



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 167

Licensing: Discretionary powers

Related instruments (see Schedules)

Chapter 7 — Financial services and markets

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From 5 July 2007, this document may be referred to as Regulatory Guide 167 (RG 167) or Policy Statement 167 (PS 167). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 167.1) or their policy statement number (e.g. PS 167.1).

What this guide is about

RG 167.1 This guide explains:

A how we will approach applications for relief from compliance with Parts 7.6 to 7.8 (other than Div 4 and Div 8 of Part 7.6 and Div 8 of Part 7.8) of the *Corporations Act 2001* (“Corporations Act”) — and how you can apply for relief

see RG 167.3–RG 167.13

B how our pre-FSR Act policies apply in administering the licensing provisions, including a list of those policy publications that continue to apply, and, in some cases, apply more widely (eg to custodians or depositories)

see RG 167.14–RG 167.27A

C how we will use our powers to impose licence conditions to support the licensee obligations under the Corporations Act

see RG 167.28–RG 167.34

D our continuing interim approach to compensation arrangements and the licence conditions we will impose to support those arrangements

see RG 167.35–RG 167.49B

E our policy on relief for securitisation special purpose vehicles

see RG 167.49C–RG 167.49S

F our policy on relief for generic financial calculators

see RG 167.50–RG 167.83

Schedule 1 the extent to which we apply pre-FSR Act policies to administer the licensing provisions of the FSR regime

see RG 167.84–RG 167.88

Schedule 2 the post-FSR Act class orders that give relief from Parts 7.6 to 7.8 (other than Div 4 and Div 8 of Part 7.6 and Div 8 of Part 7.8)

see RG 167.89

RG 167.2 In this guide, reference to the “licensing provisions” means Parts 7.6 to 7.8 (other than Div 4 and Div 8 of Part 7.6 and Div 8 of Part 7.8). These provisions include the key licensing, conduct and disclosure requirements that apply to providers of financial services.

RG 167.2A This guide should be read in conjunction with other guides we have issued on how we will administer the licensing provisions, in particular:

- (a) Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146) for a discussion of our approach to the minimum training standards for people who provide financial produce advice to retail clients;
- (b) Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164) for a discussion of our approach to the obligations of an Australian financial services (AFS) licensee;
- (c) Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165) for a discussion on how we will administer the dispute resolution provisions of the Corporations Act;

- (d) Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) for a discussion of our approach to the financial requirements you will have to meet as the holder of an AFS licence;
- (e) Regulatory Guide 175 *Licensing: Financial product advisers — conduct and disclosure* (RG 175) for a discussion of our approach to Financial Services Guide (FSG) and Statements of Advice (SOA);
- (f) Regulatory Guide 176 *Licensing: Discretionary powers — Wholesale foreign financial services providers* RG 176 for a discussion of our approach to applications for relief by overseas-regulated wholesale financial service providers who provide financial services only to wholesale clients;
- (g) Regulatory Guide 178 *Foreign collective investment schemes* (RG 178) for a discussion of how we will administer some of our exemption and modification powers under the Corporations Act for operators of foreign collective investment schemes who are authorised in other jurisdictions;
- (h) Regulatory Guide 179 *Managed discretionary account services* (RG 179) for a discussion of how we intend to regulate managed discretionary account (MDA) services provided to retail clients;
- (i) Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181) for a discussions of our approach to the statutory obligation to manage conflicts of interest in s912A(1)(aa) of the Corporations Act;
- (j) Regulatory Guide 182 *Dollar disclosure* (RG 182) for a discussion on how we will administer the dollar disclosure provisions under the Corporations Act; and
- (k) Regulatory Guide 183 *Approval of financial services sector codes of conduct* RG 183 for a discussion of how and when we will approve financial services sector codes of conduct under s1101A of the Corporations Act; and
- (l) Regulatory Guide 185 *Non-cash payment facilities* (RG 185) for a discussion of our approach to when we will grant licensing relief to providers of non-cash payment facilities; and
- (m) Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) for a discussion of the scope of the licensing regime in relation to advice and dealing.

[*Historical note:* RG 167.2B amended 25/1/2007 by inserting para (l).]

RG 167.2B For guidance on our approach to disclosure requirements under the FSR regime, see:

- (a) Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169) for a discussion of our approach to relief from the Product Disclosure Statement (PDS) requirements and the ongoing disclosure requirements for financial products
- (b) Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) for a discussion of our approach to the Product Disclosure Statement (PDS) requirements; and
- (c) Regulatory Guide 38 *The hawking prohibitions* (RG 38) for guidance about the hawking prohibitions.

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Important note: This guide was first published on 28 November 2001. It has been amended to reflect changes made to the Corporations Act by the *Financial Services Reform Amendment Act 2003*, Corporations Regulations, ASIC policy and instruments issued before 20 December 2005, and to provide some clarifications. It does not reflect changes made by the Corporations Amendment Regulations 2005 (No. 5).

A Our general policy on relief

Our policy

RG 167.3 We will consider giving relief under s911A(2)(l), 926A, 951B and 992B to address atypical or unforeseen circumstances and unintended consequences of the licensing provisions of the Corporations Act. We may give relief on our initiative or on application.

Note: For a discussion of our approach to relief from Div 8 of Part 7.8, see Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169).

RG 167.3A We have the flexibility under the law to give partial or complete relief from the licensing provisions (including with conditions). The kind of relief that is given (if any), the extent of the relief and the situations in which the relief applies will depend on what is appropriate in the circumstances.

RG 167.3B When considering using these powers to give relief, we will keep in mind the regulatory goals of:

- (a) promoting consumer confidence in using financial services (including informed decision making);
- (b) promoting the provision of efficient, honest and fair financial services by all licensees and their representatives; and
- (c) supporting confident use of financial markets by consumers and market participants.

We suggest that applicants address these goals in their applications.

RG 167.3C Factors that we may consider when deciding whether to exercise our relief powers include whether:

- (a) strict compliance with the FSR regime would be impossible or disproportionately burdensome;
- (b) persons to whom financial services are provided would still have the protection intended by Parliament;
- (c) those to whom the relief applies (eg the applicant) will receive any benefits;
- (d) a reasonable person would think that the predominant purpose of the product to which the service relates is not a financial product purpose;
- (e) the service is subject to adequate alternative regulation;

- (f) the likelihood and extent of potential consumer detriment resulting from the proposed relief is minimal; and
- (g) the service is only provided to wholesale clients (or in some cases only to professional investors as defined in s9).

Note 1: The above list is not exhaustive. Relevant considerations will always depend on the applicable facts and circumstances. How much weight is given to any particular item in the list or any other relevant consideration will depend on the circumstances.

Note 2: The consideration in paragraph (g) is unlikely in itself to be a sufficient basis for relief due to market integrity considerations.

Applications

RG 167.4 Generally, if your application does not contain all relevant information, we will refuse it. In some limited circumstances, we may consider delaying a decision on your application until you provide more information.

How to apply for relief

- Lodge your application at any ASIC office.
- Include the prescribed fee.
- Ensure that your application complies with Regulatory Guide 51 *Applications for relief* (RG 51).
- Specify and quantify any financial and other benefits and costs (including any loss of consumer protection) of the relief as far as you can.
- If you cannot quantify the benefits and costs, explain why this is so and how the scale of the effects of the relief can be estimated.
- Candidly set out all information that may be relevant to your application including your commercial objectives and how you will address any loss of consumer protection.
- Address, to the extent that they are relevant, the factors highlighted in RG 167.3B–RG 167.3C.
- Applications are not needed if a class order applies.

You can also contact ASIC Infoline on 1300 300 630 for information and assistance.

Class orders under the FSR regime

RG 167.4A We have given class order relief from some or all of the licensing provisions (other than Div 4 and Div 8 of Part 7.6 and Div 8 of Part 7.8) in certain circumstances: see Schedules 1 and 2. The class orders listed in Schedule 1 continue to apply our pre-FSR Act policy and class order relief under the FSR regime. The class orders listed in Schedule 2 give relief from the licensing provisions that is based on new policy issued after the commencement of the FSR Act.

Note: A full list of class orders is available at www.asic.gov.au/co.

Underlying principles

RG 167.5 We will only exercise our powers to give relief in a way that is consistent with Parliamentary intention. The Corporations Act as amended by the *Financial Services Reform Act 2001* (“FSR Act”) and the *Financial Services Reform Amendment Act 2003* (“FSR Amendment Act”) is intended to harmonise and raise standards of conduct. We will give weight to the value of promoting international harmonisation where relevant.

RG 167.6 Deleted.

Applications

RG 167.7 We exercise our powers based on as much relevant information as can reasonably be obtained. You are better placed than us to get the most relevant information such as quantifications of costs and benefits. It is appropriate that you do so if you choose to seek the benefit of relief.

Explanations

RG 167.8 We have powers of exemption or modification that apply to the licensing provisions. Our main discretionary powers are to:

- (a) exempt the provision of certain services from the requirement to hold an AFS licence (s911A(2)(l));
- (b) exempt a wholesale foreign financial service provider regulated by an ASIC-recognised overseas regulatory authority from the requirement to hold an AFS licence (s911A(2)(h));

Note: For a discussion of our approach to relief for services regulated by an overseas regulatory authority, see Regulatory Guide 176 *Licensing: Discretionary powers — Wholesale foreign financial services providers* (RG 176).

- (c) grant exemptions and modifications of the Corporations Act to persons from the requirements of Part 7.6 (other than Div 4 and Div 8) (s926A);
- (d) grant exemptions or modifications of the Corporations Act to persons from the requirements of Part 7.7 (including obligations on the provision of Financial Services Guides and Statements of Advice) (s951B); and
- (e) grant exemptions or modifications of the Corporations Act to persons from the requirements of Part 7.8 (including obligations on dealing with clients' money, financial records and statements, and audit) (s992B).

Note: From 1 January 2005, ASIC class orders will be disallowable under the *Legislative Instruments Act 2003*. Further, we must table our class orders in Parliament with an Explanatory Statement.

RG 167.9 Any exercise of power has to be justified by the net benefits that will arise. We will carefully consider the impact of any relief on consumer protection.

RG 167.10 Deleted.

RG 167.11 Our powers under s926A, 951B and 992B extend to any definitions, regulations and transitional provisions that apply for the purposes of Parts 7.7 and 7.8.

Note: For further information, see s761H and the legislative notes to s951B and 992B.

Financial product purpose

RG 167.11A In making a decision about relief, we may consider whether a reasonable person is likely to think that the predominant purpose of the product to which the service relates is not a financial product purpose: see paragraph (d) of RG 167.3C. A financial product purpose is a purpose of:

- (a) making a financial investment;
- (b) managing a financial risk; or
- (c) making non-cash payments (s763A).

RG 167.11B In considering whether there is a financial product purpose we anticipate that a reasonable person would be influenced by all of the facts and circumstances surrounding the product, including whether the product involves:

- (a) a promise to make future monetary payments (eg deposit products and debentures);

- (b) the pooling or management of funds to produce a return (eg managed investment schemes and superannuation);
- (c) the pooling or management of funds to reduce a risk (eg insurance);
- (d) a promise used to manage the financial consequences if a particular circumstance occurs, rather than prepayment for future services (eg insurance and derivatives); or
- (e) a promise to settle transactions for the benefit of the client, particularly where the service enables the client to pay a wide variety of third parties (eg non-cash payment facilities such as direct debits and smart cards).

Note: The above list is not exhaustive. Relevant considerations will always depend on the applicable facts and circumstances.

Adequate alternative regulation

RG 167.11C When considering whether an alternative regulatory regime is “adequate”, we will generally consider whether (and how effectively) the regime addresses:

- (a) efficient, honest and fair service provision;
- (b) service provider resources and competence;
- (c) compliance and risk management practices by service providers;
- (d) initial and ongoing disclosure to retail clients about the provision of a service;
- (e) protection of client assets;
- (f) financial and transaction record-keeping;
- (g) access by retail clients to internal and external dispute resolution services; and
- (h) the provision of any advice to retail clients on a reasonable basis.

See paragraph (e) of RG 167.3C.

Note: The above list is not exhaustive. Relevant considerations will always depend on the applicable facts and circumstances. How much weight is given to any particular item in the list or any other relevant consideration will depend on the circumstances.

Applications

RG 167.12 Applications need to address why relief would save costs or otherwise provide commercial benefits. Applications must also address effects of the requested relief on others, in particular consumers. This approach reflects that adopted in Regulatory Guide 51 *Applications*

for relief (RG 51). Applications should also address the factors in RG 167.3B, RG 167.3C, RG 167.11A, RG 167.11B and RG 167.11C to the extent that they are relevant.

RG 167.13 We have noted that many applications for relief under the old regulatory regime inadequately discussed economic impacts or omitted relevant facts that explained the underlying commercial objectives involved. We will therefore be adopting administrative practices that reinforce that the onus is on you to make comprehensive applications.

B When do our pre-FSR Act policies apply?

Our policy

RG 167.14 Deleted.

RG 167.15 Moved to RG 167.16A.

Do the pre-FSR Act policies apply where your activities are subject to the licensing provisions?

RG 167.16 Schedule 1 of this guide sets out the extent to which we apply various pre-FSR Act policies to activities subject to the licensing provisions of the FSR regime.

RG 167.16A Unpublished positions we (or the Insurance and Superannuation Commission) adopted pre-FSR Act for particular entities do not continue to apply if you are subject to the licensing provisions of the FSR regime, unless we tell you that they do. If you want us to adopt a similar approach under the FSR regime, you must apply to us and set out why you think we should adopt that approach.

Replacing continuing no action in policies with relief

RG 167.17 Where our published policy was not to enforce the licensing provisions under the old regulatory regime (eg Regulatory Guide 67 *Real estate companies* (RG 67)), and our policy is noted as continuing in Schedule 1, we have generally granted class order exemptions under the Corporations Act.

Note: A full list of class orders is available at www.asic.gov.au/co.

