFS licence as the trustees of a trust (i.e. where you are a group of individuals and/or companies who act as the trustees of a trust), in this proof also provide a list of the names of all trustees.

People Proofs for each responsible manager

RG 2.274 You must provide this core proof if you are:

- (a) applying for an AFS licence; or
- (b) adding new responsible managers (Form FS20) for a variation to the financial service and/or product authorisations on your AFS licence.

RG 2.275 We need this information to help us assess your organisational competence and whether your responsible managers are of good fame and character.

RG 2.276 This core proof includes the following information for each responsible manager you have nominated in your application form:

- (a) a scanned signed copy of the Statement of Personal Information;
- (b) scanned copies of their relevant qualification certificates;
- (c) a scanned copy of a national criminal history check (also called a police check);
- (d) a scanned copy of a bankruptcy check;
- (e) scanned copies of two business references (at least one of these should be from someone external to the nominated responsible manager's current organisation), and

Note: Business references are not required if you are applying for a limited AFS licence between 1 July 2013 and 30 June 2016 and your nominated responsible manager(s) are recognised accountants.

- (f) if you are applying for a limited AFS licence and you or your nominated responsible manager(s) are recognised accountants, a scanned copy of the relevant Certificate of Public Practice or Public Practice certificate: see INFO 179 for more guidance.

RG 2.277 If you are a body regulated by APRA, you don't need to provide a bankruptcy check, national criminal history check or business references for your responsible managers.

RG 2.278 Only documents written in English will be accepted. If your documents are not in English, you must also provide a translation of the document.

Statement of Personal Information

RG 2.279 The eLicensing system will print a Statement of Personal Information for all responsible managers you have nominated at B1 in your online application.

RG 2.280 All responsible managers must answer all of the questions in the Statement of Personal Information and it must be signed and witnessed.

RG 2.281 Part B of the Statement of Personal Information requires you to provide, for each responsible manager, details of their educational qualifications that are relevant to the types of financial services and products you are applying for under your AFS licence.

Copies of qualification certificates

RG 2.282 You must provide copies of all relevant qualification certificates for each of your responsible managers.

Overseas qualifications

RG 2.283 We will generally only accept an overseas qualification where you can show that it is comparable to an Australian qualification that meets one of the five options in RG 105. If a responsible manager has a relevant foreign university

qualification, you will need to provide a submission setting out the responsible manager's relevant overseas qualification and demonstrate:

- (a) the comparability of the overseas qualifications with Australian qualifications; and
- (b) how it is relevant to the option selected under RG 105.

RG 2.284 The Australian Education International–National Office of Overseas Skills Recognition (AEI–NOOSR) provides official information and advice on the comparability of overseas qualifications with Australian qualifications. AEI–NOOSR Country Education Profiles (CEP) Online is an online recognition tool to assist in determining the equivalence of qualifications from over 119 countries with Australian qualifications. CEP Online can be purchased and accessed from [AEI–NOOSR](#) or phone 1300 615 262.

RG 2.285 If there is any doubt about the adequacy of your responsible manager's qualification based on the information on CEP Online, you can apply to AEI–NOOSR to make an assessment of the comparability of the individual qualification with Australian qualifications. This process may take up to three months.

RG 2.286 To find out more about AEI–NOOSR's assessment of qualifications and CEP Online, go to www.aei.gov.au.

Copy of national criminal history check

RG 2.287 You will need to get national criminal history checks on your responsible managers from one of the following sources:

- (a) Australian Federal Police;
- (b) state and territory police services; and
- (c) brokers accredited by CrimTrac.

RG 2.288 The national criminal history checks you provide to us must be **no more than 12 months old**. You should send us scanned copies of the national criminal history checks and retain the originals.

How to apply for a national criminal history check

The websites listed below set out details of how to apply for national criminal history checks. The CrimTrac website provides a list of accredited brokers, who can then be contacted for details of how to apply.

Table 2: Where to find information on how to apply for a national criminal history check

| Source | Websites |
|-------------------------------------|---|
| Australian Federal Police | www.afp.gov.au |
| State and territory police services | New South Wales: www.police.nsw.gov.au Northern Territory: www.pfes.nt.gov.au Queensland: www.police.qld.gov.au South Australia: www.sapolice.sa.gov.au Tasmania: www.police.tas.gov.au Victoria: www.police.vic.gov.au Western Australia: www.police.wa.gov.au |
| Brokers accredited by CrimTrac | www.crimtrac.gov.au This website provides a list of accredited brokers, who can then be contacted for details on how to apply. |

Note: Not all organisations that provide employment screening services are brokers accredited by CrimTrac. If you arrange a criminal history check through an employment screening organisation that is not an accredited broker, you will need to ensure that you are given a copy of the criminal history check that the organisation obtains for you. The check must be on the letterhead of an accredited broker or a police service listed in Table 2.

Tips on national criminal history checks

- RG 2.289 You are not obliged to disclose convictions to us that are ‘spent’ or ‘quashed’: see the definition of ‘spent conviction’ in Part VIIC of the *Crimes Act 1914*. You must ensure that the national criminal history checks you apply for do not disclose details of spent convictions. We may not accept national criminal history checks that have been conducted for other purposes, such as for applications for a firearms licence, because those checks may include details of spent convictions.
- RG 2.290 You need to pay a fee to the organisation providing the national criminal history checks on your responsible managers. These fees differ between the organisations listed in Table 2.
- RG 2.291 The time it takes to obtain national criminal history checks also differs between the organisations listed in Table 2. Apply early for the checks on your responsible managers.
- RG 2.292 If you are applying for national criminal history checks from the Australian Federal Police, insert code number 25 ‘Australian Securities and Investments Commission (ASIC) Consumer Credit/Financial Services Licensing Requirements’ in the ‘Code Number’ field on the application form.

Overseas criminal history checks

- RG 2.293 You must also provide us with a criminal history check, no more than 12 months old, from each of the countries in which a responsible manager has resided for one year or more in the last 10 years. If a responsible manager has never lived in Australia or arrived in Australia within 6 months before the application is lodged, an Australian criminal history check will not be needed in addition to the overseas criminal history check(s).
- RG 2.294 The criminal history check must be obtained from a national government authority in the relevant country. If this is not possible, you must provide a criminal history check issued by a state or provincial authority for each state or province where the responsible manager has lived for one year or more over the last 10 years.
- RG 2.295 If authorities in the relevant country do not provide criminal history checks, you must provide a statutory declaration declaring that the responsible manager has no criminal history and detailing the attempts you have made to obtain a criminal history check from the relevant authorities. If the responsible manager is still overseas at the time you lodge your licence application, the statutory declaration must be notarised and registered at the Australian Consulate of the country where the responsible manager lives. If the responsible manager is living in Australia at the time the statutory declaration is made, the declaration must be signed and witnessed by a solicitor, justice of the peace, notary or other equivalently qualified person.

