



ASIC

Australian Securities & Investments Commission

## REGULATORY GUIDE 183

# Approval of financial services sector codes of conduct

## Chapter 7 — Financial services and markets

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*From 5 July 2007, this document may be referred to as Regulatory Guide 183 (RG 183) or Policy Statement 183 (PS 183). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 183.1) or their policy statement number (e.g. PS 183.1).*

## What this guide is about

RG 183.1 This guide gives guidance about how and when ASIC will approve financial services sector codes of conduct under s1101A of the *Corporations Act 2001* (the Act).

RG 183.2 It gives an overview of the role of codes and ASIC approval, and a code approval checklist

*see RG 183.3–RG 183.9.*

It also sets out:

**A** our approach to approving financial sector codes, including what we will treat as a code for the purposes of approval and the circumstances in which approval might be sought

*see RG 183.10–RG 183.25*

**B** the statutory criteria for code approval, and how we will interpret and apply these criteria

*see RG 183.26–RG 183.42*

- C** the other relevant criteria that we will consider when approving a code, and how we will interpret and apply these criteria  
*see RG 183.43–RG 183.81*
  
- D** how to apply for approval of a code, including how a code can retain its approval status and when code approvals will be revoked  
*see RG 183.82–RG 183.108*

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## Overview of this guide

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### The role of codes and ASIC approval

RG 183.3 Industry codes of conduct play an important part in how financial products and services are regulated in Australia. Where they enjoy the support and commitment of the sponsoring industries, codes can deliver real benefits to both consumers and subscribers.

RG 183.4 We believe that codes sit at the apex of industry self-regulatory initiatives. To us, a code is essentially a set of enforceable rules that sets out a progressive model of conduct and disclosure for industry members that are signed up. Codes should therefore improve consumer confidence in a particular industry or industries.

RG 183.5 We believe that the primary role of a financial services sector code is to raise standards and to complement the legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers. We expect an effective code to do at least one of the following:

- (a) address specific industry issues and consumer problems not covered by legislation;
- (b) elaborate upon legislation to deliver additional benefits to consumers; and/or
- (c) clarify what needs to be done from the perspective of a particular industry or practice or product to comply with legislation.

RG 183.6 It is not mandatory for any industry in the financial services sector to develop a code. Where a code exists, that code does not have to be approved by ASIC. However, where approval by ASIC is sought and obtained, it will be a signal to consumers that this is a code they can have confidence in. An approved code will respond to identified and emerging consumer issues and will deliver substantial benefits to consumers.

RG 183.7 ASIC approval of any code is not guaranteed. It is up to the code applicant to establish how the code meets the approval requirements.

RG 183.8 Further, ASIC approval must be continuous. A code (including any amendments) must continue to comply with the criteria set out in this guide if an approval, once granted, is to remain in place. An approved code will be a living document that is responsive to emerging industry and consumer issues.

## Code approval checklist

RG 183.9

Approval criteria	Reference
Freestanding and written in plain language	RG 183.99 & RG 183.56
Comprehensive body of rules (not single issue)	RG 183.13 & RG 183.23
Enforceable against subscribers	RG 183.13–RG 183.15
Meets the statutory criteria	RG 183.26–RG 183.35
Consultative process for code development	RG 183.50–RG 183.55
Effective and independent code administration	RG 183.73–RG 183.75
Compliance is monitored and enforced	RG 183.76–RG 183.78
Appropriate remedies and sanctions	RG 183.67–RG 183.72
Code content addresses stakeholder issues	RG 183.56–RG 183.61
Code is adequately promoted	RG 183.75–RG 183.77
Mandatory 3 year review of code	RG 183.79–RG 183.81

## **A Our approach to approving codes**

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### **Our policy**

#### ***What codes can ASIC approve?***

RG 183.10 ASIC can approve industry codes of conduct (codes) that relate to any aspect of the activities of persons for which it has a regulatory responsibility: s1101A. This includes activities of:

- (a) financial services licensees;
- (b) authorised representatives of financial services licensees; or
- (c) issuers of financial products.