Exempt managed investment schemes

RG 167.18 We have generally continued relief by class order under the FSR regime where:

- (a) we have previously given relief from registration for a scheme;
- (b) the scheme's operator has been exempted from licensing because of former reg 7.3.11 (as in force immediately before commencement of the FSR Act); and
- (c) there is no requirement for licensing in our relief.

We have given an exemption for advice given about interests in these schemes from licensing under the FSR regime, where the basis for relief from registration also applies to licensing.

RG 167.19 We have not given relief for advice about interests in mortgage schemes that are exempt because of the role of an industry supervisory body under Regulatory Guide 144 *Mortgage investment schemes* (RG 144). Industry supervision is directed to the operation of these schemes and not advice about interests in these schemes.

Custodians or depositories

RG 167.20 We have applied our policy on who can operate an investor directed portfolio service (IDPS) for authorisations to conduct a custodial or depository service. We consider the standards applying to persons operating an IDPS also apply as appropriate minimum standards for bodies that provide a custodial or depository service under s766E: see Regulatory Guide 148 *Investor directed portfolio services* (RG 148) at RG 148.20–RG 148.28.

RG 167.21 The application of RG 148.23 means that the following guides (the ongoing status of which are set out in Schedule 1) apply as minimum standards of compliance with the licensee obligations for bodies that provide a custodial or depository service under s766E:

- (a) Regulatory Guide 130 *Managed investments: Licensing* (RG 130):
 - (i) RG 130.8–RG 130.10 except paragraph (e) of RG 130.9; and
 - (ii) RG 130.32–RG 130.63 except paragraph (a) of RG 130.60; and
- (b) Regulatory Guide 132 *Managed investments: Compliance plans* (RG 132) except paragraph (f) of RG 132.12; and

Note: The guidance on compliance plans contained in RG 132 supplements our general guidance on compliance measures applying to all licensees in Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164).

- (c) Regulatory Guide 133 *Managed investments: Scheme property arrangements* (RG 133) except paragraph (a) of RG 133.26 and excluding the custody-related financial requirements, which are dealt with in Regulatory Guide 166 *Licensing: Financial requirements* (RG 166).

RG 167.22 These guides apply as if references to:

- (a) a managed investment scheme were to a custodial or depository service;
- (b) the responsible entity were to the operator of the custodial or depository service; and
- (c) the compliance plan were to the compliance measures a licensee needs to have in place to satisfy the licensee obligations under s912A: see Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164).

RG 167.23 The financial requirements referred to in paragraph (b) of RG 148.23 (which apply Regulatory Guide 131 *Managed investments: Financial requirements* (RG 131)) do not apply to bodies that provide a custodial or depository service under s766E, as financial requirements are dealt with in Regulatory Guide 166 *Licensing: Financial requirements* (RG 166).

Underlying principles

RG 167.24 By clarifying how our pre-FSR Act policies apply under the FSR regime, we give more certainty to industry. We have applied as much of our previous published policy and guidance as we can in administering the licensing provisions.

RG 167.25 In determining the status of our pre-FSR Act policies, we have applied the following general principles:

- (a) we have not adopted policies and publications on requirements that do not have corresponding provisions under the FSR regime;
- (b) we have continued to apply policies and publications on provisions that correspond to provisions under the FSR regime unless we considered they should be varied (see Schedule 1); and
- (c) policies and publications on a particular type of financial product have been extended to other financial products where relevant and appropriate.

Explanations

RG 167.26 Deleted.

Do the pre-FSR Act policies apply where your activities are subject to the licensing provisions?

The “Good Advice” policies

RG 167.27 The “Good Advice” policies (RG 116–RG 124) are superseded — that is, they are not policy for those activities subject to the licensing provisions of the FSR regime. Refer to Schedule 1

RG 167.27A For guidance about how the FSR regime applies to the provision of financial product advice and how to comply with the FSR regime, see the following ASIC publications:

- (a) RG 1–RG 3 *AFS Licensing Kit*;
- (b) RG 36 *Licensing: Financial product advice and dealing*;
- (c) RG 146 *Licensing: Training of financial product advisers*;

- (d) RG 164 *Licensing: Organisational capacities*;
- (e) RG 165 *Licensing: Internal and external dispute resolution*;
- (f) RG 166 *Licensing: Financial requirements*;
- (g) RG 175 *Licensing: Financial product advisers — conduct and disclosure*;
- (h) RG 176 *Licensing: Discretionary powers — wholesale foreign financial services providers*;
- (i) RG 178 *Foreign collective investment schemes*;
- (j) RG 179 *Managed discretionary account services*;
- (k) RG 181 *Licensing: Managing conflicts of interest*;
- (l) RG 182 *Dollar disclosure*;
- (m) RG 183 *Approval of financial services sector codes of conduct*; and
- (n) RG 185 *Non-cash payment facilities*.

[*Historical note:* RG 167.27A amended 25/1/2007 by inserting para (n).]

C Licence conditions

Our policy

RG 167.28 We have imposed standard licence conditions for all licensees and other standard licence conditions for particular classes of licensee. Among other things, these licence conditions specify the particular financial services or class of financial services that the licensee is authorised to provide.

RG 167.29 We have imposed licence conditions that support our guidance on minimum expectations for compliance with the licensee obligations where appropriate.

Note: For further information about the standard licence conditions for all licensees, see Pro Forma 209 *Australian Financial Services Licence conditions* [PF 209] at www.asic.gov.au.

RG 167.30 We will continue to review and, if appropriate, vary our standard licence conditions. We may also impose additional conditions for particular licensees (eg if we consider this will promote compliance with the licensee obligations given the particular circumstances or conduct of the licensee).

Underlying principles

RG 167.31 We have imposed licence conditions in order to specify the way in which we believe a licensee must comply with the licensee obligations. We will do this if the advantages (for the licensee and ASIC) in terms of certainty justify imposing such licence conditions.

Explanations

Standard licence conditions

RG 167.32 For details on our standard licence conditions, see [PF 209].

Licence conditions under the old Corporations Act

RG 167.33 Where a non-standard licence condition or conditions was imposed on a specific licensee (eg as a result of surveillance or enforcement action) under the old Corporations Act, we have continued to impose a similar condition on licences issued under the licensing provisions of the FSR regime unless the condition has been made inappropriate (eg because of provisions in the FSR regime).

Conditions to support compensation arrangements

RG 167.34 For a discussion of our approach to licence conditions to support interim compensation arrangements, see Section D.

Note: Regulation 7.6.02AA continues to apply interim compensation arrangements that applied during the two-year transitional period.

D Compensation arrangements

Our policy

RG 167.35–RG 167.38 Deleted.

RG 167.39 As contemplated by regs 7.6.02AA(3), (4) and (5), we continue to apply the approved security bond requirements for AFS licensees who carried on a business that:

- (a) would have been required to be licensed under Part 7.3 of the old Corporations Act if that Part was still in force; and
- (b) involves providing financial services to retail clients.

However, we will not impose a security bond on AFS licensees in circumstances where we would not have imposed a security bond under the old Corporations Act. This policy is reflected in [PF 209] condition 31.

Note: Under regs 7.6.02AA(1) and (2), the requirements under the *Insurance (Agents and Brokers) Act 1984* (IABA) (now repealed) for persons carrying on business as an insurance broker, or as a foreign insurance agent, to have acceptable professional indemnity insurance continue to apply to persons who hold an AFS licence authorising those broking activities. This regulation applies whether or not you carried on business as an insurance broker before FSR commencement (ie 11 March 2002).

RG 167.39A Under this approach, this means we will not impose a security bond on:

- (a) responsible entities of registered managed investment schemes;
- (b) IDPS operators;
- (c) market participants (as defined in [PF 209]);
- (d) dealers in foreign exchange contracts;
- (e) advisers where the advice is limited to derivatives (futures advisers); or
- (g) APRA-regulated entities.

This applies to AFS licensees who were securities licensees under the old Corporations Act and to AFS licensees who have not previously held a licence: see [PF 209], condition 31.

RG 167.40 We are continuing the requirement for responsible entities and IDPS operators to maintain appropriate professional indemnity insurance as required by RG 131. This applies whether or not the responsible entity or IDPS operator was previously licensed under the old Corporations Act: see [PF 209], condition 29.

RG 167.41–RG 167.41A Deleted.

Underlying principles

RG 167.42 We will continue to impose as licence conditions the compensation arrangements that were in place prior to 11 March 2002. We will continue to monitor any government developments on compensation arrangements.

Explanations

RG 167.43 Section 912B imposes a requirement on financial services licensees who provide financial services to retail clients to have adequate compensation arrangements. Regulation 7.6.02AA was inserted to defer the application of s912B until 11 March 2005 and to continue to apply the compensation arrangements that applied prior to the commencement of the FSR Act. To ensure the Government has sufficient time to consider and develop its position on compensation arrangements reg 7.6.02AA was amended on 10 March 2005 to further defer the commencement of the application of s912B until 1 July 2006.

RG 167.44–RG 167.47 Deleted.

Licence conditions to support compensation arrangements

RG 167.48 Section 912B (dealing with compensation arrangements under the FSR regime) did not apply to AFS licensees during the two-year transitional period: reg 10.2.44(1). However, regs 7.6.02AA(3), (4) and (5) authorises ASIC to impose the condition previously imposed under s786(2)(d) of the old Corporations Act (for the licensee to lodge a security bond), as a condition of a person's AFS licence, if the person carries on an activity to which Part 7.3 of the old Corporations Act would have applied before repeal of that Part.

RG 167.49 As an interim measure we will continue to apply such a condition as contemplated by reg 7.6.02AA. This licence condition will be applied only where the licensee provides financial services to retail clients.

RG 167.49A Also as an interim measure we will continue to apply our pre-FSR Act professional indemnity insurance requirements on responsible entities and IDPS operators.

RG 167.49B During the two-year transitional period, AFS licensees who carried on a business that would have been subject to the professional indemnity insurance requirements, as insurance brokers under IABA (if that Act was still in force), had to comply with those insurance requirements: see reg 10.2.44. Under reg 7.6.02AA(1) and (2), as a matter of law, insurance brokers must continue to have professional indemnity insurance.

E Securitisation special purpose vehicles

Our policy

RG 167.49C We have provided relief from the requirement to hold an AFS licence to certain entities in the securitisation industry: see Class Order [CO 04/1526]. The relief applies only to certain special purpose trustees and special purpose companies (each a “securitisation entity”) carrying on a securitisation business. For dealing by the securitisation entity, the exemption applies where either:

- (a) a licensee has:
 - (i) licence conditions requiring that the licensee comply with the Corporations Act, as if the securitisation entity were a representative of the licensee; and
 - (ii) a deed poll in place under which the licensee is liable for any conduct of the securitisation entity relating to the dealing, as if the securitisation entity were a representative of the licensee (except for any liability to repay the principal and interest on the securitisation product or a liability for which a special purpose trustee could be indemnified out of trust property). We may give case-by-case relief to allow arrangements other than a deed poll if they are equally effective; or
- (b) both of the following are satisfied:
 - (i) the securitisation entity engages in the dealing only on and in accordance with advice from a licensee authorised to provide financial product advice on those products to which the dealing relates; and
 - (ii) the securitisation entity receives that advice under a contract with the licensee under which the licensee has not excluded or limited (or purported to exclude or limit) its liability for any negligence in providing the advice.

Note: We have given interim relief until 30 June 2005 for securitisation entities and securitisation managers without these requirements: see Class Order [CO 03/1098].

RG 167.49D The relief applies to the following financial services:

- (a) issuing debentures, debt instruments that would be debentures but for the exclusions from the definition of debenture in s9 of the Corporations Act, or interests in a managed investment scheme (“securitisation products”), where the securitisation products are:

- (i) secured by assets transferred directly or indirectly to the securitisation entity by the same person as for each other offer of securitisation products that the securitisation entity has acted on; and
- (ii) issued to:
 - (A) another securitisation entity that is exempt under this policy;
 - (B) a licensee; or
 - (C) a person exempt from the licensing provisions for dealing in the securitisation products under Regulatory Guide 176 *Licensing: Discretionary powers — Wholesale foreign financial services providers (RG 176)*;

Note: For the purposes of condition (i), above, where, for example, the assets transferred to the securitisation entity are residential mortgages, a “person” who would transfer the assets to the securitisation entity would be the authorised deposit-taking institution (“ADI”) (or other entity) that originated the mortgages. This person will often be referred to as the “sponsor” or “originator”.

- (b) issuing to or acquiring from wholesale clients derivatives or foreign exchange contracts (other than market making), in order to manage a financial risk that arises in its securitisation business; and
- (c) providing custodial or depository services for, or dealing in, the underlying assets of the special purpose trust that are financial products.

RG 167.49E The relief in paragraphs (a) and (c) of RG 167.49D only applies if the securitisation entity takes all reasonable steps to ensure that a retail client does not acquire the securitisation products either at the time they are issued or by later transfer.

Underlying principles

RG 167.49F Securitisation entities that are established for the limited purpose of securitising a particular sponsor’s assets are exempt from the licensing provisions, as it would be disproportionately burdensome to require them to hold an AFS licence. The market integrity objectives of the Corporations Act are achieved under this exemption where the securitisation entity only deals in financial products either on the advice of a licensee or under the supervision of a licensee.