Copy of bankruptcy check

- RG 2.296 You can get bankruptcy checks on your responsible managers from search agents authorised by the Australian Financial Security Authority (AFSA). The bankruptcy checks you provide to us must be **no more than 12 months old**. You should send us a scanned copy of the bankruptcy check and retain the original.
- RG 2.297 AFSA maintains the National Personal Insolvency Index (NPII), which contains information on proceedings and administrations under the *Bankruptcy Act 1966*. AFSA does not perform searches of the NPII for the general public, so you will need to request a bankruptcy check through an Index Search Agent who has been authorised by AFSA. Go to the AFSA website at www.afsa.gov.au/resources/npil/how-to-search-the-npil for more information about the search agents. A fee applies to bankruptcy checks.

Overseas bankruptcy checks

- RG 2.298 You must also provide us with a bankruptcy check, no more than 12 months old, from each of the countries in which a responsible manager has resided for one year or more in the last 10 years. If a responsible manager has never lived in Australia or arrived in Australia within 6 months before the application is lodged,

an Australian bankruptcy check will not be needed in addition to the overseas bankruptcy check(s).

- RG 2.299 The bankruptcy check must be obtained from a national government authority in the relevant country. If this is not possible, you must provide a bankruptcy check issued by a state or provincial authority for each state or province where the responsible manager has lived for one year or more over the last 10 years.
- RG 2.300 If authorities in the relevant country do not provide bankruptcy checks, you must provide a statutory declaration declaring that the responsible manager has never been bankrupt and detailing the attempts you have made to obtain a bankruptcy check from the relevant authorities. If the responsible manager is still overseas at the time you lodge your licence application, the statutory declaration must be notarised and registered at the Australian Consulate of the country where the responsible manager lives. If the responsible manager is living in Australia at the time the statutory declaration is made, the declaration must be signed and witnessed by a solicitor, justice of the peace, notary or other equivalently qualified person.

Copies of two business references

- RG 2.301 The two business references you need to provide for each responsible manager must be in a similar format to the example reference in Appendix 1. You should send us a scanned copy of each reference and retain the original.
- RG 2.302 The references must:
- (a) be signed and dated and clearly state the full name and title of the referee. References must be **no more than 12 months old** at the time you lodge your application;
 - (b) specifically relate to the work the responsible manager has performed in the industry in connection with the types of financial services and products that you are applying for; and
 - (c) confirm whether the responsible manager is of good fame and character.
- RG 2.303 Where the first reference is provided from an internal source (e.g. the human resources branch, chairperson or CEO of the responsible manager's current organisation), the second reference must be from an external source (e.g. previous employer or industry body).
- RG 2.304 We will not accept references where your responsible managers provide references for each other.
- RG 2.305 Referees are reminded that providing false or misleading information to ASIC is an offence.

- RG 2.306 Business references are not required if you are applying for a limited AFS licence between 1 July 2013 and 30 June 2016 and your nominated responsible manager(s) are recognised accountants.

B1 Organisational Competence core proof

- RG 2.307 You must provide this core proof if you are:
- (a) applying for an AFS licence; or
 - (b) varying the financial service and/or product authorisations or key person condition on your AFS licence.
- RG 2.308 We need this information to help us assess whether you meet the organisational competence requirements for the financial services and products you are applying for under your AFS licence.
- RG 2.309 This core proof includes a Table of Organisational Competence and, if applicable, a Submission on a Responsible Manager's Competence.
- RG 2.310 If you are applying for a limited AFS licence there will be some differences in the information required in your B1 Organisational Competence core proof: see the note to RG 2.311(a) and INFO 179 for more guidance.

Table of Organisational Competence

- RG 2.311 If you set out your Table of Organisational Competence in the same format as the example provided in Appendix 2, it will help us to assess your application efficiently. For each responsible manager you must set out:
- (a) their experience and qualifications in relation to each financial service and product authorisation you are applying for under your AFS licence;

Note: If you are applying for a limited AFS licence between 1 July 2013 and 30 June 2016 and your nominated responsible manager(s) are recognised accountants, you do not need to set out their experience in the Table of Organisational Competence. However, you do need to include details about their qualifications: see INFO 179 for more guidance.
 - (b) which of the five options in RG 105 for demonstrating appropriate knowledge and skills they meet; and
 - (c) if you will be operating a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service, their knowledge and skills in relation to:
 - (i) the operation of the scheme; and
 - (ii) the assets under management or the business operated by the scheme.

Submissions on a Responsible Manager's Competence

If a responsible manager is relying on Option 5

- RG 2.312 You must provide a submission describing:
- (a) the nature of the role performed by the responsible manager;
 - (b) any relevant qualifications or courses completed by the responsible manager and the dates they were completed;
 - (c) the responsible manager's relevant experience over the past 10 years (this does not necessarily mean they need 10 years relevant experience);
 - (d) any relevant credentials of the responsible manager, including association memberships or affiliations, or skills or knowledge recognised by an industry association, a regulator such as APRA, or some relevant overseas body; and
 - (e) why you think the responsible manager has appropriate knowledge and skills for the financial services and products their role relates to.

If a nominated person will be acting as a responsible manager for multiple AFS licensees

- RG 2.313 You must provide a submission demonstrating that you will be able to meet your ongoing organisational competence obligations, even though a responsible manager will have responsibilities to other AFS licensees.
- RG 2.314 Your submission must include a description of:
- (a) how the responsible manager will allocate their time to ensure that they can properly perform their role as both your responsible manager and the responsible manager of another AFS licensee; and
 - (b) how you will manage any conflicts of interest that may arise from the responsible manager acting on behalf of multiple AFS licensees.

B5 Financial Statements and Financial Resources core proof

- RG 2.315 You must provide this core proof if you are applying for an AFS licence, unless you are a body regulated by APRA. However, if you are an RSE licensee authorised to operate registered managed investment schemes, you must provide this proof.
- RG 2.316 We need this information to assess whether you have adequate financial resources available to you to comply with your obligations as an AFS licensee.