RG 183.11 For the purposes of approving codes, ASIC's regulatory responsibility includes:

- (a) the licensing, conduct and disclosure obligations in Chapter 7 of the Act;
- (b) the consumer protection provisions in Part 2, Division 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act); and
- (c) the obligations set out in the *Insurance Contracts Act 1984*.

RG 183.12 We take the view that ASIC can approve a code that also deals with matters other than those described in RG 183.10. For example, a code may cover the activities of entities that are clearly within ASIC's jurisdiction, such as deposit taking, as well as other activities, such as compliance with privacy obligations. The fact that a particular code deals with both types of activities would not prevent us approving it.

Note: For information on consulting with other regulators about a code approval application, see RG 183.87.

#### ***What do we consider to be a code?***

RG 183.13 We consider a code to be a comprehensive body of rules that sets enforceable standards across an industry (or part of an industry), and delivers measurable consumer benefits. As such, a code should satisfy the following criteria:

- (a) the rules contained in the code must be binding upon (and enforceable against) code subscribers through contractual arrangements;

- (b) the code must be developed and reviewed in a transparent manner which involves consulting with relevant stakeholders including consumer representatives; and
- (c) the code must have effective administration and compliance mechanisms.

RG 183.14 We will not consider self-regulatory arrangements that do not have these characteristics to be ‘codes’ for the purposes of our approval power. These criteria are ‘threshold tests’ that an applicant must satisfy before we will formally consider an application for approval.

### Enforcing codes

RG 183.15 Enforceability of a code is one of the key threshold approval criteria. It is essential that code breaches can be dealt with effectively and independently. This requires that:

- (a) members must agree to be contractually bound by the code (including by any amendments to the code over time);
- (b) there is an independent body that is empowered to administer and enforce the code, including imposing any appropriate sanctions;
- (c) the code provisions provide that consumers have access to internal dispute resolution (IDR) processes and an appropriate external dispute resolution (EDR) scheme for any code breaches resulting in direct financial loss (see RG 183.62–RG 183.68); and
- (d) there is broad standing to complain about any other code breach to the independent body.

Note: For more information about the role and responsibilities of the code administration body, see RG 183.73–RG 183.75.

## Underlying principles

RG 183.16 Industry codes of conduct play an important part in how financial products and services are regulated in Australia. Where they enjoy the support and commitment of the sponsoring industries, codes can deliver real benefits to both consumers and subscribers.

RG 183.17 We believe that codes sit at the apex of industry self-regulatory initiatives. To us, a code is essentially a set of enforceable rules that sets out a progressive model of conduct and disclosure for industry members that are signed up. Codes should therefore improve consumer confidence in a particular industry or industries.

RG 183.18 We believe that the primary role of a financial services sector code is to raise standards and to complement the legislative

requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers. We expect an effective code to do at least one of the following:

- (a) address specific industry issues and consumer problems not covered by legislation;
- (b) elaborate upon legislation to deliver additional benefits to consumers; and/or
- (c) clarify what needs to be done from the perspective of a particular industry or practice or product to comply with legislation.

## **Explanation**

### ***What codes can ASIC approve?***

RG 183.19 We expect that the primary subscribers to an approved code will be licensees, their representatives and/or product issuers.

RG 183.20 However, we may still consider approving a code if it is open to membership by others or if the code touches upon issues that are not directly within our regulatory responsibility. For example, a code may only deliver substantial consumer benefits if its scope also extends to third parties or intermediaries that are not directly regulated by us, but that do business with the entities described in RG 183.10.

RG 183.21 We will determine whether a code is appropriate for ASIC approval on a case-by-case basis and, if necessary, in discussion with other key stakeholders including industry and consumer representatives and other government agencies and regulators.