Explanations

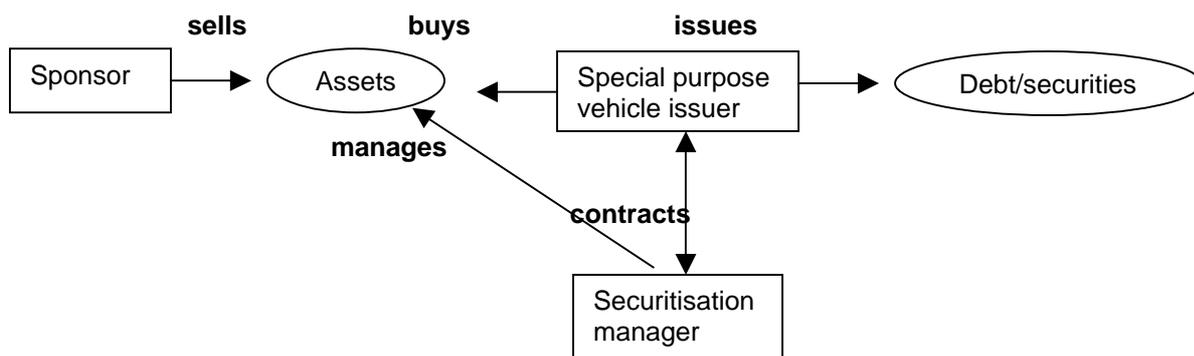
Typical operation of securitisation

RG 167.49G A securitisation arrangement typically involves a complex set of structured finance transactions where a number of entities are often established just for the purpose of the transaction. The classic definition is a process where a portfolio of relatively illiquid assets is packaged into marketable securities (“securitisation products”) that are sold into the capital markets. The benefits payable to investors from a securitisation will depend at least partly on the return from the underlying securitised assets.

RG 167.49H The securitisation industry operates almost exclusively in the wholesale market, where the securitisation product is sold to wholesale investors, invariably through the on-sale of the financial product by a licensed dealer.

RG 167.49I The legal structure of a securitisation will depend on the type of asset to be securitised, the type of market access desired by the seller of the securitised assets (“the sponsor”) and any relevant taxation, prudential or regulatory issues. In Australia, a sponsor will typically be an Australian ADI. Further, securitisations generally have common features to ensure viability because of the need to obtain a high credit rating to promote marketability of the scheme.

RG 167.49J A securitisation arrangement structured with a special purpose company can be illustrated generally in the following example:



RG 167.49K Securitisation entities generally carry on a business of providing financial services in one of a number of ways. In particular they provide a financial service by issuing financial products consisting of debentures or interests in managed investment schemes (“securitisation products”).

Note: We issued a Consultation Paper in the course of developing this policy: see Information Release [IR 04/41].

Securitisation entities

RG 167.49L We provided the two alternative relief conditions shown in RG 167.49C to allow securitisation entities to rely on relief that best suits their situation. In particular, some securitisation entities may find it difficult to comply with paragraph (a) of RG 167.49C because licensees involved in the securitisation may be affected by prudential standards applying to their parent companies.

RG 167.49M After consultation with the Australian Prudential Regulatory Authority (APRA), we understand that, under current APRA policy, an ADI subsidiary can comply with paragraph (b) of RG 167.49C in typical securitisation arrangements without it necessarily causing a securitisation to fail to qualify for prudential purposes as a clean sale, or giving rise to any adverse capital consequences for an ADI (and its group). Any ADI subsidiary that does provide financial product advice under the contract required by paragraph (b) of RG 167.49C would, of course, need to comply with all prudential requirements applied by APRA to the functions it is contracted to undertake.

Note: The relevant APRA standard is Prudential Standard *APS 120 — Funds Management and Securitisation*.

Licensee responsible for securitisation entity

RG 167.49N When the securitisation entity relies on relief under paragraph (a) of RG 167.49C, the licensee that accepts liability for the conduct of the securitisation entity is not required to guarantee payments under the financial product. The potential liability relates to the conduct of the securitisation entity in relation to any dealings it engages in rather than the securitisation entity having sufficient funds to make payments under the product. That is, the licensee is not expected to accept liability for risks arising from the assets from which the payments are to be made by the securitisation entity.

Licensee advising securitisation entity

RG 167.49O When the securitisation entity relies on relief under paragraph (b) of RG 167.49C, the licensee providing advice to the securitisation entity will need to take account of any obligations of the securitisation entity under a trust deed, its contracts and general law. We expect that the advice will be framed so as to ensure the licensee's conduct in providing advice to the securitisation entity does not adversely affect the efficient, honest and fair provision of financial services by the securitisation entity.

RG 167.49P For the relief under paragraph (b) of RG 167.49C to apply, the advice must be provided under a contract between the securitisation

entity and the licensee giving advice. The securitisation entity does not need to agree to act on the advice. The securitisation entity must consider whether to act on any advice having regard to its duties to holders of the securitisation products. If the securitisation entity does not act on the advice of a licensee the relief will not apply. We anticipate it will be uncommon for a securitisation entity to be bound under its duties to act contrary to the advice of a licensee authorised to provide advice. In the unlikely event the securitisation entity is not able to act on the advice of a licensee, the entity can consider making an application to ASIC for case-by-case relief from the licensing provisions.

RG 167.49Q Under the contract between the securitisation entity and the licensee authorised to provide advice the licensee may not exclude liability for its negligence. For example, the licensee must not exclude liability for financial product advice that was provided negligently because the licensee unreasonably assumed facts about the securitisation entity. However, we note that the contract under which the licensee provides the advice may exclude liability for reasonable reliance on information provided by others.

Securitisation managers

RG 167.49R We do not propose to give an exemption from the need to have an AFS licence merely because a provider of financial services is acting as a securitisation manager under typical securitisation arrangements.

RG 167.49S Securitisation managers typically play a significant role in providing financial product advice to investors in the securitisation products by way of the information memorandum the manager prepares, as well as providing financial product advice and dealing services to the securitisation entity. As the source of financial product advice, it is generally not practical for another licensee to play a role in the provision of financial services by a securitisation manager that would generally provide an adequate substitute for the AFS licensing requirements.

Note: We have given interim relief until 30 June 2005 for securitisation managers: see Class Order [CO 03/1098].

F Calculators

[*Historical note:* Section F inserted 20/12/2005.]

Our policy

RG 167.50 This section sets out our policy on relief from the licensing provisions for generic financial calculators.

What is a generic financial calculator?

RG 167.51 A generic financial calculator is a facility, device or table that:

- (a) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
- (b) does *not* advertise or promote one or more specific financial products.

Note: See RG 167.63–RG 167.69 for a more detailed explanation of a generic financial calculator.

What relief is available for generic financial calculators?

RG 167.52 We have given relief to providers of generic financial calculators from the requirement to hold an AFS licence with an advice authorisation. Where they already hold an AFS licence, we have given relief from the advice conduct and disclosure requirements of Part 7.7 of the Corporations Act: see Class Order [CO 05/1122] *Relief for providers of generic calculators*.

Note: ASIC had given relief to providers of generic superannuation calculators: see [CO 05/611] *Relief for providers of superannuation calculators* and Information Release [IR 05/32] *ASIC provides relief and guidance for providers of superannuation calculators* (22 June 2005). This relief is revoked by [CO 05/1122]. Providers of generic superannuation calculators can now rely on the relief in [CO 05/1122].

RG 167.53 We have imposed the following conditions on this relief:

- (a) if the generic financial calculator is an electronic facility or device, the user must be able to alter the default assumptions (except for those that reflect certain statutorily fixed factors, such as taxation rates, which can either be fixed or able to be altered by the user) and perform a calculation using the changed assumptions;
- (b) the default assumptions must be reasonable;
- (c) the calculator must include clear and prominent statements about:

- (i) the purpose and limitations of the calculator (including an explanation of the likely impact of the limitations);
 - (ii) why the default limitations are reasonable;
 - (iii) where the calculator provides an estimate of an amount or value at a future time, whether or not the estimate is in today's dollars or future dollars, and the fact that future dollars will be worth far less than today's dollars especially over longer periods of time; and
 - (iv) the fact that the calculator should not be relied on for making a decision about a particular financial product, and that the user should consider getting advice from a licensed adviser before making any financial decisions;
- (d) if the calculator is an electronic facility or device, the calculator must not prevent the user from readily printing or electronically storing results produced by the calculator; and
- (e) the provider must keep a copy of the calculator for seven years from when the financial calculator is first made available.

Other types of calculators

RG 167.54 ASIC is still considering its policy on calculators other than generic financial calculators. Other types of calculators include:

- (a) product-specific calculators; and
- (b) risk profilers.

In the meantime, we expect providers of these other types of calculators to comply with the FSR regime.

Note: See RG 167.79–RG 167.82 for an explanation of what calculators fall within these categories. See RG 167.56–RG 167.62 and RG 167.83 for an explanation of the relevant legal requirements.

Underlying principles

RG 167.55 Consistent with the intention of the FSR Act, our policy on calculators aims to help consumers to make informed decisions about financial products by:

- (a) promoting the cost-effective provision of useful and accurate information about financial products to consumers; and
- (b) protecting consumers from poor quality advice.

Explanations

What are the legal requirements?

Financial product advice

RG 167.56 Calculators that provide financial product advice are subject to the licensing provisions, unless an exemption applies. A calculator involves financial product advice if it produces recommendations or statements of opinion that are (or could reasonably be regarded as being) intended to influence the user in making a decision about a particular financial product or class of financial products: see s766B. Whether a particular calculator involves financial product advice will, therefore, depend on the facts of the particular case.

Note: For a discussion of the meaning of financial product advice, see Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36).

RG 167.57 A calculator does not involve financial product advice if, for example, it merely provides:

- (a) factual information;

Note: For more details, see QFS 55 *What is the distinction between factual information and financial product advice?*

- (b) information about the cost or rate of return of a product (see s766B(7));
- (c) for insurance calculators, information about the cost of an insurance product and the value of an item (eg a house or car covered by the product) from which the cost of the product is worked out (see s766B(6)); or
- (d) asset allocation advice (see reg 7.1.33A).

RG 167.58 It is unlikely that a calculator will produce a recommendation. However, a calculator may produce a statement of opinion that is (or could reasonably be regarded as being) intended to influence the user in making a decision about a particular financial product or class of financial products. Therefore, in our view, it is likely that some calculators involve financial product advice.

Personal advice

RG 167.59 Personal advice is financial product advice given in circumstances where:

- (a) the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or

- (b) a reasonable person might expect the provider of the advice to have considered one or more of those matters (see s766B(3)).

RG 167.60 Advice may be personal advice even where the advice is given by electronic means, where the adviser has not had direct contact with the client, or where the adviser did not (subjectively) intend to provide personal advice.

Note: For a discussion of the meaning of personal advice, see RG 175.14–RG 175.18 and QFS 158 *Can I give a client general advice about a financial product if I have information about their personal circumstances?*

RG 167.61 Calculators typically require the user to input some information about their financial objectives, financial situation or needs (eg information about their initial investment, investment timeframe, ongoing investments, salary, age, attitude to risk). The calculator then uses this information to generate a result. In doing so, the calculator has taken into account at least one aspect of the user's objectives, financial situation or needs. For these reasons, in our view, the financial product advice provided by many calculators is likely to be personal advice.

RG 167.62 If a calculator provides personal advice to a retail client, the provider must comply with the personal advice regime in Div 3 of Part 7.7 of the Corporations Act, unless an exemption applies. Under these provisions:

- (a) there must be a reasonable basis for the advice and the advice must be appropriate (s945A);
- (b) the client must be warned if the advice is based on incomplete or inaccurate information about the client's relevant personal circumstances (s945B); and
- (c) the client must be given a Statement of Advice (SOA) setting out, among other things, the advice and the basis upon which it is given (s946A).

What is a generic financial calculator?

RG 167.63 A generic financial calculator is a type of calculator. As stated in RG 167.51, it is a device, facility or table that:

- (a) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
- (b) does *not* advertise or promote one or more specific financial products.

RG 167.64 Typically, generic financial calculators help the user calculate:

- (a) the estimated value of total superannuation, savings or investments at a future point in time; and/or
- (b) the estimated level of superannuation contributions, saving, investment or life insurance cover required to achieve a particular financial goal.

RG 167.65 Generic financial calculators can be made available through any medium. They may be available online or in other electronic form (eg CD-ROM). They can also be paper-based. For example, a paper device consisting of a “slidewheel” that enables a user to adjust one or more variables (eg age or income) to calculate a numerical result (eg the total value of superannuation at a future point in time) may be a generic financial calculator.

RG 167.66 The default assumptions of a generic financial calculator can be the same as actual features (eg fees or rate of return) of a specific financial product. That is, a calculator does not advertise or promote one or more specific financial products merely because its default assumptions are the same as actual features of a specific financial product.

RG 167.67 However, a calculator that, for example, is directly connected to promotional material for a named financial product (eg by including a link to the Product Disclosure Statement for the product or a link to “Apply now” on the results page) does advertise or promote one or more specific financial products and is, therefore, not a generic financial calculator.

RG 167.68 We will not treat something as a generic financial calculator to the extent that its output goes beyond the numerical result of the calculation and a description of what that result is. For example, a facility is not a generic financial calculator to the extent that it says that, in light of the relevant numerical result, the user should consider acquiring a particular type of financial product.

RG 167.69 Finally, we note that something is not a generic financial calculator merely because its output is a numerical figure. For example, an advice tool that produces a numerical rating of a financial product or comparative ranking of financial products is not a calculator.

What relief is available for generic financial calculators?

RG 167.70 Our relief from the licensing provisions for generic financial calculators:

- (a) recognises that, where the conditions of the relief are satisfied, the results produced by generic financial calculators are more akin to factual information than financial product advice;

- (b) promotes legal certainty about when providers of generic financial calculators do not need to comply with the licensing provisions; and
- (c) sets minimum standards of quality for generic financial calculators.

Assumptions

RG 167.71 Assumptions (whether default or set by the user) are an important component of any calculator. Even small changes to assumptions can make large differences in results.

RG 167.72 We have not set prescriptive rules about assumptions (eg we have not prescribed what assumptions the calculator should take into account or how the default values of assumptions should be determined). Instead we have adopted a more flexible approach requiring that:

- (a) in the case of electronic facilities or devices, the user must be able to alter the default assumptions (except for those that reflect certain statutorily fixed factors, such as taxation rates, which can either be fixed or able to be altered by the user);
- (b) the default assumptions must be reasonable; and
- (c) the calculator must include clear statements about, among other things, the limitations of the calculator and why the provider considers the default assumptions to be reasonable.