- RG 2.317 For this core proof you need to:
- (a) identify which financial requirement(s) under RG 166 apply to you and provide financial documents demonstrating that you can comply with these financial requirements; and
 - (b) provide a description of your processes for ensuring that you comply with RG 166, including your processes for:
 - (i) monitoring and reporting on financial obligations, including reporting lines and the frequency of reporting;
 - (ii) ensuring that you have adequate funds to properly carry out your responsibilities under your AFS licence, now and in the future; and
 - (iii) ensuring compliance with all ongoing record keeping obligations.
- RG 2.318 As an alternative to RG 2.317(a) above, you can get your accountant to provide a statement that:
- (a) specifies which financial requirements apply to you;
 - (b) confirms that you can comply with these financial requirements; and
 - (c) states/confirms that there are no other financial requirements that apply to you.
- RG 2.319 Your accountant must be a qualified accountant who is external to your organisation. A ‘qualified accountant’ is an accountant who satisfies the requirements in Regulatory Guide 154 *Certificate by a qualified accountant* (RG 154).
- RG 2.320 Your accountant’s statement must also be accompanied by a statutory declaration, signed by you or a person authorised to sign on your behalf, stating that:
- (a) you comply with the RG 166 financial requirements described by the accountant; and
 - (b) no other financial requirements apply to you.
- RG 2.321 You still need to provide RG 2.317(b), that is, a description of your processes for ensuring that you comply with RG 166. You cannot rely on a statement from a qualified accountant to demonstrate that you have adequate processes in place for ensuring you comply with RG 166.

Identifying which financial requirements apply to you

- RG 2.322 It will help you if you refer back to the information in RG 2.139–RG 2.147. You should also see Table 1 in RG 166.

Financial documents to show compliance with RG 166 financial requirements

RG 2.323 Any financial documents you give us, except for cash flow projections, must comply with all relevant accounting standards.

Base level financial requirements

Financial statements

RG 2.324 The base level requirements in Section B of RG 166 apply to all applicants except bodies regulated by APRA, and market and clearing participants that are exempt from them under Appendix 1 of RG 166. However, if you are an RSE licensee authorised to operate registered managed investment schemes, Section B of RG 166 still applies to you.

RG 2.325 If Section B of RG 166 applies to you, you must provide financial statements demonstrating that you have positive net assets and solvency. These must include:

- (a) a balance sheet;
- (b) an income statement (if already operating); and
- (c) a statement of cash flows (if already operating).

RG 2.326 Your financial statements must be **no more than 3 months old**. You should preferably provide audited financial statements. However, if your last audited financial statements are more than 3 months old, you should provide signed unaudited financial statements that are no more than 3 months old.

RG 2.327 Unaudited financial statements should be signed by the authorised person(s) and include the printed name and capacity of the signatory and the date of signing. People authorised to sign unaudited financial statements are:

- (a) for an individual, that person;
- (b) for a company, a director or secretary;
- (c) for a partnership, a partner who would perform duties in connection with the holding of the AFS licence; and
- (d) for non-corporate trustees, a trustee.

Cash needs requirement

RG 2.328 If Section B of RG 166 applies to you, you must also provide documents demonstrating you meet the cash needs requirement by complying with one of Options 1 to 5 described in RG 166.38–RG 166.52.

RG 2.329 Your documents must clearly identify which of Options 1 to 5 you are relying on, for example, whether you have chosen Option 1 (reasonable estimate projection plus cash buffer) or Option 2 (contingency based

projection). Options 3 to 5 are generally only available for licensees within corporate groups or those with financial support from an Australian ADI.

RG 2.330 **If you choose Option 1 or Option 2**, you must provide a signed 3-month (month-by-month) cash flow projection demonstrating that you have met the cash needs requirement. In preparing your cash flow projection you must document the projections, calculations and your assumptions on which the projected inflow and outflow have been based. You must explain why these assumptions are appropriate, particularly when relying on the conduct of people not under a legal commitment (e.g. sales from repeat business). This helps to show that you will comply with your obligations.

RG 2.331 For a worked example of how to calculate cash flow projections under Option 1 or Option 2, see Appendix 3 of this guide.

RG 2.332 **If you choose Options 3, 4 or 5**, you must provide documents showing that you will satisfy the requirements in Section B of RG 166. You don't need to provide cash flow projections if you choose one of these options.

Managed investments, custody services, trustee companies, margin lending facilities and retail OTC derivatives issuers

RG 2.333 The financial requirements in Appendices 2, 3, 4, 5, 6 and 8 of RG 166 generally apply to:

- (a) responsible entities of managed investment schemes;
- (b) IDPS operators;
- (c) providers of custodial or depository services;
- (d) trustee companies providing traditional services;
- (e) issuers of margin lending facilities; and
- (f) retail OTC derivatives issuers.

RG 2.334 If Appendix 2, 3, 4, 5, 6 or 8 of RG 166 applies to you, you must provide:

- (a) a calculation of the amount of net tangible assets (NTA) you are required to hold;
- (b) a calculation of the amount of NTA you actually hold;
- (c) if you are the responsible entity of a managed investment scheme, an IDPS operator or an issuer of a margin lending facility who uses a third party custodian, a statement verifying the NTA of the custodian, signed by the auditor or by two directors of the custodian; and
- (d) if you do not provide any custodial or depository services other than as an incidental provider and you do not meet the NTA requirement for custodians (see RG 166.269), a description of your circumstances and why you believe you satisfy the definition of 'incidental provider' (see 'Key terms'). Your submission should include information about:

- (i) the nature of the custodial or depository services you will be providing and the relationship of these services to other financial services you will provide;
- (ii) the estimated proportion of your ‘financial services business revenue’ that your ‘custodial or depository services revenue’ will comprise (see ‘Key terms’);
- (iii) who will hold the legal title to the client’s assets; and
- (iv) who will undertake physical custody of the client’s assets.

RG 2.335 Your NTA calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your NTA calculation.

Licensees holding client money and property

RG 2.336 If Section C of RG 166 applies to you, you must provide a calculation of the amount of surplus liquid funds (SLF) you actually hold.

RG 2.337 Your SLF calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your SLF calculation.

Licensees transacting with clients as principal

RG 2.338 If Section D of RG 166 applies to you, you must provide calculations of:

- (a) the amount of adjusted surplus liquid funds (ASLF) you are required to hold; and
- (b) the amount of ASLF you actually hold.

RG 2.339 Your ASLF calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your ASLF calculation.

RG 2.340 In calculating ASLF, if you intend to rely on a system for calculating risk exposures rather than the standard adjustments to SLF, you must provide a submission including evidence that the model is substantially the same as a model accepted by regulators with a prudential focus. Your submission must comply with Regulatory Guide 51 *Applications for relief* (RG 51). You must include certification from your chief executive and a report by a registered company auditor: see RG 166.131–RG 166.135.

Tier one capital requirements

RG 2.341 If Appendix 7 of RG 166 applies to you, you must provide an ASLF calculation or a calculation of the amount of tier one capital you actually

hold. Foreign exchange dealers can generally choose to comply with either Section E or have \$10 million of tier one capital.