### ***What do we consider to be a code?***

RG 183.22 In our view, there is an important distinction between industry codes and other self-regulatory arrangements. We consider that effective codes should deliver stronger consumer protection outcomes because:

- (a) they are enforceable;
- (b) they are developed in a consultative fashion so as to address a broad range of issues of real concern to consumers;
- (c) they set standards that elaborate on, exceed or clarify the law;
- (d) compliance with their standards is required to be monitored; and
- (e) remedies and sanctions are available for breaches of the code.

RG 183.23 While it is open to industry to develop any range of self-regulatory initiatives, our approach to what we will treat as

a 'code' is designed to ensure that the term is reserved for self-regulatory tools with these key features. The criteria for codes in this policy are therefore designed to exclude single-issue industry guidelines or other self-regulatory arrangements that lack adequate compliance, administration and review features.

### Enforcing codes

RG 183.24 Experience has shown that community confidence in the effectiveness of industry codes is largely reliant on consumers being able to seek redress under the code and, further, that the code is seen to be enforced against non-compliant subscribers. For this to happen, subscribing members must first agree to be bound by the terms of the code.

RG 183.25 In most cases, members will incorporate their agreement to abide by a code by contracting directly with the independent body that has the power to administer and enforce that code. In some cases, code subscribers will also incorporate their agreement to abide by a code in individual contracts with consumers (e.g. written directly into the terms and conditions of a particular product). We strongly encourage code sponsors to consider this approach.



## B What are the statutory criteria?

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### Our policy

RG 183.26 If we are satisfied that an applicant's code meets the threshold tests in RG 183.13, we will consider whether it meets the statutory code approval criteria set out in s1101A(3) of the Act.

RG 183.27 Under these criteria, ASIC may only approve a code of conduct where:

- (a) the code (or the code as proposed to be varied, in the case of amendments) is not inconsistent with the Corporations Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities (see RG 183.28–RG 183.30); and
- (b) ASIC considers that it is appropriate to approve the code given:
  - (i) the ability of the applicant to ensure that persons who claim to comply with the code will comply with the code (see RG 183.31); and
  - (ii) the desirability of codes of conduct being harmonised to the greatest extent possible (see RG 183.32–RG 183.35).

### **Not inconsistent**

RG 183.28 While a code must do more than restate the law (and indeed should offer consumers benefits that exist beyond the protection afforded by law), it must not be inconsistent with the Act or other relevant Commonwealth law for which ASIC is responsible. For example, where compliance with a code provision would make it impossible to comply with the law, then we will generally take the view that the code provision is inconsistent with the law.

*[Historical note: RG 183.28 amended 4/03/2005 by adding the last sentence.]*

RG 183.29 In some cases, a code may provide for a higher standard of conduct or practice than that required by legislation. For example, a code provision may specify a longer cooling-off period, a shorter response time, or more prescriptive pre-contractual disclosure than is otherwise provided for in the legislation. As long as compliance with the code provision would not make it impossible to comply with the law, then we will generally take the view that there is no inconsistency.

*[Historical note: RG 183.29 was replaced 4/03/2005.]*

RG 183.29 formerly read: 'We will generally take the view that no such inconsistency exists where:

- (a) compliance with a code provision would make it impossible to comply with the law then the code provision is inconsistent with the law, however,
- (b) a code provision:
  - (i) provides for a higher standard of conduct or practice than that required by legislation; and
  - (ii) compliance with the code would not be inconsistent with the legislation.

For example, a code may provide for a longer cooling-off period, a shorter response time, or more prescriptive pre-contractual disclosure than is otherwise provided for in legislation.’]

RG 183.30 In determining whether a code meets the not inconsistent test, we will specifically consider whether the provisions of the code are consistent with any relevant ASIC guides, instruments and guidance that expand upon the obligations that code subscribers are subject to.