RG 167.73 We think that assumptions are likely to be reasonable if they are:

- (a) approved by an actuary or other appropriately qualified professional;
- (b) consistent with standards for assumptions used by calculators approved by the Government Actuary; or
- (c) consistent with industry standards for assumptions used by calculators.

Explanations for users

RG 167.74 Users of calculators should be able to easily understand both the purpose and limitations of the calculator. If the calculator has any significant limitations (eg by not including the effect of fees or taxation, or not enabling users to alter default assumptions), these limitations and their impact should be clearly explained.

Note: For example:

- (a) if a managed investment calculator does not take into account fees, we expect the calculator to explain this limitation and also say that, as a result of this, the final value would be lower than the estimate shown because of the compounding effect of fees over time; and

- (b) if a paper-based superannuation calculator does not allow the user to alter the default assumptions, we expect the calculator to explain this limitation and also say that, as a result of this, the estimate of future superannuation benefit produced by the calculator is illustrative only and does not accurately predict the individual user's future superannuation.

Future values in today's dollars

RG 167.75 We are concerned that some calculators only provide results in future dollars. By future dollars we mean the actual amount at a future point in time rather than the amount with equivalent buying power in today's dollars.

RG 167.76 Where the calculator relates only to financial products to be held for limited time periods (eg one year), the use of future dollars is generally of less concern. However, consumers might not realise that future dollars, especially over longer periods of time, will be worth less than today's dollars.

RG 167.77 We strongly recommend that the results of calculators be expressed in today's terms. Where this is not done, calculators should say clearly that results are expressed in future dollars and warn users that future dollars will be worth less than today's dollars.

Record-keeping

RG 167.78 The provider of a generic financial calculator must keep a copy of the calculator for seven years. The copy must enable the provider to reproduce each version of the calculator that was made available to users. However, the provider does not have to keep sufficient records to enable it to reproduce each actual use of the calculator by an individual user.

Other types of calculators

RG 167.79 Other types of calculators are not covered by this policy. They include product-specific financial calculators and risk profilers.

Product-specific financial calculators

RG 167.80 A product-specific financial calculator is a facility, device or table that:

- (a) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
- (b) advertises or promotes one or more specific financial products.

Note: See RG 167.67 for an example of when a calculator advertises or promotes one or more specific financial products.

Risk profilers

RG 167.81 Risk profilers are tools that, based on the user's answers to a series of questions about investment preferences, assess the user's attitude to risk.

RG 167.82 Risk profilers are only calculators in the broadest sense. They generally do not produce numerical results. Although the results may be derived using mathematical formulae (eg by assigning the user's answers scores and using the total to produce a result), the results themselves are not numerical (eg the output is that the client has a risk weighting, such as "conservative" or "aggressive").

Note: This category of calculators includes a risk profiler that produces a numerical figure combined with an interpretative guide to explain the significance of that numerical figure (eg a risk profiler that results in the output "5" and then has an interpretative guide that "5" equates to a "conservative" risk profile).

RG 167.83 Risk profilers do not fall within the FSR regime if they do not produce financial product advice. They do not produce financial product advice if:

- (a) they do not relate to financial products at all (eg the risk profiler only provides information about the user's attitude to risk); or
- (b) they only make recommendations or statements of opinion about the allocation of the user's funds among one or more classes of assets (eg shares, debentures, deposit products, managed investment products etc).

Note: Under reg 7.1.33A asset allocation advice is not a financial service.

Schedule 1: Tables of pre-FSR Act policies

RG 167.84 The tables in this Schedule set out the extent to which we apply various pre-FSR Act policies in administering the licensing provisions of the FSR regime. The tables cover:

- A Old Corporations Act
- B Life insurance
- C General insurance
- D Superannuation

Note 1: These tables are a summary of our policy only. The summaries assume that the reader is familiar with the relevant publication, and should be read with the relevant publication. To find out what relief and requirements apply, refer to instruments published by ASIC. Instruments are available at www.asic.gov.au/co and the *ASIC Digest*.

Note 2: This Schedule does not cover whether any policy or aspect of policy dealing with dispute resolution or matters outside the licensing provisions will apply under the FSR regime. For example, those parts of publications described as “superseded” dealing with dispute resolution may continue. For a discussion of our approach to dispute resolution, see Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165).

Note 3: For a discussion of our approach to relief from compliance with Div 8 of Part 7.8 (the hawking prohibitions) and Part 7.9 (the product disclosure provisions), see Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169).

Note 4: This Schedule contains a list of class orders in effect from 11 March 2002. These class orders continue to apply our pre-FSR Act policy and class order relief under the FSR regime.

Note 5: See Schedule 2 for details about class order relief from the licensing provisions that issued after commencement of the FSR Act.

Continuing policies

The policies referred to in this Schedule as “continuing” or “unaffected” apply under the licensing provisions of the FSR regime as they applied before FSR commencement (ie 11 March 2002) where the FSR Act effected no significant change. Some necessary or incidental changes may have resulted from changes to the Corporations Act effected by the FSR Act, the FSR Amendment Act or regulations.

Superseded policies

The policies referred to in this Schedule as “superseded” are no longer ASIC policy for the licensing provisions of the FSR regime. Reference to a policy being “superseded” in this guide refers only to the licensing and conduct aspects of the policy.

Note: For references to the product disclosure and hawking aspects of pre-FSR Act policy, see Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169).

Where policies are referred to in this Schedule as “superseded”, in some cases, we have included notes providing guidance about provisions of the Corporations Act, regulations and our guides that are relevant to the topic.

A Old Corporations Act

RG 167.85

ASIC policies and publications

Regulatory guides

No.	Description	Status
19	Film investment schemes	<p>Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under RG 19, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. See Class Orders [CO 02/210] and [CO 02/236].</p> <p>RG 19.28 and RG 19.30 are superseded. For guidance on applying for an AFS licence, see RG 1–RG 3 and RG 164.</p> <p>For the application of RG 19.29, see RG 167.39–RG 167.40 and RG 167.48–RG 167.49 about compensation arrangements.</p>
20	Horse racing schemes	<p>Policy at RG 20.21, RG 20.23 and RG 20.23A continues. For guidance on applying for an AFS licence, see RG 1–RG 3 and RG 164.</p> <p>Policy at paragraphs (e), (g) and (h) of RG 20.22 is superseded. The remaining paragraphs continue to apply. For paragraph (a) of RG 20.22, see RG 167.39–RG 167.40 and RG 167.48–RG 167.49 about compensation arrangements.</p>
33	Security deposits	<p>Continuing. The policy applies for security deposits lodged and maintained with ASIC as a condition of a licence granted under the FSR regime: see RG 167.39, RG 167.48, RG 167.49 and [PF 209], condition 31.</p>
39	Licensed investment advisers — Security deposits	<p>Continuing. The policy applies for security deposits lodged and maintained with ASIC as a condition of a licence granted under the FSR regime: see RG 167.39, RG 167.48, RG 167.49 and [PF 209], condition 31.</p>
42	Securities dealers financial statements	<p>Superseded. Our policy is set out in RG 166 and the approved form to be published under s989B.</p>

No.	Description	Status
49	Employee share schemes	<p>Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. Note this relief applies to any interest in an exempt contribution plan and not to the shares.</p> <p>Note: We released an updated version of RG 49 in May 2003. See Information Release [IR 03/314] and Class Order [CO 03/184].</p>
51	Applications for relief	Policy applies to financial services subject to our general policy on relief in Section A of RG 167.
67	Real estate companies	Policy at RG 67.37 continues to apply with necessary adaptation. We have given a class order exemption from licensing for conduct within the no action policy. See Class Order [CO 00/213].
75	Independent expert reports to shareholders	<p>Policy at RG 75.19 is superseded. See the definitions of “financial product advice” (Part 7.2, Div 4) and the requirements for financial service providers (in Parts 7.6 to 7.8). See also s766B(1A) and 766B(1B) and reg 7.6.01(1)(u) and 7.6.01(1)(v).</p> <p>See RG 36.</p> <p>See s923A about use of the term “independent” by a financial product advice licensee. See also reg 7.6.07.</p>
77	Property trusts and property syndicates	<p>Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. This applies to certain participating property syndicates and private property syndicates. See Class Order [CO 02/239].</p> <p>The relief under this policy against the requirement to register the scheme and obtain a licence to operate participating property syndicates has been extended from 31 December 2004 to 30 September 2005. See Information Release [IR 04/76]. We are reviewing this policy to determine whether to grant the relief permanently (with no expiry date) or to allow the relief to expire.</p>

No.	Description	Status
80	Prescribed interests not for money	Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. See Class Order [CO 02/211].
87	Charitable investments schemes and school enrolment deposits	<p>We will give two types of relief that will conditionally exempt charities from certain provisions in Chapters 2L, 5C, 6D and 7 of the Corporations Act, subject to certain lodgment and registration requirements.</p> <p>We will give conditional relief to groups of charities that have a common or related charitable objective and for which there is a “sponsor”. Relief for a sponsored charity and the trustee of a sponsored charity will be from the fundraising, managed investment and debenture provisions for the charity’s charitable investment schemes. The sponsor must enter into a deed poll in the form of Pro Forma [PF 96] <i>Sponsor deed poll</i>, and comply with the requirements set out in the deed (see RG 87.27).</p> <p>We will also give conditional relief from the fundraising, managed investment and debenture provisions and the licensing provisions of the Corporations Act to individual charities and their trustees for the charity’s charitable investment schemes without the need for a sponsor. A charity and its trustee are eligible for this exemption only if we have first registered the charity’s identification statement. See Class Order [CO 02/184] and Pro Forma [PF 97].</p> <p>Note: We released an updated version of RG 87 in December 2004. See Information Release [IR 04/69], Class Order [CO 02/184], [PF 96] and [PF 97].</p>
91	Horse breeding schemes	Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. Note, however, that the operator of a private stallion scheme needs to be licensed for the relief to apply in certain circumstances. See Class Orders [CO 02/172] and [CO 02/178].
108	No action letters	Policy unaffected.

No.	Description	Status
116	Investment advisory services: licensing and “independent” advisory services	<p>Superseded.</p> <p><i>Part II — When do you need a licence to give investment advice?</i> See definitions of “financial product advice” and “dealing” (Part 7.1, Div 4) and the requirements for financial service providers in Parts 7.6 to 7.8. See RG 36.</p> <p><i>Part III — Applying for a licence</i> For guidance on applying for an AFS licence, see RG 1–RG 3 and RG 164.</p> <p><i>Part IV — “Independent” advisory services</i> See s923A for the restricted use of the word or expression “independent” (and like terms). A breach of that provision is an offence. See also reg 7.6.07.</p>
117	Investment advisory services: acting as a representative	<p>Superseded.</p> <p><i>Part II — When is a proper authority needed?</i> See s911A–911C and Part 7.6, Div 5 for provisions about when and how representatives must be authorised for the purposes of the Corporations Act. See RG 36. See also reg 7.6.04A and 7.6.04B.</p> <p><i>Part III — What must be disclosed in business documents?</i> See RG 36.</p>
118	Investment advisory services: media, computer software and internet advice	<p>Superseded.</p> <p><i>Part II — Media advice</i> See Part 7.6 for provisions about when a person providing media advice is exempt from the requirement to hold an AFS licence. See reg 7.6.01B for the condition to which the exemption is subject. See also RG 36.</p> <p><i>Parts III and IV — Computer software and books and internet advice</i> See RG 36.</p>
119	Investment advisory services: merely incidental investment advice by solicitors and accountants	<p>Superseded. See RG 36. See also s766B(5) and reg 7.1.29, 7.1.29A, 7.1.33E, 7.1.35A and 7.1.40.</p>
120	Investment advisory services: mere referrals and other excluded activities	<p>Superseded. See RG 36. See also regs 7.1.29A, 7.1.33E, 7.6.01(1)(e), 7.6.01(1)(ea), 7.7.04, 7.7.07, 7.7.11 and 7.7.12.</p>
121	Investment advisory services: retail investor protection requirements	<p>Superseded. Relevant policy is now in RG 175.</p>
122	Investment advisory services: the conduct of business rules	<p>Superseded. Relevant policy is now in RG 168, RG 175 and RG 181.</p>
123	Investment advisory services: superannuation	<p>Superseded.</p> <p>Note that there are various exemptions from licensing for</p>

No.	Description	Status
	advice	superannuation-related services: see the regulations and RG 36.
124	Investment advisory services: mixed advice on securities and life insurance products	Superseded by the harmonised approach to regulating the provision of financial product advice under the FSR regime. See RG 175 and RG 36.
129	Business introduction or matching services	See RG 36.
130	Managed investments: Licensing	<p>This guide continues to provide guidance and relevant considerations about:</p> <ul style="list-style-type: none"> (a) our minimum standards of compliance with the licensee obligations by an operator of a registered scheme; and (b) how we assess an application for a licence to operate a registered scheme. <p>The minimum standards in RG 130 need to be read with RG 164. We consider that the minimum standards in RG 130, RG 132 and RG 133 are consistent with the guidance in RG 164.</p> <p>Where RG 164 provides more details about our expectations of compliance than those guides, it should be read as adapting and supplementing those guides.</p> <p>We have continued our use of letters of offers to applicants for a licence to operate a registered scheme, as discussed in RG 130.9–RG 130.10.</p> <p>Note that the organisational expertise requirements for operators of a registered scheme set out in RG 130.34 and RG 130.43–RG 130.52 remain unchanged.</p>
131	Managed investments: Financial requirements	Superseded by RG 166.
132	Managed investments: Compliance plans	Continues. We consider the guidance on compliance plans given in this guide is consistent with our compliance measures for all licensees and our policy on risk management for non-APRA regulated licensees contained in RG 164.
133	Managed investments: Scheme property arrangements	Continues. See also our summary on RG 130.
136	Managed investments: discretionary powers and closely related schemes	We will not give relief from licensing merely because a person's financial services business relates only to an excluded issue scheme under RG 136.10.
138	Investment advisory services: personal	Superseded by RG 164.