- RG 2.342 Your calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your calculation.

Eligible undertakings and eligible providers

- RG 2.343 If you are relying on an eligible undertaking (i.e. a financial commitment from an eligible provider: see RG 166.100(e) and RG 166.141–RG 166.151) to meet your financial requirements, you must provide information showing us that the undertaking and provider meet the requirements described in RG 166.141 and RG 166.146. You can usually demonstrate this by providing us with a copy of the eligible undertaking.
- RG 2.344 If you want to apply for our approval of an eligible provider under RG 166.141(e) or RG 166.141(g) or of an eligible undertaking under RG 166.148, you will need to make a submission to us as described in RG 166.145 under ‘How to apply for approval of an eligible provider’ and RG 166.151 under ‘How to apply for approval of an eligible undertaking’.
- RG 2.345 If, after being granted an AFS licence, you want to apply for our consent to cancel the eligible undertaking, you should apply to us in writing.

Deeds of subordination

- RG 2.346 If you need to subordinate debt for the purposes of excluding it from your adjusted liabilities (see RG 166.101(a) and RG 166.102), you must provide us with **three original** executed deeds of subordination for **each lender** in the same form as Pro Forma 63 *Deed of subordination* (PF 63). The original copies of these documents must be posted to ASIC.
- RG 2.347 If, after being granted an AFS licence, you want to release the deed of subordination, you can obtain a pro forma of a deed of mutual release from the ASIC website.

Trading trusts

- RG 2.348 If you will be conducting your financial services business through a trading trust, you cannot rely on the assets of the trading trust to meet SLF or NTA requirements.
- RG 2.349 You may, however, rely on your right to use the assets of a trading trust to meet the cash needs requirement under Option 1 or Option 2 in Section B of RG 166.
- RG 2.350 If you are using Option 1, you must include all the cash flows of the trust in your cash projections, as well as any cash flows specifically relating to you.

RG 2.351 If you are using Option 2, one of the contingencies you would need to take into account would be the possible loss of access to the funds of the trust.

Appendix 1: Sample proof—Business reference for a responsible manager (part of People Proofs)

1. Date *[insert date]*

2. Reference for *[insert name of responsible manager]*

3. I am writing this reference in support of the application for an AFS licence by *[insert name of applicant]*

4. I confirm that I have known *[insert name of responsible manager]* for *[insert number]* years *[insert number]* months since *[insert relevant year]*

5. in my capacity as their *[provide full details (e.g. supervisor at ABC Pty Ltd, AFS licensee, professional adviser at ABC Pty Ltd, or client)]*.

[Also indicate if you are the responsible manager's]

current employer

previous employer

from within the responsible manager's organisation (e.g. from the Human Resources branch)

6. I confirm that the responsible manager has experience in the following nominated areas

[tick the appropriate boxes]

Provide Financial Product Advice to: Retail clients and/or Wholesale clients

in relation to the following:

Deposit and payment products:

- Basic deposit products
- Non-basic deposit products
- Non-cash payment products

- Derivatives
- Derivatives—wool only
- Derivatives—electricity only
- Derivatives—grain only

 Foreign exchange contracts

General insurance:

- General insurance products
- Consumer credit insurance

 Government debentures, stocks or bonds

Life products:

- Investment life insurance products
- Life risk insurance products
- Consumer credit insurance

Managed investment schemes (registered or unregistered):

- Managed investment schemes, excluding IDPS
- Managed investment schemes, including IDPS
- IDPS only
- Own managed investment scheme only
- Horse racing syndicate
- Time-sharing scheme
- MDA services

 Retirement savings account products Securities Superannuation

Margin lending facility:

- Standard margin lending facility
- Non-standard margin lending facility

Carbon credits:

- Australian carbon credit units
- Eligible international emissions units

Miscellaneous financial facility:

- Miscellaneous financial investment products
- Miscellaneous financial investment products—MDA services
- Miscellaneous financial risk products

Provide General Financial Product Advice Only

- Retail clients and/or
- Wholesale clients

in relation to the following:

Deposit and payment products:

- Basic deposit products
- Non-basic deposit products
- Non-cash payment products

- Derivatives
- Derivatives—wool only
- Derivatives—electricity only
- Derivatives—grain only

Foreign exchange contracts

General insurance:

- General insurance products
- Consumer credit insurance

Government debentures, stocks or bonds

Managed investment schemes (registered or unregistered):

- Managed investment schemes, excluding IDPS
- Managed investment schemes, including IDPS
- IDPS only

Own managed investment scheme only

- Horse racing syndicate
- Time-sharing scheme
- MDA services

Retirement savings account products

Securities

Superannuation

Margin lending facility:

- Standard margin lending facility
- Non-standard margin lending facility

Life products:

- Investment life insurance products
- Life risk insurance products
- Consumer credit insurance

Provide Class of Product Advice to:

Retail clients and/or

Carbon credits:

- Australian carbon credit units
- Eligible international emissions units

Wholesale clients

in relation to the following:

- Basic deposit products
- General insurance products
- Life risk insurance products
- Simple managed investment schemes
- Securities
- Superannuation

Underwrite an issue of securities or interests in a managed investment scheme

Deal in a Financial Product

Retail clients and/or

Wholesale clients

or

Arrange for a Person to Deal in a Financial Product

Retail clients and/or

Wholesale clients

in relation to the following:

Deposit and payment products:

- Basic deposit products
- Non-basic deposit products
- Non-cash payment products
- Derivatives

Managed investment schemes (registered or unregistered):

- Managed investment schemes, excluding IDPS
- Managed investment schemes, including IDPS
- IDPS only
- Own managed investment scheme only
- Horse racing syndicate

- | | |
|---|--|
| <input type="checkbox"/> Derivatives—wool only | <input type="checkbox"/> Time-sharing scheme |
| <input type="checkbox"/> Derivatives—electricity only | <input type="checkbox"/> MDA services |
| <input type="checkbox"/> Derivatives—grain only | |
| | <input type="checkbox"/> Retirement savings account products |
| <input type="checkbox"/> Foreign exchange contracts | |
| | <input type="checkbox"/> Securities |

General insurance:

- | | |
|---|---|
| <input type="checkbox"/> General insurance products | <input type="checkbox"/> Superannuation |
| <input type="checkbox"/> Consumer credit insurance | |

Margin lending facility:

- | | |
|---|---|
| <input type="checkbox"/> Government debentures, stocks or bonds | <input type="checkbox"/> Standard margin lending facility |
| | <input type="checkbox"/> Non-standard margin lending facility |

Life products:

- | | |
|---|---|
| <input type="checkbox"/> Investment life insurance products | Carbon credits: |
| <input type="checkbox"/> Life risk insurance products | <input type="checkbox"/> Australian carbon credit units |
| <input type="checkbox"/> Consumer credit insurance | <input type="checkbox"/> Eligible international emissions units |

Miscellaneous financial facility:

- Miscellaneous financial investment products
- Miscellaneous financial investment products—MDA services
- Miscellaneous financial risk products

Make a Market for a Financial Product

in relation to the following:

- | | |
|---|---|
| <input type="checkbox"/> Derivatives | Carbon credits: |
| <input type="checkbox"/> Derivatives—wool only | <input type="checkbox"/> Australian carbon credit units |
| <input type="checkbox"/> Derivatives—electricity only | <input type="checkbox"/> Eligible international emissions units |
| <input type="checkbox"/> Derivatives—grain only | |
| <input type="checkbox"/> Foreign exchange contracts | <input type="checkbox"/> Other financial products |

Bonds and debentures

Operate a Registered Scheme, namely:

[insert name of scheme(s)]

Type of scheme *[please tick appropriate type]:*

Derivatives

Mortgages

Direct real property

Primary production

Film schemes

Time-sharing scheme

Financial assets

Other specialised scheme

IDPS-like

Provide Traditional Trustee Company Services

Provide a Custodial or Depository Service:

IDPS

non-IDPS

7. On a

full-time basis

part-time basis

8. For the period *[please specify]*

9. The duties occupied *[specify percentage]*% of the responsible manager's time

10. In their capacity as *[provide details of position held]*(e.g. an authorised representative of *[please specify licensee]* for *[insert period of time]*).

11. I further confirm that the responsible manager undertook the following duties

(e.g. supervised 10 financial planners, managed funds of \$, provided product research, was Compliance Manager... for [insert period of time]).

12. These duties occupied [*specify percentage*]% of the responsible manager's time.

13. I attest to their good fame and character, and I am not aware of their involvement in any misconduct.

14. I can be contacted on [insert phone number and email address] should you wish to discuss the above further.

Yours faithfully

15. [Referee's signature]

16. [Referee's full name]

17. [Title]

18. [Firm or self-employed]

Appendix 2: Sample proof—B1 Table of Organisational Competence

- RG 2.352 The following table is an example of the B1 Table of Organisational Competence outlined in RG 2.311. It illustrates the type of information you need to give us and how to set it out in a table format. Note that the example is not exhaustive.
- RG 2.353 For each responsible manager you must set out which RG 105 option they are relying on and their experience and qualifications in relation to each financial service and product authorisation. When describing their experience, you should describe the roles they perform or have performed that enable them to understand their responsibilities as a responsible manager. The experience that you describe needs to be relevant to the financial services and products you are applying for under your licence.
- RG 2.354 Your table will be easier for us to understand if you include no more than two responsible managers per page.

Table 3: Table of organisational competence

| Details of Responsible Manager(s) | Name of Responsible Manager 1 RG 105 option they are relying on | Responsible Manager 2 RG 105 option they are relying on |
|--|--|---|
| Qualifications | [All relevant qualifications and memberships, including dates completed, institution details and full title of awards] | [All relevant qualifications and memberships, including dates completed, institution details and full title of awards] |
| Experience in providing: | Dates in Role | Dates in Role |
| Advice | Entity Name and, if applicable, AFS licence or old licence no. | Entity Name and, if applicable, AFS licence or old licence no. |
| [Specify whether General and/or Personal Advice] | <u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for] | <u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for] |
| [Specify whether to retail and/or wholesale clients] | <u>Position:</u> [Set out the position title held by the responsible manager] | <u>Position:</u> [Set out the position title held by the responsible manager] |
| [Specify the financial products the advice relates to (e.g. Superannuation, Derivatives, General Insurance, Deposit Products)] | <u>Clients:</u> [Are the clients wholesale, retail or both?] | <u>Clients:</u> [Are the clients wholesale, retail or both?] |
| | <u>Financial Products:</u> [List the financial products their experience relates to] (e.g. Superannuation, Derivatives) | <u>Financial Products:</u> [List the financial products their experience relates to] (e.g. General Insurance, Deposit Products) |
| | <u>Role:</u> [Provide an overview of their role, including day-to-day functions performed] (e.g. providing financial planning advice to retail clients) | <u>Role:</u> [Provide an overview of their role, including day-to-day functions performed] (e.g. providing specialist insurance advice to retail clients) |
| | <u>Advice Experience:</u> [Provide a description of the type of advice experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to the financial services and products applied for,], for example: | <u>Advice Experience:</u> [Provide a description of the type of advice experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to the financial products applied for,], for example: |
| | <ul style="list-style-type: none"> • Superannuation: [Describe how advice experience in this product was attained] (e.g. preparation of written advice to retail clients, sign-off of junior financial planner's advice, monitoring client investments) • Derivatives: [Describe how advice experience in this product was attained; explain what types of derivatives the advice relates to; describe the purpose of the advice (e.g. hedging, speculation); give an estimate of the estimated time spend advising in this service] | <ul style="list-style-type: none"> • General Insurance: [Describe how advice experience in this product was attained; explain what types of insurance products the advice relates to (e.g. household, motor vehicle, travel insurance); give an estimate of the proportion of time spent in relation to this service] • Deposit Products: [Describe how advice experience in this product was attained; explain what types of deposit products advice relates to; give an estimate of the proportion of time spent in relation to this service] |
| | [Insert other relevant product experience] | [Insert other relevant product experience] |