### ***Compliance***

RG 183.31 The success of any code in protecting consumers and raising standards will depend on ensuring that code subscribers comply with the provisions of the code, and that there are appropriate remedies and sanctions for non-compliance. Under our policy, the code administration body is responsible for monitoring and reporting on compliance with the code: see also RG 183.75–RG 183.77.

### ***Harmonisation***

RG 183.32 We interpret the requirement for harmonisation as meaning that all approved codes should:

- (a) have certain characteristics (see Section A); and
- (b) meet certain standards in terms of development, content, enforcement, administration and review (see Section C).

RG 183.33 More broadly, we believe that it is normally undesirable to have a number of different codes covering substantially the same subject area. We will therefore encourage those industry representatives responsible for codes to allow all relevant industry participants and service providers to sign up to the code. We also expect the code applicant to be able to demonstrate that its membership covers a majority of participants in the relevant sector.

RG 183.34 Where there is more than one code covering the same area, any approval process will focus on ensuring that those codes are harmonised to the greatest extent possible. We will, however, consider approving a code that covers substantially the same subject area as an existing code, but which sets higher standards.

RG 183.35 While this may result in a potential competitive advantage for subscribers to the existing code, we do not interpret s1101A(3)(b)(ii) as preventing the code with the higher standards from being approved.

## Underlying principles

RG 183.36 To be approved by ASIC, a code must meet the statutory code approval criteria set out in s1101A(3) of the Act.

## Explanation

### ***Not inconsistent***

RG 183.37 The not inconsistent requirement does not prevent a code from:

- (a) containing higher standards than those contained in legislation; or
- (b) dealing with an issue that is not covered by legislation.

RG 183.38 In fact, this would defeat the role of codes to improve industry standards as recognised in the Explanatory Memorandum, which states at paragraphs 17.16-17 that:

*‘Codes may also be developed that establish best practice in areas not covered by the Act, but where industry and consumers consider the adoption by industry participants of consistent procedures and standards will facilitate business and enhance services offered to consumers.’*

*The Government considers that existing industry codes . . . will continue to play an important role in fleshing out best practice standards for compliance with the proposed new regime.’*

### **Compliance**

RG 183.39 Without formal independent monitoring mechanisms and appropriate access to remedies, breaches of a code may go undetected or uncompensated, and there may be little incentive for subscribers to continue to comply.

RG 183.40 It is also important that people and organisations other than affected consumers are able to make complaints about code breaches. Bodies such as consumer organisations and financial services regulators may be better placed than individual consumers in monitoring compliance with codes, and thus better able to promote consumer confidence in them.

### **Harmonisation**

RG 183.41 Harmonisation of codes can certainly be enhanced if all approved codes meet certain minimum standards. However, the more codes there are covering the same issues or functions:

- (a) the more difficult it will be to achieve harmonisation;

- (b) the more confusing it will be for consumers; and
- (c) the more costly it will be for industry to support a range of administration and compliance systems.

This will normally be inconsistent with the intent of the legislation and is undesirable.

RG 183.42 We will therefore encourage those industry representatives responsible for codes to allow all relevant service providers to subscribe.

## C What are the other relevant criteria?

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### Our policy

RG 183.43 When deciding whether or not to approve a code, ASIC may also consider any other matters that we think are relevant in addition to the specific statutory criteria in Section B: s1101A(3)(b).

RG 183.44 Other matters we will consider when exercising our codes approvals power include:

- (a) *development*—whether there has been an appropriate process for developing the code (see RG 183.50–RG 183.55);
- (b) *content*—whether the code contains plain language provisions that deal with the code’s scope, objectives and core rules (see RG 183.56–RG 183.61);
- (c) *enforceability*—whether the code provides for adequate dispute resolution procedures, remedies and sanctions (see RG 183.62–RG 183.72);
- (d) *administration*—whether the code has effective arrangements for monitoring and reporting on compliance (see RG 183.73–RG 183.78); and
- (e) *review*—that the code provides for regular, independent reviews at intervals of not more than 3 years (see RG 183.79–RG 183.81).