No.	Description	Status
competencies of licensees		
140	Serviced strata schemes	<p>Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in those interests, or who only provides other financial services that do not require an AFS licence.</p> <p>Note, however, that the operator of a management rights scheme will need to be licensed for the relief to apply in certain circumstances (ie the operator does not hold a real estate agents licence under state or territory law). We will consider any further exemption, including extending any exemption to advice, as part of our review of the disclosure conditions: see RG 169.</p> <p>We will not give relief from licensing merely because a person's financial services business only relates to a scheme that is not registered since the scheme involves the sale of strata units of \$500,000 or more under RG 140.59.</p> <p>Policy at RG 140.92 and RG 140.92A (net tangible asset requirements) is superseded by RG 166.</p> <p>Section G of RG 140 is superseded. See RG 36. See also Class Order [CO 02/245].</p>
144	Mortgage investment schemes	<p>Policy at RG 144.21 and RG 144.23 is superseded by RG 166.</p> <p>Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in those interests, or who only provides other financial services that do not require an AFS licence. This does not extend to advice in the case of the exemption under Section D of RG 144. See Class Order [CO 02/238].</p> <p>Policy at RG 144.63–RG 144.68 is superseded. See RG 36.</p>
146	Licensing: Training of financial product advisers	<p>Continuing.</p> <p>Note: Interim Regulatory Guide 146 [IPS 146] on training of authorised representatives was replaced by final RG 146.</p>
148	Investor directed portfolio services	<p>RG 148.20–RG 148.28 on who can operate an investor directed portfolio service (IDPS) applies as minimum standards of compliance with the licensee obligations and extend to any body that provides a custodial or depository service under s766E.</p> <p>However, paragraph (b) of RG 148.23 dealing with custody-related financial requirements has been superseded by RG 166.</p> <p>An IDPS operator or other person performing a custodial or</p>

No.	Description	Status
		depository service will also need to refer to: RG 164; RG 165; RG 166; RG 169; RG 175; and RG 181.
149	Nominee and custody services	<p>Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. See Class Order [CO 02/295].</p> <p>We have not given relief from licensing on this basis if a person's financial services business is the provision of an exempt nominee and custody service that is a custodial or depository service.</p>
160	Time-sharing schemes	<p>This policy is currently under review.</p> <p>Financial services in relation to interests in fixed term schemes to which the old Law as defined in s1451 of the Corporations Law (continued in operation by s1408 of the Corporations Act) applies are not affected by the FSR Act.</p> <p>Where the operator of a managed investment scheme is not required to register the scheme because of an exemption under RG 160.2 (formerly exempt under state laws), we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.</p> <p>We have not given a licensing exemption if the operator of a scheme is exempt from the requirement that the scheme be registered under RG 160.3 (title based relief) or RG 160.12 (Chapter 5C relief).</p> <p>The policy at RG 160.6 and paragraph (a) of RG 160.10 about net tangible assets is superseded by RG 166.</p> <p>RG 160.9 and paragraph (b) of RG 160.10 continue.</p>
161	Interim policy statement on registered insurance brokers and their representatives	Superseded. See RG 36.
162	Interim policy statement on internet discussion sites	This continues to apply as interim policy with necessary adaptations. See RG 36.

Regulatory guides

No.	Description	Notes
20	Disclosure of convictions and proceedings	Does not apply to applications for an AFS licence.
65	Authorisations when dealing in futures contracts	Superseded. See RG 36.

Class orders

Note: The following is a list of class orders that continue to apply pre-FSR Act class order relief under the FSR regime. The table indicates whether the class orders vary or revoke previous class orders issued under the old Corporations Act. The table is ordered on an ascending basis by reference to the old class order numbers. These class orders are available at www.asic.gov.au/co and the *ASIC Digest*.

New class order	Effect on corresponding old class order	Description	Notes
02/239	Revokes 98/64	Participating property syndicates	<p>Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.</p> <p>The class order relief against the requirement to register and obtain a licence to operate participating property syndicates has been extended from 31 August 2004 to 30 September 2005. See Information Release [IR 04/76].</p> <p>We are reviewing this policy to determine whether to grant the relief permanently (with no expiry date) or to allow the relief to expire. RG 77 describes the nature of the relief provided and the conditions applicable to participating property syndicates.</p>
02/303	Revokes 98/2287	Management rights schemes	<p>Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in those interests, or who only provides other financial services that do not require an AFS licence.</p> <p>Note, however, that the operator of a management rights scheme will need to be licensed for the relief to apply in certain circumstances. We are considering any further exemption, including extending any exemption to advice, as part of our separate review of the disclosure conditions: see RG 169.</p>
02/304	Revokes 99/460		

New class order	Effect on corresponding old class order	Description	Notes
02/245	Revokes 99/461	Closed schemes	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
None	99/558	Certain pre-conditions to the issue of a licence	Superseded. The Corporations Act does not provide for ASIC to determine additional requirements. For the applicable requirements, see RG 167.39–RG 167.40, RG 167.48–RG 167.49 and RG 166.
02/185	Revokes 00/191	Sale of strata units for \$500,000 or more	No licensing exemption.
02/184	Revokes 00/197	Charitable investment schemes	<p>Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about interests in that scheme, or who only provides other financial services that do not require an AFS licence. We will not provide licensing relief for other financial products.</p> <p>Where we give exemption under this policy to offers of debentures, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those debentures, or who only provides other financial services that do not require an AFS licence. We will not provide licensing relief for other financial products. See also reg 7.1.07E.</p> <p>See also Information Release [IR 04/69].</p>
02/211	Revokes 00/198	Managed investment schemes — interests not for money	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.

New class order	Effect on corresponding old class order	Description	Notes
None	00/200	Relief for operations of foreign managed investment schemes	[CO 00/200] grants an exemption from the prohibition to operate an unregistered managed investment scheme when no offers or interests have been made in Australia other than certain offers or interests, which do not require disclosure. It does not provide any licensing exemptions. See also RG 178.
02/238	Revokes 00/203	Mortgage schemes — Chapter 5C relief	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. This does not extend to advice in the case of the exemption under Section D of RG 144 (ISB regulated schemes).
02/171	Revokes 00/204	Private ostrich schemes	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
02/172	Revokes 00/205	Horse breeding schemes — private broodmare syndication	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
02/178	Revokes 00/206	Horse breeding schemes — private stallion syndication	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or is any other financial services business that would not require a licence. We have also exempted from licensing any person who gives advice about interests in these schemes. Note, however, that the operator of a private stallion scheme who takes part in its promotion will need to be licensed for the relief to apply in certain circumstances.

New class order	Effect on corresponding old class order	Description	Notes
02/319	Revokes 00/207	Horse racing syndicates	[CO 02/319] gives conditional relief from Chapter 5C for the operation of horse racing syndicates. It does not provide any licensing exemptions.
02/226	Revokes 00/208	Managed investment schemes — no issue required disclosure	[CO 02/226] provides an exemption in some cases from the prohibition to operate an unregistered managed investment scheme when all the interests on issue did not require disclosure and if all the members have agreed that the scheme does not have to be registered. It does not provide any licensing exemptions.
02/182	Revokes 00/209	Ordinary commercial or residential letting arrangements	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
02/294	Revokes 00/210	Investor directed portfolio services	The relief previously provided in [CO 00/210] is continued in [CO 02/294] on the basis that the requirement to hold a dealers licence under the old regulatory regime has been replaced by the requirement to hold an AFS licence.
02/295	Revokes 00/211	Nominee and custody services	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. The operator of a nominee and custody service is required to hold an AFS licence if they carry on a custodial or depository service. See also reg 7.1.33E.
02/183	Revokes 00/215	Small property syndicates	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.

New class order	Effect on corresponding old class order	Description	Notes
03/184	Revokes 02/264 (02/264 revoked 00/224)	Employee share schemes —contribution plans	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. Note this relates only to the contribution plan and not the shares.
02/151	Revokes 00/232	School enrolment deposits	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. Where we have given an exemption under this policy to offers of debentures, we have also given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those debentures, or who only provides other financial services that do not require an AFS licence. See also reg 7.1.07E.
02/210	Revokes 00/233	Interests in film and theatrical ventures	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
02/236	Revokes 00/234	Film investment schemes	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
02/318	Applies with 00/241	Society of Lloyd's	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising

New class order	Effect on corresponding old class order	Description	Notes
			<p>about those interests, or who only provides other financial services that do not require an AFS licence.</p> <p>[CO 02/318] operates with [CO 00/241] by providing similar relief to that in [CO 00/241] for the purposes of the FSR regime.</p>
02/305	Revokes 00/570	Management rights schemes	<p>Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in those interests, or who only provides other financial services that do not require an AFS licence.</p> <p>Note, however, that the operator of a management rights scheme will need to be licensed for the relief to apply in certain circumstances (ie the operator does not hold a real estate agents licence under state or territory law).</p> <p>We will consider any further exemption, including extending any exemption to advice, as part of our separate review of the disclosure conditions: see RG 169.</p>
02/237	Revokes 01/179	Time-sharing schemes — operation of rental pool	<p>Where the operator of a managed investment scheme is not required to register the scheme because of the first exemption of this class order, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.</p>
02/314	Revokes 01/929	Redundancy funds	<p>Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.</p>

Pro formas

No.	Description	Notes
5	Securities' dealers financial statements — NTA licence condition	See RG 166.
6	Securities' dealers financial statements — SLF licence condition	See RG 166.
13	Performance bond licensee	Reissued 30 July 2003. Continues for applicable licensees: see RG 167.39–RG 167.40 and RG 167.48–RG 167.49 about compensation arrangements.
63	Deed of subordination	Reissued 4 August 2004. See RG 166.
97	Sponsor exemption	Reissued 17 December 2004. Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we will give relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence. Note: See also, [IR 04/69].
143	Investments to top up to \$500,000 in a trust that is not a registered scheme	No licensing exemption.
173	Statutory declaration by guarantor (body corporate)	Superseded. See RG 166.
184	Strata arrangements which incidentally involve a managed investment scheme	We consider these are not financial products: see s763E.
186	Well advanced schemes	Reissued 4 June 2003. Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we will give relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
187	Management rights schemes where the strata unit cannot be used as a residence	Reissued 6 July 2004. Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we will give relief from the requirement to be licensed to any person whose only financial services business is dealing in those interests, or who only provides other financial services that do not require an AFS licence. Note, however, that the operator of a management rights scheme will need to be licensed for the relief to apply in certain circumstances (ie the operator does not hold a real estate agents licence under

No.	Description	Notes
		state or territory law). We will consider any further exemption, including extending any exemption to advice, as part of our separate review of the disclosure conditions: see RG 169.
188	Approval of guarantee for responsible entity where guarantor is an Australian ADI or foreign bank	See RG 166.
188A	Approval of guarantee for responsible entity where guarantor is an Australian ADI or foreign bank	Superseded. See RG 166.
189	Responsible entity authorisation and licence conditions	Reissued 2 September 2003. See Section C of RG 167.
196	Investor directed portfolio service operator licence conditions	Superseded by Pro Forma 209 [PF 209].
204	Time sharing schemes — licence conditions	Superseded by Pro Forma 209 [PF 209].
205	Time-sharing schemes formerly exempt under state laws	Where the operator of a managed investment scheme is not required to register the scheme because of the exemption, we have given relief from the requirement to be licensed to any person whose only financial services business is dealing in or advising about those interests, or who only provides other financial services that do not require an AFS licence.
206	Time-sharing schemes — Chapter 5C relief	No licensing exemption.
207	Title-based time-sharing schemes	No licensing exemption.

B Life insurance

RG 167.86

ISC published policy

Circulars

No.	Description	Notes
B.3 (AB 3/96)	Guide to the <i>Insurance Contracts Act 1984</i>	<p>Continuing, except that the FSR regime supplements some requirements of the Insurance Contracts Act. Guidance in the introduction on complaints handling and codes of practice is superseded.</p> <p>For further information about how and when ASIC will approve financial services sector codes of conduct under s1101A of the Corporations Act, see RG 183.</p> <p>Note: On 10 September 2003, the then Minister for Revenue and Assistant Treasurer, Senator Helen Coonan, and the then Parliamentary Secretary to the Treasury, Senator Ian Campbell jointly announced that the Government would be undertaking a review of the Insurance Contracts Act. The final report was released in January 2005. See <i>Review of the Insurance Contracts Act 1984: Final Report</i>. Further information is available at www.treasury.gov.au.</p>
G.II.1	Code of practice for advising, selling and complaints handling in the life insurance industry	Superseded. See RG 183.
G.II.2	Code of practice requirements	Superseded. See RG 183.
G.II.6	ISC/ASC harmonisation issues and consequential amendments to the code of practice	Superseded.

CEO letters

No.	Description	Notes
22/2/96	Approval of the insurance brokers dispute resolution facility	Superseded.
8/4/98	Complaints resolution	Superseded.

C General insurance

RG 167.87

ISC instruments

Decision-making principles

No.	Description	Notes
1 of 1994	Insurance (Agents and Brokers) Decision-making Principles under s41A of the <i>Insurance (Agents and Brokers) Act 1984</i>	Superseded.