| Details of Responsible Manager(s) | Name of Responsible Manager 1 RG 105 option they are relying on | Responsible Manager 2 RG 105 option they are relying on |
|--|--|--|
| <p>Experience in providing:</p> <p>Dealing services</p> <p>[Specify whether Dealing or Arranging in relation to ‘Issuing’, ‘Applying for’ or ‘Underwriting’]</p> <p>[Specify whether to retail and/or wholesale clients]</p> <p>[Specify the financial products the dealing services relate to (e.g. Managed Investment Products, Foreign Exchange, Securities)]</p> | <p>Dates in Role</p> <p>Entity Name and, if applicable, AFS licence or old licence no.</p> <p><u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for]</p> <p><u>Position:</u> [Set out the position title held by the responsible manager]</p> <p><u>Clients:</u> [Are the clients wholesale, retail or both?]</p> <p><u>Financial Products:</u> [List the financial products that their experience relates to] (e.g. Managed Investment Products, Foreign Exchange)</p> <p><u>Role:</u> [Provide an overview of their role, including day-to-day functions performed] (e.g. arranging client investments in selected schemes, entering to foreign exchange contracts)</p> <p><u>Deal Experience:</u> [Provide a description of experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to the financial services and products applied for], for example:</p> <ul style="list-style-type: none"> • Managed Investment Products: [Describe how dealing experience in this product was attained; explain what type(s) of schemes were involved, including details of the underlying scheme assets; give an estimate of the proportion of time spent in relation to this financial service] • Foreign Exchange: [Describe how dealing experience in this product was attained; explain what types of foreign exchange contracts were involved; describe the purpose for using this service (e.g. hedging, speculation); give an estimate of the proportion of time spent in relation to this financial service] <p>[Insert other relevant product experience]</p> | <p>Dates in Role</p> <p>Entity Name and, if applicable, AFS licence or old licence no.</p> <p><u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for]</p> <p><u>Position:</u> [Set out the position title held by the responsible manager]</p> <p><u>Clients:</u> [Are the clients wholesale, retail or both?]</p> <p><u>Financial Products:</u> [List the financial products that their experience relates to] (e.g. Securities)</p> <p><u>Role:</u> [Provide an overview of their role, including day-to-day functions performed] (e.g. negotiating underwriting agreements with product issuers and sub-underwriters, offering placements to professional investors)</p> <p><u>Deal Experience:</u> [Provide a description of experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to the financial services and products applied for], for example:</p> <ul style="list-style-type: none"> • Securities: [Describe how dealing experience in this product was attained; explain what types of securities the dealing experience relates to (e.g. ASX 200 shares, fixed interest securities); give an estimate of the proportion of time spent in relation to this service] <p>[Insert other relevant product experience]</p> |

| Details of Responsible Manager(s) | Name of Responsible Manager 1 RG 105 option they are relying on | Responsible Manager 2 RG 105 option they are relying on |
|--|--|--|
| <p>Experience in:</p> <p>Operating a Registered Managed Investment Scheme</p> <p>[Specify whether to retail and/or wholesale clients]</p> <p>[Specify the underlying asset(s) of the scheme(s) (e.g. Primary production scheme)]</p> | <p>No operate a scheme experience</p> | <p>Dates in Role</p> <p>Entity Name and, if applicable, AFS licence or old licence no.</p> <p><u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for]</p> <p><u>Position:</u> [Set out the position title held by the responsible manager]</p> <p><u>Clients:</u> [Are the scheme investors wholesale, retail or both?]</p> <p><u>Role:</u> [Provide an overview of their role, including day-to-day functions performed] (e.g. responsible for managing portfolio of scheme assets, preparation of disclosure documents)</p> <p><u>Operate a Scheme Experience:</u> [Provide a description of experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to satisfying the legal, compliance and financial obligations of operating a scheme], for example:</p> <ul style="list-style-type: none"> • Primary production scheme: [Explain how experience in operating a primary production scheme was attained; give an overview of the scheme(s) the experience relates to, including the scheme asset types and how the activities performed have given the person knowledge in the underlying asset and relevant industry (e.g. olive scheme); give details of the amount of funds under management; explain what activities the person performed in relation to the compliance, financial and legal obligations of the scheme; give an estimate of the proportion of time spent in relation to this service] <p>[Insert other relevant experience]</p> |

| Details of Responsible Manager(s) | Name of Responsible Manager 1 RG 105 option they are relying on | Responsible Manager 2 RG 105 option they are relying on |
|--|---|---|
| <p>Experience in:</p> <p>Custodial or Depository Service</p> <p>[Specify whether to retail and/or wholesale clients]</p> | <p>No custodial or depository service experience</p> | <p>Dates in Role</p> <p>Entity Name and, if applicable, AFS licence or old licence no.</p> <p><u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for]</p> <p><u>Position:</u> [Set out the position title held by the responsible manager]</p> <p><u>Clients:</u> [Are the clients wholesale, retail or both?]</p> <p><u>Role:</u> [Provide an overview of their role, including day-to-day functions performed] (e.g. ensuring client assets are segregated and accounted for at all times, supervising reconciliations of client accounts and property, supervising the pricing of financial products and distribution of income)</p> <p><u>Custodial or Depository Service Experience:</u> [Provide a description of experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to the custodial or depository service authorisation applied for; give an estimate of the proportion of time spent in relation to this service]</p> <p>[Insert other relevant experience]</p> |
| <p>Experience in:</p> <p>Make a Market</p> <p>[Specify whether to retail and/or wholesale clients]</p> | <p>Dates in Role</p> <p>Entity Name and, if applicable, AFS licence or old licence no.</p> <p><u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for]</p> <p><u>Position:</u> [Set out the position title held by the responsible manager]</p> <p><u>Clients:</u> [Are the clients wholesale, retail or both?]</p> <p><u>Financial Products:</u> [List the financial products relevant to this role] (e.g. derivatives)</p> <p><u>Role:</u> [Provide an overview of the role including day-to-day functions performed], for example:</p> | <p>No make a market experience</p> |

| Details of Responsible Manager(s) | Name of Responsible Manager 1 RG 105 option they are relying on | Responsible Manager 2 RG 105 option they are relying on |
|---|--|--|
| | <ul style="list-style-type: none"> Derivatives: [Provide a description of experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to the make a market authorisation applied for; give details of the specific types of products and underlying assets that experience relates to; give an estimate of the proportion of time spent in relation to this service] <p>[Insert other relevant product experience]</p> | |
| <p>Experience in:</p> <p>Traditional Trustee Company Services</p> | <p>No traditional trustee company services experience</p> | <p>Dates in Role</p> <p>Entity Name and, if applicable, AFS licence or old licence no.</p> <p><u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for]</p> <p><u>Position:</u> [Set out the position title held by the responsible manager]</p> <p><u>Role:</u> [Provide an overview of their role, including day-to-day functions performed] (e.g. responsible for managing deceased estates, preparation of will documents)</p> <p><u>Providing Traditional Trustee Company Services Experience:</u> [Provide a description of experience attained in this role, the activities undertaken in attaining that experience and how that experience is relevant to satisfying the legal, compliance and financial obligations of providing traditional trustee company services]</p> <p>[Insert other relevant experience]</p> |

Appendix 3: Sample proof—Cash needs requirement (part of B5 Financial Statements and Financial Resources)

- RG 2.355 The tables in this appendix are examples of documents showing how to comply with the cash needs requirement under Section B of RG 166. These documents form part of the B5 Financial Statements and Financial Resources core proof outlined in RG 2.315–RG 2.351.
- RG 2.356 These examples cover Options 1 and 2 of the cash needs requirements and illustrate the type of information you need to give us and how you can set it out. Please note that these examples are not exhaustive.
- RG 2.357 The examples in this appendix do not cover Options 3, 4 or 5 of the cash needs requirement. For further information on these options, see Section B of RG 166.