RG 183.45 We also reserve the right to consider any other issues that may be relevant to a particular application.

### Underlying principles

RG 183.46 Codes come in many forms, and our policy is intended to apply to codes for both large and small sectors. It has been designed to allow code designers a degree of flexibility while ensuring that the key high-level features of effective codes are met.

RG 183.47 In determining the additional approval criteria, we have taken account of the regulatory objectives set down in s1 of the ASIC Act. These require ASIC to:

- (a) promote the confident and informed participation of consumers in financial markets; and
- (b) maintain, facilitate and improve the performance and efficiency of the financial system and the entities within it.

RG 183.48 We have also considered the primary objectives of Chapter 7 of the Act, which seek, amongst other things, to promote:

- (a) consumer confidence in using financial services; and
- (b) the provision of fair, honest and professional services.

RG 183.49 In addition we have been guided by the growing body of work about effective self-regulation and, in particular, what makes for a high quality code of conduct.

## **Explanation**

### ***Development***

RG 183.50 We believe that there are certain steps that should be followed in developing a code. These will increase the likelihood that the code enjoys broad stakeholder support, and will also assist in identifying what the core rules of the code should cover.

RG 183.51 These steps are:

- (a) identifying at the outset all relevant stakeholders, including affected consumers, relevant community and consumer groups, industry participants and their peak bodies, and relevant regulators and government departments;
- (b) effectively consulting with all stakeholders to identify the issues and debate appropriate responses. For example, this may include obtaining information about consumer complaints from a variety of sources including internal and external dispute resolution complaints data;
- (c) adopting transparent procedures such as issuing a discussion paper, recommendations and/or draft code for public consultation purposes. In most cases, it will be necessary to appoint an independent party to conduct public consultations and/or to make public recommendations about the code;
- (d) having early and appropriate involvement of ASIC and other relevant regulators in the development and consultative process;
- (e) assessing whether a code actually provides the best option to address the identified problems; and
- (f) resolving what is in (and out) of the code without bias towards any group of stakeholders.

RG 183.52 This last objective can be demonstrated by processes that give due consideration to different stakeholder views. It may be necessary, for example, to conduct stakeholder roundtables to find mutually acceptable solutions as to how the code might respond to identified consumer and industry issues.

RG 183.53 The processes followed by industry in developing a new code (and also for reviewing an existing code) are extremely important in determining the effectiveness of the final code and the degree of confidence in it.

RG 183.54 If the steps in RG 183.51 are not followed, there is a risk that the code will not be as effective as it could be and that it will not enjoy the confidence of those it is designed to benefit. This is recognised in paragraph 17.17 of the Revised Explanatory Memorandum, which states that:

*'It is expected that new and revised codes will be developed by industry in conjunction with ASIC and with consumer organisations.'*

RG 183.55 Early involvement by ASIC in any development or review process is important. It means we should be able to deal with resulting applications for approval more effectively, because we will be familiar with the content and stakeholder issues and the circumstances in which the code has been developed.

### **Content**

RG 183.56 As a starting point, an approved code must contain plain language provisions that clearly describe what the code is about. We will consider whether the code adequately addresses three key elements:

- (a) the objectives of the code;
- (b) the scope of the code; and
- (c) its core rules.

### **Objectives**

RG 183.57 A code should clearly set out the objectives it intends to meet. The standards in the code must do more than simply restate the law. For example, if a code objective is to reduce undesirable practices within an industry, the code should as far as possible describe how subscribers would actually avoid such practices.

### **Scope**

RG 183.58 The scope of the code must be clearly set out, including:

- (a) which industry sectors the code applies to;
- (b) which products and services it applies to; and
- (c) which consumers are covered.

We encourage applicants developing codes to extend code obligations beyond retail clients where this is appropriate.