ISC published policy

Circulars

No.	Description	Notes
AB 1/98	<i>Insurance Laws Amendment Act 1998</i>	Superseded.
AB 4/96	<i>Insurance (Agents and Brokers) Act 1984</i> — Applications for Renewal of Registration	Superseded.
AB 1/96	<i>Insurance (Agents and Brokers) Act 1984</i> — Operation of Insurance Broking Account	Superseded.
AB 2/95	<i>Insurance (Agents and Brokers) Act 1984</i> — Section 35 Restrictions Relating to Broker Remuneration by Insurers	Superseded.
AB 1/95	<i>Insurance (Agents and Brokers) Act 1984</i> — Unauthorised Foreign Insurers	Superseded. See reg 7.9.15.
AB 1/89	<i>Insurance (Agents and Brokers) Act 1984</i> — Duties of Brokers, Agents and Insurers in Relation to Premiums and Certain Other Moneys	Superseded.
AB 1/88	<i>Insurance (Agents and Brokers) Act 1984</i> — Audit of Accounts	Superseded.
AB 6/87	<i>Insurance (Agents and Brokers) Act 1984</i> — Registration of Insurance Brokers	Superseded.
AB 5/87	<i>Insurance (Agents and Brokers) Act 1984</i> — Submission of Audited Accounts	Superseded.
AB 4/87	<i>Insurance (Agents and Brokers) Act 1984</i> — Renewal of Registration	Superseded.

No.	Description	Notes
AB 2/87	<i>Insurance (Agents and Brokers) Act 1984</i> — Acquisition of Insurance Portfolios	Superseded.
AB 8/86	<i>Insurance (Agents and Brokers) Act 1984</i> — Insurance Broking Account	Superseded.
AB 7/86	<i>Insurance (Agents and Brokers) Act 1984</i> — Professional Indemnity Insurance Contract	Continuing. The policy continues to apply for professional indemnity insurance contracts required by reg 7.6.022A until 30 June 2006. Reg 7.6.02AA defers the application of s912B until 1 July 2006.
AB 4/86	<i>Insurance (Agents and Brokers) Act 1984</i> — Guidelines on the Interpretation of Particular Provisions	Superseded.
2AB/1989	<i>Insurance (Agents and Brokers) Act 1984</i> — Dealing with Unauthorised Foreign Insurers	Superseded.

ASIC published policy

Information releases

No.	Description	Notes
00/026 (3/8/00)	ASIC approves general insurance code of practice and insurance enquiries and complaints scheme	Superseded. See RG 183.

D Superannuation

RG 167.88

ASIC published policy

Information releases

No.	Description	Notes
99/002 (11/1/99)	ASIC's approach to operational requests on superannuation	Superseded.
99/006 (15/1/99)	ASIC answers superannuation questions	Superseded.

Schedule 2: Table of post-FSR Act class orders

RG 167.89 The following is a list of class orders that provide relief from Parts 7.6 to 7.8 (other than Div 4 and Div 8 of Part 7.6 and Div 8 of Part 7.8). The relief in these class orders is based on new policy issued after the commencement of the FSR Act. The class orders may also provide relief from other requirements in the Corporations Act. These class orders are available at www.asic.gov.au/co and the *ASIC Digest*.

Note 1: See Schedule 1 for a list of class orders that continue to apply our pre-FSR Act policy and class order relief to the licensing provisions.

Note 2: This table only refers to permanent class order relief granted by ASIC. For interim class order relief, please see the full list of class orders at www.asic.gov.au/co and the *ASIC Digest*.

Note 3: For a list of some of the class orders that provide relief from Div 8 of Part 7.8 or Part 7.9 except s1017G, see Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169).

Note 4: For a discussion of our approach to relief from compliance with the managed investment scheme provisions of Ch 5C, see Regulatory Guide 136 *Managed Investments: Discretionary powers and closely related schemes* (RG 136).

Class orders

Class order	Description	Notes
02/551	Recognised accountant	This class order declares that certain members of professional bodies listed in the class order are to be a “recognised accountant” for the purposes of reg 7.1.29.
02/1073	Financial Services Guide – dealing in underlying investments by responsible entities	Relief has been provided to responsible entities of registered managed investment schemes from the requirement to provide a Financial Services Guide (FSG). The entity will not have to provide an FSG merely because the entity deals in financial products which are the underlying investments of the scheme concerned.
02/1074	Financial Services Guide – dealing in underlying investments by superannuation trustees	Relief has been given to superannuation trustees from the requirement to provide a Financial Services Guide (FSG). The entity will not have to provide an FSG merely because the entity deals in financial products which are the underlying investments of the fund concerned.

Class order	Description	Notes
02/1145	Declaration on overseas student health insurance	A declaration has been made that an overseas student health insurance contract issued before 31 March 2003 is not a financial product for the purposes of Chapter 7 of the Corporations Act. See also RG 169.
02/1161	Limited relief from requirement for dealing authorisation for public offer superannuation entities	<p>Relief has been given to the trustee of a public offer superannuation entity from the requirement to apply for an authorisation to deal in financial products (other than in interests in the entity) on behalf of members of the entity in the course of the operation of the entity.</p> <p>We consider that dealings by such trustees in financial products undertaken when they invest the assets of the entity are carried out for the purpose of managing and administering the entity to enable the trustee to meet its obligations under its governing rules.</p>
02/1176	Credit union member shares	Relief has been given from the requirement to hold an AFS licence to certain registered credit unions for the issue member shares. Relief has also been given from the disclosure requirements in Part 7.7 and the requirement to confirm transactions: s1017F.
03/184	Employee share schemes	<p>Relief has been given from the requirement to hold an AFS licence for certain offers of shares made to full-time and part-time employees under an employee share scheme. See [IR 03/14].</p> <p>We have also given relief from the managed investment scheme, hawking and product disclosure provisions: see RG 169 and RG 136.</p>
03/578	Financial Services Guide exemption for market making services on a licensed market	Relief has been provided to financial services licensees and their authorised representatives from the requirement to provide a Financial Services Guide where they conduct the service of making a market of a financial product through a licensed market.
03/606	Financial product advice — exempt documents	Relief has been given from the requirement to hold an AFS licence to issuers of certain disclosure documents for the provision of any general advice in those documents. See [IR 03/20].
03/705	Non-cash payment facilities — licensing relief	We have clarified that AFS licensees will not generally need an additional licence authorisation to give basic advice on, or arrange for their client to use, most non-cash payment facilities. See [IR 03/32].
03/748	Reporting requirements under s989B	Relief has been given to AFS licensees who are natural persons from the requirement under s989B(1) of the

Class order	Description	Notes
	s989B	Corporations Act to include in a profit and loss statement any revenues and expenses that do not relate to a financial services business carried on by the licensee. See [IR 03/23].
03/823	Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions (ADIs)	<p>Relief has been given from the AFS licensing requirements to foreign ADIs for limited dealings in derivatives and foreign exchange in connection with their ordinary banking business where the counterparty to the dealing is a wholesale client.</p> <p>Relief has also been given from some of the accounting and audit obligations for AFS licensees that are foreign ADIs, where equivalent reports prepared for the overseas regulator of the foreign ADI are lodged with ASIC. See [IR 03/28].</p>
03/824	Licensing relief for financial services providers with limited connection to Australia dealing with wholesale clients	<p>We have given relief from the licensing provisions to persons that deal with wholesale clients and the only reason the person is carrying on a financial services business in Australia is as a result of s911D of the Corporations Act.</p> <p>However, persons who are carrying on a business of providing services to wholesale clients in Australia under the more general tests used to determine whether a person carries on a business in Australia (elsewhere in the Act and under the common law) will still require an AFS licence (unless of course some other exemption applies): s761C. See [IR 03/28].</p>
03/825	Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside the jurisdiction	Relief has been given from the licensing provisions to foreign persons that provide further financial services to an existing client (ie a client holding a product previously issued by the person), where the client acquired the original product when they were not in this jurisdiction. See [IR 03/28].
03/826	Market related records: Australian financial services licensees dealing on overseas markets	Relief has been given to AFS licensees when dealing with wholesale clients who are not in Australia, for dealing on a financial market not operating in Australia, from the requirement to keep certain records of the transactions, as required under reg 7.8.19. See [IR 03/28].
03/911	Licensing relief for self-dealers who provide general product advice about own securities	<p>Relief has been given from the licensing provisions to bodies that:</p> <p>(a) are entitled to the licensing exemption in s766C(4)</p>

Class order	Description	Notes
		<p>(known as the “self-dealing exemption”); and</p> <p>(b) provide general advice to wholesale clients in an offer document about securities of that body for issue.</p> <p>See [IR 03/36].</p>
03/1048	Mortgage offset accounts	<p>Relief has been given from the requirement to hold an AFS licence for the provision of a financial service that consists of advising on or arranging for a mortgage offset account (including any non-cash payment facility that is part of the mortgage offset account). The relief is on the condition that the provider of the service is a member of an eligible external dispute resolution scheme. See [MR 03/388].</p>
03/1063	Licensing relief for financial counselling agencies	<p>Relief has been given from the requirement to hold an AFS licence for certain financial counselling agencies that may provide financial product advice in the course of providing a financial counselling service. This relief is subject to certain conditions including requirements that:</p> <p>(a) no fees or charges are payable by the client for any aspect of the service;</p> <p>(b) a financial counsellor is competent to carry out the service; and</p> <p>(c) a financial counsellor is a member of, or is eligible for membership of, a relevant financial counselling association.</p> <p>This relief is designed to facilitate the professional delivery of financial counselling services to consumers in financial difficulty. See [IR 03/43].</p>
03/1095	Law societies — statutory deposits and public purpose funds	<p>Interim relief has been given until 1 July 2005 from the requirement to hold an AFS licence for certain state and territory law societies that are obliged under relevant state and territory legislation to operate various statutory deposit and public purpose funds. The relevant legislation partially regulates these funds.</p> <p>This relief is given on an interim basis pending the outcome of the Federal Government’s “Review of discretionary mutual funds and direct offshore foreign insurers”. A condition of the relief is that law societies must give warnings that these funds are not licensed under the Corporations Act. See [IR 03/43] and [IR 04/10].</p>

Class order	Description	Notes
03/1099	UK FSA regulated financial service providers	Relief has been given to foreign entities regulated by the UK Financial Services Authority from the requirement to hold an AFS licence for certain financial services provided to wholesale clients. This relief is provided under RG 176. See [IR 03/41] and [IR 04/04].
03/1100	US SEC regulated financial service providers	Relief has been given to foreign entities regulated by the US Securities and Exchange Commission from the requirement to hold an AFS licence for certain financial services provided to wholesale clients. This relief is provided under RG 176.
03/1101	US Federal Reserve and OCC regulated financial service providers	Relief has been given to foreign entities regulated by the US Federal Reserve Board or the Comptroller of the Currency from the requirement to hold an AFS licence for certain financial services provided to wholesale clients. This relief is provided under RG 176.
03/1102	Singapore MAS regulated financial service providers	Relief has been given to foreign entities regulated by the Monetary Authority of Singapore from the requirement to hold an AFS licence for certain financial services provided to wholesale clients. This relief is provided under RG 176. See [IR 03/41] and [IR 04/04].
03/1103	Hong Kong SFC regulated financial service providers	Relief has been given to foreign companies regulated by the Hong Kong Securities and Futures Commission from the requirement to hold an AFS licence for certain financial services provided to wholesale clients. This relief is provided under RG 176. See [IR 03/41] and [IR 04/04].
03/1110	Prime brokerage services: relief from obligation to hold client property on trust	Relief has been given to an AFS licensee who is an authorised deposit-taking institution (ADI) from the obligation to hold a client's property on trust where: <ul style="list-style-type: none"> (a) the property consists of securities; (b) the licensee holds the securities under a prime brokerage agreement; (c) the client is a wholesale client; and (d) the licensee and client agree in writing to the terms of the agreement.

Class order	Description	Notes
03/1111	Prime brokerage services: relief from obligation to hold scheme property separately	Relief has been given to a responsible entity from the obligation to hold scheme property separately where the property consists of money and an authorised deposit-taking institution (ADI) holds the property as custodian under a prime brokerage agreement.
03/1112	Relief from obligation to hold client money on trust	Relief has been given to an AFS licensee who is an Australian authorised deposit-taking institution (ADI) from the obligation to hold a client's money on trust where the client is a wholesale client and the licensee and client agree in writing.
04/150	Wholly-owned subsidiaries of professional investors to be treated as wholesale clients	Relief has been given so that an AFS licensee can treat wholly owned subsidiaries of professional investors as wholesale clients for the purposes of Parts 7.6 (other than Divs 4 and 8), 7.7, 7.9 and s992A and 992AA of the Corporations Act. See [IR 04/12] and RG 169.
04/239	Factoring arrangements — licensing, hawking and disclosure relief	Relief has been given from the requirement to hold an AFS licence to persons who provide certain financial services for factoring arrangements. Where the person is or proposes to be the purchaser of debt obligations under the terms of a factoring arrangement, the relief is conditional on disclosure of terms and conditions to retail clients and maintaining an internal dispute resolution system that covers retail client complaints. See [IR 04/18]. We have also given relief from the hawking and product disclosure provisions: see RG 169.
04/291	CHESS Depository Nominees — FSG relief in relation to CHESS Depository Interests (CDIs)	This class order modifies s 940C(1)(a) to permit CHESS Depository Nominees to provide a Financial Services Guide or a Supplementary Financial Services Guide to CHESS Depository Interest (CDI) clients by making it available on the Internet in the case set out in the class order.
04/443	Licensing relief for offshore participants in the market operated by Eurex Frankfurt AG	Relief has been given from the requirement to hold an AFS licence to offshore market participants of the licensed market operated by Eurex Frankfurt AG for conduct on the market. The relief applies only to a financial services business that is taken to be carried on in this jurisdiction by virtue of s911D(1).
04/444	Licensing relief for offshore participants in the market operated by Chicago Mercantile Exchange Inc.	Relief has been given from the requirement to hold an AFS licence to offshore market participants of the licensed market operated by Chicago Mercantile Exchange Inc. for conduct on the market. The exemption