Option 1: Reasonable estimate projection plus cash buffer

Cash flow projections

- RG 2.358 If you rely on Option 1 of the cash needs requirement, you must prepare a projection of cash flows (i.e. cash inflow and outflow) based on your reasonable estimate of what is likely to happen over at least the next 3 months: see Table 4.
- RG 2.359 In projecting your cash flows, we would normally expect you to take into account:
- (a) assets you hold at the start of the projection term that can be used to pay your liabilities; and
 - (b) inflows you may receive including:
 - (i) income from your business or sale of your business;
 - (ii) amounts that you may borrow (e.g. under an overdraft); and
 - (iii) amounts that you may receive from your owners or associates as financial support.

Table 4: Cash projections at 31 October 2007 under Option 1

| | Nov 2007 (\$) | Dec 2007 (\$) | Jan 2008 (\$) | Total (\$) |
|-------------------------------------|---------------|---------------|---------------|----------------|
| Cash at bank—Opening balance | 23,000 | 27,000 | 28,000 | |
| Inflows | | | | |
| Management fees | 37,000 | 37,000 | 37,000 | 111,000 |
| Interest | 500 | 500 | 500 | 1,500 |
| Total inflows | 37,500 | 37,500 | 37,500 | 112,500 |
| Outflows | | | | |
| Rent | 5,000 | 5,000 | 5,000 | 15,000 |
| Salaries | 13,000 | 13,000 | 13,000 | 39,000 |
| Compliance review | 1,000 | 2,000 | 1,000 | 4,000 |
| Utilities | | | | |
| Stationery | 0 | 3,000 | 0 | 3,000 |
| Fund manager fees | 1,500 | 500 | 2,500 | 4,500 |
| | 13,000 | 13,000 | 13,000 | 39,000 |
| Total outflows | 33,500 | 36,500 | 34,500 | 104,500 |
| Cash at bank—Closing balance | 27,000 | 28,000 | 31,000 | |

Assumptions

RG 2.360 You must document your assumptions and explain why you think they are appropriate, particularly when relying on the conduct of people not under a legal commitment (e.g. sales from repeat business): see Table 5.

Table 5: List of assumptions under Option 1

| Assumption | Reasons why it is appropriate |
|----------------------|---|
| 1. Management fees | Based on 2 years experience, as contracted with investors |
| 2. Interest | Based on current interest rate, payable at month end |
| 3. Rent | As contracted under lease, for 2 years ending 1 January 2009, payable at month end |
| 4. Salaries | Employed under employment contracts, payable fortnightly |
| 5. Utilities | Based on 3 years experience for the size and nature of the business, payable quarterly |
| 6. Stationery | Based on 3 years experience for the size and nature of the business, payable at month end |
| 7. Fund manager fees | As contracted with three service providers, payable at month end |

Financial resources

RG 2.361 Using your cash flow projections, you must be able to show that you will have access as needed to enough financial resources to meet your liabilities over the projected term, including any additional liabilities you project you will incur during that term. This means your projections must not show a negative cash balance at any time during the projected term.

RG 2.362 You must also show you have as a cash buffer an amount equal to 20% of the greater of:

- (a) the cash outflow for the projected period (i.e. 3 months); 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.

See Table 6.

RG 2.363 You can meet this cash buffer requirement by:

- (a) holding sufficient current assets valued at the amount of cash for which they can be expected to be exchanged within 5 business days, or
- (b) obtaining a commitment to provide cash from an eligible provider where the cash can be drawn down within 5 business days, or
- (c) using a combination of the above.

Table 6: Cash buffer amount under Option 1

| Cash buffer | Amount |
|------------------------------|--|
| Minimum cash buffer needed | = 20% of the greater of: <ul style="list-style-type: none"> • \$104,500 (projected cash outflow for next 3 months); and • \$0 (actual cash outflow for 3 months of last financial year) = \$20,900 (i.e. 20% of \$104,500) |
| Amount of cash actually held | = \$23,000 |

RG 2.364 This example for Option 1 assumes that this is a new business that did not need to prepare financial statements for the previous financial year and, therefore, the actual cash outflow for the last financial year (adjusted to produce a 3-month average) is zero.

RG 2.365 If, in this example, the entity did not hold the necessary amount of cash, then it could choose to rely on a commitment to provide cash from an eligible provider. This, for example, could be in the form of an overdraft facility from an Australian bank.

Option 2: Contingency based projections

Cash flow projection

RG 2.366 Under Option 2 of the cash needs requirement, you must prepare a projection of cash flows that shows your estimate of what would happen if your ability to meet your liabilities over the projected term were adversely affected by commercial contingencies. The projection must cover at least the next 3 months: see Table 7.

RG 2.367 This cash flow preparation is prepared in a similar way to Option 1 except that you must reduce the amounts of cash inflows to take into account all events or contingencies that are sufficiently likely to occur for a reasonable licensee to plan for them. This includes many events that probably will not occur.

Table 7: Cash projections at 31 October 2007 under Option 2

| | Nov 2007 (\$) | Dec 2007 (\$) | Jan 2008 (\$) | Total (\$) |
|-------------------------------------|---------------|---------------|---------------|------------|
| Cash at bank—Opening balance | 22,000 | 30,000 | 4,500 | |
| Inflows | | | | |
| Trail commissions | 35,000 | 32,000 | 30,000 | 97,000 |
| New business | 500 | 0 | 500 | 1,000 |
| Total inflows | 35,500 | 32,000 | 30,500 | 97,000 |
| Outflows | | | | |
| Rent | 7,000 | 7,000 | 11,000 | 25,000 |
| Salaries | 16,000 | 16,000 | 16,000 | 48,000 |
| Compliance review | 2,000 | 2,000 | 2,000 | 6,000 |
| Other staff costs | | | | |
| Utilities | 0 | 30,000 | 0 | 30,000 |
| Stationery | 0 | 0 | 2,500 | 2,500 |
| Travel | 500 | 500 | 500 | 1,500 |
| | 2,000 | 2,000 | 2,000 | 6,000 |
| Total outflows | 27,500 | 57,500 | 34,000 | 119,000 |
| Cash at bank—Closing balance | 30,000 | 4,500 | 1,000 | |

Assumptions

RG 2.368 You must document your calculations and assumptions and describe in writing why they are the appropriate: see Table 8. It is not enough to just state that you have considered the possible contingencies and decided that

none of them are likely. You need to explain in writing the contingencies you have considered and why their occurrence is unlikely.