Class order	Description	Notes
		applies only to a financial services business that is taken to be carried on in this jurisdiction by virtue of s911D(1).
04/526	Foreign collective investment schemes	The policy in RG 178 acknowledges that when other jurisdictions become assessed as being sufficiently equivalent to the Australian regulatory regime for managed investments, the class order will be amended to include those jurisdictions to which the class order applies. See [IR 04/20].
04/829	US CFTC regulated financial service providers	Relief has been given from the requirement to hold an AFS licence to foreign entities regulated by the US Commodity Futures Trading Commission for the provision of certain financial services to wholesale clients. This relief is provided under RG 176. See [IR 04/52].
04/909	Agency banking	Relief has been given deeming an agent of a licensed Australian approved deposit-taking institution (ADI) as a representative of that ADI when they provide the financial service of arranging for the issue of a basic deposit product. This means that agents do not need to hold an AFS licence or be formally appointed as an authorised representative to help open an account of behalf of an ADI. The licensed ADI is fully responsible for all consumer protection measures under the Corporations Act for the provision of the financial service by the agent, including providing proper disclosure and dispute resolution mechanisms. See [IR 04/35].
04/1055	Information in a Financial Services Guide given in a time critical situation	Modification has been made to s941E so that a Financial Services Guide (FSG) given in a time critical situation must be up to date at the time a statement (given before the provision of service) was provided. This removes the need to provide additional information that subsequently becomes available as a result of the written FSG being provided in time critical cases up to five days after the financial service.
04/1063	Section 981B money in cash common funds	We have modified s981B of the Corporations Act permitting money to be paid into a cash common fund. See [IR 04/47]. See also, reg 7.8.01(11), (12), (13) and (14).
04/1313	Germany BaFin regulated financial service providers	Relief has been given from the requirement to hold an AFS licence to entities regulated by the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) of Germany

Class order	Description	Notes
		<p>for the provision of certain financial services to wholesale clients. This relief is provided under RG 176.</p> <p>See [IR 04/55].</p>
04/1430	Dollar disclosure: Unknown facts or circumstances	<p>Relief has been given from the obligation for information to be disclosed as an amount in dollars in a SOA where the amount depends on unknown facts or circumstances.</p> <p>Where [CO 04/1430] applies, the information must be disclosed as either a percentage or a specified matter or as a description of the method of calculating the amount, with worked dollar examples unless that is inappropriate. See RG 182 and [IR 04/67].</p> <p>We have also granted relief from the product disclosure provisions: see RG 169.</p>
04/1433	Dollar disclosure: Non-monetary benefits and interests	<p>Relief has been given from the obligation to disclose non-monetary benefits and interests as amounts in dollars in a SOA (and PDS) subject to the SOA including certain disclosures as specified in the class order. See RG 182 and [IR 04/67].</p> <p>We have also granted relief from the product disclosure provisions: see RG 169.</p>
04/1435	Dollar disclosure: Amounts denominated in a foreign currency	<p>Relief has been given from the obligation to disclose as amounts in dollars (i.e. Australian dollars) in a SOA any amount that is denominated in a foreign currency. See RG 182 and [IR 04/67].</p> <p>We have also granted relief from the product disclosure provisions: see RG 169.</p>
04/1526	Securitisation special purpose vehicles	<p>Relief has been given from the requirement to hold an AFS licence for certain securitisation special purpose companies and trustees for dealing in and providing a custodial and depository service.</p> <p>See [IR 05/01]. See also Section E of RG 167.</p>
04/1556	Statements of Additional Advice	<p>Relief has been given to allow a Statement of Additional Advice (SOAA) to be given to a retail client instead of a Statement of Advice (SOA) in certain circumstances. An SOAA incorporates by reference information required under Part 7.7 from another documents which has previously been provided to the client. [CO 04/1556] revokes Class Order [CO 04/576]. See [IR 04/75].</p>
04/1570	Licensing relief for some overseas dealers or market makers in	<p>Relief has been given from the requirement to hold an AFS licence to some overseas wholesale financial</p>

Class order	Description	Notes
	derivatives and foreign exchange	<p>service providers, which are dealing in foreign exchange contracts and making markets in derivatives and foreign exchange in Australia. The relief provided applies to foreign companies that meet the equivalent requirements in reg 7.6.01(1)(m), namely:</p> <ul style="list-style-type: none"> (a) the derivative or foreign exchange contract is issued, acquired or disposed of under agreements that set out the terms and conditions for future dealing in a derivative or foreign exchange contract between the two parties; (b) the other party to the agreement: <ul style="list-style-type: none"> (i) is a wholesale client in Australia; (ii) initiated the agreement; (iii) holds an AFS licence which permits it to make a market or deal in the financial product; (c) the person relying on the exemption is not in this jurisdiction; and (d) each party is dealing in the financial product on its own behalf. <p>See [IR 05/02].</p>
04/1571	Secondary services: General Financial Services Guide relief	<p>Relief has been given to secondary service providers, commencing on 1 July 2005, from the consequences of failing to provide an FSG to a retail client to whom the secondary service provider provides, via an intermediary, a financial service.</p> <p>The relief applies where the secondary service provider enters into an arrangement with the intermediary for the intermediary to give the secondary service provider's FSG to the client and where other conditions are met. See [IR 04/78]. See also Class Orders [CO 04/1572] and [CO 04/1573].</p>
04/1572	Secondary services: Financial Services Guide relief for experts	<p>Relief has been given to allow an expert's FSG to be included as a separate and clearly identifiable part of an expert's report that is prepared for inclusion in a third party's disclosure document (eg a prospectus or a PDS) where certain conditions are met. See [IR 04/78]. See also Class Orders [CO 04/1571] and [CO 04/1573].</p>
04/1573	Secondary services: Financial Service Guide relief for arrangers acting under an intermediary authorisation	<p>Relief has been given to allow the FSG for a person arranging for the issue of a financial product by a product provider under an intermediary authorisation (as referred to in paragraph 911A(2)(b) of the Corporations</p>

Class order	Description	Notes
		Act) to be included as a separate and clearly identifiable part of the product provider's PDS where certain conditions are met. See [IR 04/78]. See also Class Orders [CO 04/1571] and [CO 04/1572].
05/27	Financial Services Guides – Tailoring relief	Relief has been given from the FSG disclosure requirements in reg 7.7.04(2) and 7.7.07(2) where: (a) the information does not relate to a financial service that will be or is likely to be to the client; or (b) the information relates exclusively to services which do not require the provision of a FSG (eg where the financial service is provided to wholesale clients). See [IR 05/17].
05/21	Clarification of requirement for the appointment of auditors by financial services licensees	Section 990A of the Corporations Act 2001 has been modified by removing the reference in s990A to s327. The reference to s327 has been replaced with a reference to Subdivision A of Div 6 of Pt 2M.4, which broadly replicates the substance of s327. The Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 repealed s327 and substituted the provisions in Subdivision A of Div 6 of Pt 2M.4.
05/736	Non-cash payment facilities – Low value non-cash payment facilities	Conditional relief has been given to persons providing financial services in relation to low value non-cash payment facilities where those facilities meet the criteria set out in the class order. The class order applies only where specified consumer protection requirements are met. See RG 185 and [IR 05/60]. We have also given hawking and product disclosure relief: see RG 169.
05/737	Non-cash payment facilities – Loyalty Schemes	A declaration has been made that loyalty schemes constituting non-cash payment facilities are not financial products for the purposes of Chapter 7 of the Corporations Act. See RG 185 and [IR 05/60]. See also RG 169 and RG 136.
05/738	Non-cash payment facilities – Licensing relief: Gift facilities	Unconditional relief has been given to persons providing financial services in relation to gift facilities, such as gift vouchers or cards. This means that the licensing, conduct and disclosure obligations (as well as the hawking prohibition) in Chapter 7 of the Corporations Act will not apply. See RG 185 and [IR 05/60]. See also RG 169.

Class order	Description	Notes
05/739	Non-cash payment facilities – Road Toll Devices	A declaration has been made that facilities through which a person can pay a road toll without notes or coins are not financial products for the purposes of Chapter 7 of the Corporations Act. See RG 185 and [IR 05/60]. See also RG 169.
05/740	Non-cash payment facilities – Prepaid Mobile Facilities	Unconditional relief has been given to persons providing financial services in relation to prepaid mobile facilities. This means that the licensing, conduct and disclosure obligations (as well as the hawking prohibition) in Chapter 7 of the Corporations Act will not apply. See RG 185 and [IR 05/60]. See also RG 169.
05/835	General advice in advertising	Relief has been given from the obligation to give an FSG or general advice warning under s929A(2) where product issuers give general financial product advice in advertisements, in the media, or on billboards or posters. The relief applies where the product issuer: (a) includes a statement in their advertisement that a person should consider whether the financial product is appropriate for them; and (b) complies with the advertising disclosure requirements in s1018A or 734 (as applicable to the kind of disclosure document). See [IR 05/47].
05/1070	General insurance distributors	Relief has been given deeming a distributor, who is appointed by an AFS licensee authorised to deal in general insurance, as a representative of that AFS licensee when they provide the financial service of dealing in general insurance products. This means that distributors of general insurance products do not need to hold an AFS licence or be formally appointed as an authorised representative to deal in general insurance products. The licensee who appoints the distributor is responsible for all consumer protection measures under the Corporations Act for the provision of the financial service by the distributor. See [IR 05/59].
05/1122	Calculators	Conditional relief has been given to providers of generic financial calculators so that: (a) they do not need to hold an AFS licence; or (b) where they hold an AFS licence, they do not need to comply with the conduct and disclosure provisions

Class order	Description	Notes
		in Div 2, 3 and 4 of Part 7.7 of the Corporations Act. See Section F of this guide and [IR 05/64].
05/1195	Simplified warning for oral general advice	Relief has been given from the obligation under s949A(2) to provide a general advice warning for oral general advice. The relief applies where a simplified oral warning is given instead. See [IR 05/62].
05/1230	Credit rating agencies	Conditional relief has been provided to certain credit rating agencies so that in relation to their provision of credit ratings: (a) they do not need to hold an AFS licence; or (b) where they hold an AFS licence, they do not need to comply with the provisions in Div 2 and 4 of Part 7.7 of the Corporations Act. See [IR 05/63].
05/1243	Chapter 7: Relief: Valuation of Shares in Real Estate Company	Relief has been given to persons who provide financial product advice where the advice is or is incidental to a valuation of shares in a real estate company. This means that the licensing, conduct and services disclosure will not apply to those persons in those circumstances.
06/68	Foreign Licensees: Financial Statements & Records	Relief has been given to certain foreign licensees (except foreign ADIs) from the requirement under Division 6 of Part 7.8 to prepare and lodge audited financial statements and keep certain financial records in relation to its financial services business.

[*Historical note: Schedule 2 amended 27/10/2005 by inserting table entry on Class Order [CO 05/1070] General insurance distributors; 30/11/2005 by inserting table entries on Class Order [CO 05/835] General advice in advertising and Class Order [CO 05/1195] Simplified warning for oral general advice; 20/12/2005 by inserting table entries on Class Order [CO 05/1122] Relief for providers of generic calculators and Class Order [CO 05/1230] Credit rating agencies; 25/1/2007 by inserting table entries on Class Order [CO 02/1073] Financial Services Guide – Dealing in underlying investments by responsible entities; Class Order [CO 02/1074] Financial Services Guide – Dealing in underlying investments by superannuation trustees; Class Order [CO 02/1145] Declaration regarding overseas student health insurance; Class Order [CO 03/578] Financial Services Guide exemption for market making services on a licensed market; Class Order [CO 04/1055] Information in a Financial Services Guide given in a time critical situation; Class Order [CO 05/21] Clarification of requirement for the appointment of auditors by financial services licensees; Class Order [CO 05/611] Relief for providers of superannuation calculators; Class Order [CO 05/736] Low-value non-cash payment facilities; Class Order [CO 05/737] Loyalty schemes; Class Order [CO 05/738] Gift facilities; Class Order [CO 05/739] Road toll facilities; Class Order [CO 05/740] Prepaid mobile facilities; Class Order [CO 05/1243] Licensing relief for valuers providing valuations of shares in real estate companies; Class Order [CO 06/68] Conditional relief for foreign licensees from financial reporting and record keeping obligations.*]

Key terms

Note: In this guide, references to particular financial products have the same meaning as in the Corporations Act (eg “superannuation fund”).

RG 167.90 In this guide:

“AFS licence” means an Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services

Note: This is a definition contained in s761A.

“ASIC” means the Australian Securities and Investments Commission
 “authorised representative” of a licensee means a person authorised in accordance with s916A or 916B to provide a financial service or financial services on behalf of the licensee

Note: This is a definition contained in s761A.

“[CO 00/241]” (for example) means a reference to an ASIC class order (in this example numbered 00/241)

“Corporations Act” means the *Corporations Act 2001* as amended by the FSR Act and FSR Amendment Act, and includes regulations made for the purposes of the Act

“financial product” means generally a facility through which, or through the acquisition of which, a person does one or more of the following:

- (a) makes a financial investment (see s763B);
- (b) manages financial risk (see s763C);
- (c) makes non-cash payments (see s763D)

Note: See Div 3 of Part 7.1 for the exact definition.

“Financial Services Guide” means a document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Part 7.7

Note: See s761A for the exact definition.

“FSR Act” means the *Financial Services Reform Act 2001*

Note: The provisions contained in Schedule 1 formed part of the Corporations Act from 11 March 2002. Schedule 1 contains the financial services licensing provisions under Parts 7.6 to 7.8 and the financial product disclosure provisions under Part 7.9.

“FSR Amendment Act” means the *Financial Services Reform Amendment Act 2003*

“FSR commencement” means 11 March 2002, the date fixed by proclamation under s2(2) of the FSR Act on which Schedule 1 of the FSR Act commenced

Note: Schedule 1 contains the financial services licensing provisions under Parts 7.6 to 7.8 and the financial product disclosure provisions under Part 7.9.

“FSR regime” means the financial services licensing, conduct and product disclosure regime under the Corporations Act (as amended by the FSR Act and the FSR Amendment Act)

“general advice” means financial product advice that is not personal advice.

Note: This is a definition contained in s766B(4).

“general advice warning” means the warning required by s949A(2)

“generic financial calculator” means a facility, device, table or other thing that:

- (a) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
- (b) does *not* advertise or promote one or more specific financial products.

“IABA” means the *Insurance (Agents and Brokers) Act 1984* (now repealed) and includes regulations made for the purposes of that Act

“ISC” means the Insurance and Superannuation Commission

“licensee” means a person who holds an AFS licence

“licensing provisions” means Parts 7.6 to 7.8 (other than Div 4 and Div 8 of Part 7.6 and Div 8 of Part 7.8) of the Corporations Act

“old Corporations Act” means the *Corporations Act 2001* as in force immediately before FSR commencement (ie 11 March 2002)

“old regulatory regime” means (as applicable) the relevant old legislation and relevant industry codes, standards or practices (however enforceable at law) related to the provision of financial services and applying immediately before FSR commencement (ie 11 March 2002)

“Part 7.9” (for example) means a Part of the Corporations Act after FSR commencement (ie 11 March 2002) (in this example numbered 7.9), unless a contrary intention appears

“PDS” means a Product Disclosure Statement

“PDS requirements” means the requirements set out in Div 2 of Part 7.9 and related regulations

“[PF 186]” (for example) means an ASIC pro forma (in this example numbered 186)

“pre-FSR Act policies” means ASIC’s policy-related publications that existed as at FSR commencement (ie 11 March 2002)

“Product Disclosure Statement” means a document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Part 7.9

Note: See s761A for the exact definition.

“product-specific calculator” means a facility, device, table or other thing that:

- (a) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
- (b) advertises or promotes one or more specific financial products.

“reg 7.6.04” (for example) means a regulation of the *Corporations Regulations 2001* (in this example numbered 7.6.04)

“regulations” means the *Corporations Regulations 2001*

“relevant old legislation” means the law applying immediately before FSR commencement related to the provision of financial services as defined for the purposes of s1430

“representative” of a licensee means:

- (a) an authorised representative of the licensee; or
- (b) an employee or director of the licensee; or
- (c) an employee or director of a related body corporate of the licensee; or
- (d) any other person acting on behalf of the licensee

Note: This is a definition contained in s910A.

“retail client” means a client defined as such under s761G and Chapter 7, Part 7.1, Div 2 of the regulations

“RG 136” (for example) means a regulatory guide (in this example numbered 136)

“risk profiler” means a tool that, based on the user’s answers to a series of questions about investment preferences, assesses the user’s attitude to risk

“s912A” (for example) means a provision of the Corporations Act after FSR commencement (ie 11 March 2002) (in this example numbered 912A), unless a contrary intention appears

“SOA” means a Statement of Advice

“SOAA” means a Statement of Additional Advice

“Statement of Advice” (SOA) means a document that must be given to a retail client in relation to the provision of personal advice in accordance with Subdivisions C and D of Div 3 of Part 7.7

Note: See s761A for the exact definition.

“Statement of Additional Advice” (SOAA) means a document that can be given to a retail client instead of an SOA in certain circumstances in relation to the provision of personal advice in accordance with [CO 04/1556]. An SOAA is a document that incorporates by reference information required under Part 7.7 from another document which has previously been provided to the client

“transitional provisions” means Part 10.2 of the Corporations Act (as amended by the *Financial Services Reform (Consequential Provisions) Act 2001*) and includes regulations made for the purposes of that Part

“two-year transitional period” means a period of two years starting from FSR commencement (ie from 11 March 2002 to 10 March 2004).

Related information

RG 167.91

Headnotes

Australian financial services licence, licensing and conduct relief, disclosure requirements, organisational capacities, responsible entities, custodians and depositories, transition, good advice, life insurance, general insurance, superannuation

Class orders and pro formas

(See Schedules 1 and 2)

[PF 209] *Australian Financial Services Licence conditions*

[CO 02/1013] *Sydney Futures Exchange Limited — associate participants*

[CO 02/1022] *Sydney Futures Exchange Limited — operation of managed discretionary accounts by associate participants*

[CO 02/1073] *Financial Services Guide – Dealing in underlying investments by responsible entities*

[CO 02/1074] *Financial Services Guide – Dealing in underlying investments by superannuation trustees*

[CO 02/1084] *AFS licence numbers in prospectuses*

[CO 02/1145] *Declaration regarding overseas student health insurance*

[CO 03/184] *Employee share schemes*

[CO 03/578] *Financial Services Guide exemption for market making services on a licensed market*

[CO 03/606] *Financial product advice — exempt documents*

[CO 03/653] *Pooled development funds: Licensing exemption for dealing in, and general advice on, own securities*

[CO 03/705] *Non-cash payment facilities — licensing exemption*

[CO 03/748] *Reporting requirements under s989B*

[CO 03/823] *Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions*

[CO 03/824] *Licensing relief for financial service providers with limited connection to Australia dealing with wholesale clients*

[CO 03/825] *Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside of Australia*

- [CO 03/826] *Market related records: Australian financial services licensees dealing on overseas markets*
- [CO 03/911] *Licensing relief for self-dealers who provide general product advice about own securities*
- [CO 03/1048] *Mortgage offset accounts*
- [CO 03/1063] *Licensing relief for financial counselling agencies*
- [CO 03/1094] *Law societies — professional indemnity scheme and fidelity funds*
- [CO 03/1095] *Law societies — statutory deposit accounts and public purpose funds*
- [CO 03/1096] *Actuaries*
- [CO 03/1098] *Securitisation special purpose vehicles*
- [CO 03/1099] *UK FSA regulated financial services providers*
- [CO 03/1100] *US SEC regulated financial service providers*
- [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers*
- [CO 03/1102] *Singapore MAS regulated financial service providers*
- [CO 03/1103] *Hong Kong SFC regulated financial service providers*
- [CO 03/1110] *Prime brokerage services: relief from obligation to hold client property on trust*
- [CO 03/1111] *Prime brokerage services: relief from the obligation to hold scheme property separately*
- [CO 03/1112] *Relief from obligation to hold client money on trust*
- [CO 04/150] *Wholly owned subsidiaries of professional investors to be treated as wholesale clients*
- [CO 04/443] *Licensing relief for offshore participants in the market operated by Eurex Frankfurt AG*
- [CO 04/444] *Licensing relief for offshore participants in the market operated by Chicago Mercantile Exchange Inc.*
- [CO 04/526] *Foreign collective investment schemes*
- [CO 04/673] *Insurance brokers trust accounts under s981B*
- [CO 04/829] *US CFTC regulated financial service providers*
- [CO 04/909] *Agency banking*
- [CO 04/1055] *Information in a Financial Services Guide given in a time critical situation;*
- [CO 04/1063] *Section 981B money in cash common funds*
- [CO 04/1313] *Germany BaFin regulated financial service providers*

- [CO 04/1430] *Dollar disclosure: Unknown facts or circumstances*
- [CO 04/1433] *Dollar disclosure: Non-monetary benefits*
- [CO 04/1434] *Dollar disclosure: Transitional relief*
- [CO 04/1435] *Dollar disclosure: Amounts denominated in a foreign currency*
- [CO 041526] *Securitisation special purpose vehicles*
- [CO 04/1556] *Statements of Additional Advice*
- [CO 04/1570] *Licensing relief for some overseas dealers or market makers in derivatives and foreign exchange*
- [CO 04/1571] *Secondary services: General financial services guide relief*
- [CO 04/1572] *Secondary services: Financial Services Guide relief for experts*
- [CO 04/1573] *Secondary services: Financial Services Guide relief for arrangers acting under an intermediary authorisation*
- [CO 05/21] *Clarification of requirement for the appointment of auditors by financial services licensees*
- [CO 05/736] *Low-value non-cash payment facilities*
- [CO 05/737] *Loyalty schemes*
- [CO 05/738] *Gift facilities*
- [CO 05/739] *Road toll facilities*
- [CO 05/740] *Prepaid mobile facilities*
- [CO 05/835] *General advice in advertising*
- [CO 05/1070] *General insurance distributors*
- [CO 05/1195] *Simplified warning for oral general advice*
- [CO 05/1122] *Relief for providers of generic calculators*
- [CO 05/1230] *Credit rating agencies*
- [CO 05/1243] *Licensing relief for valuers providing valuations of shares in real estate companies*
- [CO 06/68] *Conditional relief for foreign licensees from financial reporting and record keeping obligations*

Regulatory guides

(See also Schedule 1)

RG 1–RG 3 *AFS Licensing Kit*

RG 36 *Licensing: Financial product advice and dealing*

RG 38 *The hawking prohibitions*

- RG 51 *Applications for relief*
- RG 53 *ASIC guide on the use of past performance in promotional material*
- RG 67 *Real estate companies*
- RG 79 *Managing conflicts of interest – An ASIC guide for research report providers*
- RG 108 *No action letters*
- RG 130 *Managed investments: Licensing*
- RG 132 *Managed investments: Compliance plans*
- RG 133 *Managed investments: Scheme property arrangements*
- RG 144 *Mortgage investment schemes*
- RG 146 *Licensing: Training of financial product advisers*
- RG 148 *Investor directed portfolio services*
- RG 164 *Licensing: Organisational capacities*
- RG 165 *Licensing: Internal and external dispute resolution*
- RG 166 *Licensing: Financial requirements*
- RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*
- RG 169 *Disclosure: Discretionary powers*
- RG 175 *Licensing: Financial product advisers — conduct and disclosure*
- RG 176 *Licensing: Discretionary powers — Wholesale foreign financial services providers*
- RG 177 *Australian market licenses: overseas operators*
- RG 178 *Foreign collective investment schemes*
- RG 179 *Managed discretionary account services*
- RG 181 *Licensing: Managing conflicts of interest*
- RG 182 *Dollar disclosure*
- RG 183 *Approval of financial services sector codes of conduct*
- RG 185 *Non-cash payment facilities*

Legislation

Corporations Act 2001, Chapter 7, Part 7.2, Div 2 and 4, Parts 7.6–7.8, 10.2, s761A, 761G, 766B, 766E, 786(2)(d), 910A, , 912A, 912B, 913B, 916A, 916B, 926A, 945A, 945B, , 949A, 951B, 992B, , 1430, 7.3.11, 7.6.02AA, 10.2.44; *Financial Services Reform Act 2001*, s2(2); *Corporations Law*, s1451; *Insurance (Agents and Brokers) Act 1984*, s41A

Media and information releases

- [MR 03/388] *ASIC grants relief in relation to mortgage offset accounts*
- [IR 02/07] *Publication of the imposition of special licence conditions*
- [IR 02/19] *Sydney Futures Exchange associate participant class order relief*
- [IR 03/14] *Policy Statement 49: Employee share schemes*
- [IR 03/16] *ASIC regulation of promissory notes*
- [IR 03/17] *Interim approach for regulation of mutual risk products*
- [IR 03/20] *ASIC class order exempts issuers of certain documents from requirements to hold AFSL*
- [IR 03/22] *Policy Statement 176: Discretionary powers — wholesale foreign financial services providers*
- [IR 03/23] *Reporting requirements for AFS licensees who are individuals*
- [IR 03/28] *ASIC provides limited relief for certain foreign financial services*
- [IR 03/36] *ASIC gives limited class order relief for general advice in offer documents provided to wholesale clients*
- [IR 03/39] *ASIC grants exemption to financial counselling agencies*
- [IR 03/41] *ASIC issues licensing relief for certain wholesale foreign financial services providers*
- [IR 04/04] *Practical guidance for wholesale foreign financial services providers seeking licensing relief*
- [IR 04/08] *ASIC policy statement: managed discretionary account services*
- [IR 04/09] *ASIC relief to allow mixed money to be paid into insurance brokers' s981B trust accounts*
- [IR 04/11] *ASIC's approach to the regulation of financial services: breach notification and disclosure*
- [IR 04/12] *ASIC clarifies category of wholesale clients*
- [IR 04/18] *ASIC grants relief for debt factoring arrangements*
- [IR 04/20] *ASIC releases new policy on foreign collective investment schemes*
- [IR 04/19] *Compliance with ASIC Regulatory Guide 179: Managed discretionary account services*
- [IR 04/32] *ASIC provides relief for payments into insurance brokers section 981B accounts*
- [IR 04/35] *ASIC provides relief for agency banking services*

- [IR 04/41] *ASIC proposes ongoing licensing relief for securitisation special purposes vehicles*
- [IR 04/42] *ASIC issues conflicts of management policy*
- [IR 04/45] *Operators of managed account services — apply for your licence authorisation*
- [IR 04/47] *ASIC provides relief for client money held in cash common funds*
- [IR 04/67] *ASIC issues dollar disclosure policy*
- [IR 04/69] *ASIC clarifies relief to assist charities raise funds*
- [IR 04/72] *ASIC issues report on recent relief applications from financial service providers*
- [IR 04/75] *ASIC refines relief allowing Statements of Additional Advice*
- [IR 04/78] *ASIC grants relief for secondary financial service providers*
- [IR 05/01] *ASIC issues licensing relief for securitisation special purpose vehicles*
- [IR 05/02] *ASIC issues licensing relief for some overseas dealers or market makers in derivatives and foreign exchange contracts*
- [IR 05/17] *ASIC promotes tailored financial services guides*
- [IR 05/47] *ASIC grants relief for advertising by product issuers*
- [IR 05/59] *ASIC offers general insurance dealers choice on how to appoint their distributors*
- [IR 05/60] *ASIC adopts a flexible approach to the regulation of non-cash payment facilities*
- [IR 05/62] *ASIC announces simpler warnings for oral general advice*
- [IR 05/63] *ASIC provides ongoing licensing relief for credit rating agencies*
- [IR 05/64] *ASIC releases policy on calculators*