Table 8: Documenting your assumptions under Option 2

| Assumption | Reasons why it is appropriate |
|----------------------|--|
| 1. Trail commissions | Built up over 15 years. Contingencies considered include delay in receipt of commissions or decrease in commissions. The monthly decrease reflects the risk that this will trend down in the next 12 months |
| 2. New business | \$2,000 per month maximum last year. Contingency considered is change in economic conditions. Estimate reduced to \$500 per month based on risk inherent in current economic indicators. No new business in some months, based on worst month in last 5 years |
| 3. Rent | Lease being renegotiated. Contingency considered is change in overhead costs. New lease to commence in June, currently being renegotiated. Office is located in growth area. Anticipated increase in rental cost is \$3,000 per month, however may increase by \$4,000—there is a risk that the lessor will use its bargaining power to demand a larger increase |
| 4. Salaries | Under employment agreement |
| 5. Other staff costs | Contingency considered is loss of staff—resignation notified. Staff departure incurs recruitment costs |
| 6. Utilities | Based on 10 years experience for the business—includes CPI |
| 7. Stationery | Based on 10 years experience for the business—includes CPI |
| 8. Travel | Based on 10 years experience for the business—includes CPI |
| 9. Timing | Expenses incurred at end of month |

Financial resources

RG 2.369 You must be able to show that, based on the cash flow projections, you will have access as needed to enough financial resources to meet your liabilities over the projected term, including any additional liabilities you project you will incur during that term. This means you must not have a negative cash balance at any time during the projected period.

RG 2.370 Unlike Option 1, there is no cash buffer amount required under Option 2.

Things to remember about cash flow projections for both options

- RG 2.371 All expenses of running the financial services business must be included.
- RG 2.372 Projected cash inflows and outflows must be shown on a gross basis. That is, you must show all the amounts you actually receive and all the amounts you actually pay. Cash flows must not be shown on a net basis. For example, you must not exclude certain cash inflows and outflows on the basis that the amounts offset each other.
- RG 2.373 As this is a projection of cash flows, amounts should be recorded in the month when they will be paid or received. You cannot ‘smooth’ inflows and outflows by allocating a proportion of a large amount across several months unless receipts or payments will actually occur during those months.
- RG 2.374 You must 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.

Key terms

| Term | Meaning in this document |
|--|---|
| AEI–NOOSR | Australian Education International–National Office of Overseas Skills Recognition |
| AFS licence | An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act. |
| AFS licensee | A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act. |
| APRA | Australian Prudential Regulation Authority |
| ASIC | Australian Securities and Investments Commission |
| AUSkey | AUSkey is a single key to access government online services |
| body regulated by APRA | Has the meaning given in s3(2) of the <i>Australian Prudential Regulation Authority Act 1998</i> |
| [CO 02/294] (for example) | An ASIC class order (in this example numbered 02/294) |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act |
| Corporations Regulations | Corporations Regulations 2001 |
| custodial or depository services revenue | Has the meaning given in [CO 13/761] <i>Financial requirements for custodial or depository service providers</i> |
| financial services business revenue | Has the meaning given in [CO 13/761] <i>Financial requirements for custodial or depository service providers</i> |
| financial services laws | Has the meaning given in s761 of the Corporations Act |
| Form FS01 | Online application form for an AFS licence |
| Form FS03 | Online application form for varying the authorisation and other conditions of an AFS licence |
| general obligations | The obligations of a licensee under s912A(1) of the Corporations Act |
| IDPS | Investor directed portfolio service |

| Term | Meaning in this document |
|--------------------------------------|--|
| incidental provider | Has the meaning given in [CO 13/761] <i>Adequate financial resources for custodial or depository service providers</i> |
| 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 |
| MDA | Managed discretionary account |
| PF 209 (for example) | An ASIC pro forma (in this example numbered 209) |
| recognised accountant | Has the meaning given in reg 7.6.01BA(3) of the Corporations Regulations |
| 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 <i>Superannuation Industry (Supervision) Act 1993</i> . |
| representative | Has the meaning given in s910A of the Corporations Act |
| RG 166 (for example) | An ASIC regulatory guide (in this example numbered 166) |
| RSE licence | Registrable superannuation entity licence (granted by APRA) |
| RSE licensee | A person who holds a registrable superannuation entity licence (granted by APRA) |
| simple managed investment scheme | Has the meaning given in reg 1.0.02 of the Corporations Regulations |
| traditional trustee company services | Has the meaning given in s601RAC(1) of the Corporations Act |
| trustee company | Has the meaning given in s601RAB(1) of the Corporations Act |
| you | Applicant for an AFS licence or a variation to an AFS licence |

Related information

Headnotes

additional proofs, adequacy of resources, application form, Australian financial services licence, authorisations, class of product advice, compensation arrangements, compliance arrangements, core proofs, dispute resolution, financial products, financial services, limited AFS licence, limited financial services, organisational competence, recognised accountants, representatives, responsible managers, risk management, variation

Class orders and pro formas

[CO 02/294] *Investor directed portfolio services*

[CO 13/761] *Financial requirements for custodial or depository service providers*

PF 63 *Deed of subordination*

PF 209 *Australian financial services licence conditions*

PF 225 *Deed of mutual release: Information to release a deed of subordination*

Regulatory guides

RG 1 *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence*

RG 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs*

RG 36 *Licensing: Financial product advice and dealing*

RG 51 *Applications for relief*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 144 *Mortgage investment schemes*

RG 146 *Licensing: Training of financial product advisers*

RG 148 *Investor directed portfolio services*

RG 154 *Certificate by a qualified accountant*

RG 160 *Time-sharing schemes*

RG 165 *Licensing: Internal and external dispute resolution*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 179 *Managed discretionary account services*

RG 181 *Licensing: Managing conflicts of interest*

RG 235 *Registering your business name*

Information sheets

INFO 179 *Applying for a limited AFS licence*

Legislation

Australian Prudential Regulation Authority Act 1998, s3(2)

Copyright Act 1968

Corporations Act, Ch 5D, Ch 7, s9, s761A, 910A, 911B, 912A, 912B, 913B, 914A

Corporations Regulations, 7.1.29A, 7.6.01BA, 7.6.04, 7.8.12A, 7.8.13(1)&(2), 7.8.13A, 7.8.14(b), 7.8.14B

Trans-Tasman Mutual Recognition Act 1997, s18

Information releases

IR 05-61 *ASIC cuts paperwork for AFS licence applicants*

ASIC forms

FS01 *Application for AFS licence*

FS03 *Application for variation of authorisation and other conditions*

FS06 *Appointment of an auditor of an Australian financial services licence*

FS20 *Change of details for an Australian financial services licence*