## Core rules

RG 183.59 Our approval process will focus primarily on the adequacy of a code's core rules. Core rules are the substance of any code, and the main vehicle for improving industry practices. It is therefore essential that core rules address existing and/or emerging problems in the marketplace, rather than merely restating the law.

RG 183.60 Generally, we will be satisfied that all key problems and solutions have been identified where an applicant has complied with the steps outlined in RG 183.51. Applicants must then explain how these issues are addressed in the code.

RG 183.61 Where identified consumer concerns or undesirable practices are not addressed in the code, we will need a detailed explanation for why this is so. Possible explanations may include:

- (a) that an issue is best dealt with in another specified way, for example by law reform; or
- (b) that industry reasonably needs further time in order to develop or comply with a code obligation dealing with the issue; or
- (c) that there is evidence that the issue is not a real problem; or
- (d) that a cost-benefit analysis of the issue does not warrant it being covered in the code.

## ***Enforceability***

### Dispute resolution

RG 183.62 From a consumer's perspective, the ability to pursue a complaint about a breach of a code is an important test of how effective that code is.

RG 183.63 Under the dispute resolution provisions of the Act, licensees, unlicensed product issuers, and unlicensed secondary sellers that deal with retail clients are required to:

- (a) have IDR processes that comply with standards and requirements made or approved by ASIC; and
- (b) join an ASIC-approved EDR scheme (or schemes) to deal with complaints by retail clients.

RG 183.64 A code subscriber's IDR process should be able to consider all alleged breaches of the code, while the approved EDR schemes are explicitly required to take into account the operation of any relevant industry code in determining a consumer complaint.



RG 183.65 A code must reflect the existence and operation of these dispute resolution procedures. If a code covers firms or products that are not covered by the legislative dispute resolution requirements, it will need to provide adequate dispute resolution for these members. A code may also extend the IDR process and EDR scheme requirements beyond retail clients and/or set benchmarks or performance measures that exceed a subscriber's legislative obligations.

RG 183.66 We will also look to see that any person or organisation can raise concerns about non-compliance with the body responsible for administering the code.

### Remedies

RG 183.67 At a minimum, available remedies for code breaches should include:

- (a) compensation for any direct financial loss or damage caused to an individual by the breach of the code; and
- (b) the ability to make binding non-monetary orders obliging the subscriber to take (or not take) a particular course of action in order to resolve the breach.

RG 183.68 Remedies are important for ensuring that consumers are appropriately compensated when breaches occur and that the problem is fixed. A code subscriber's IDR process should be able to consider all alleged breaches of that code.

### Sanctions

RG 183.69 It is important that code subscribers are also subject to a range of sanctions for code breaches that go beyond providing compensation or rectification to individual consumers. These sanctions might include:

- (a) formal warnings;
- (b) public naming of the non-complying organisations;
- (c) corrective advertising orders;
- (d) fines; and/or
- (e) suspension or expulsion from the industry association.

Note: Suspension or expulsion may raise competition issues and many need to be authorised by the Australian Competition and Consumer Commission (ACCC).

RG 183.70 It is up to the code administration body to apply sanctions to code subscribers, having regard to the principles of procedural fairness.

RG 183.71 Sanctions have a different function to remedies and are important to:

- (a) act as a deterrent to breaching the code; and
- (b) ensure that consumers can have confidence in the code.

RG 183.72 Sanctions beyond any necessary remedial action will not need to be applied for every breach but they do need to be available, particularly to deal with wilful or repeated breaches.

### **Administration**

RG 183.73 A code applicant must establish that the code is effectively administered. For a code to work effectively, there needs to be an administrative body charged with overseeing the operation of the code that:

- (a) is independent of the industry or the industries that subscribe to the code and provide the body's funding (e.g. with a balance of industry representative and consumer representatives and an independent Chair); and
- (b) has adequate resources to fulfil its functions and to ensure that code objectives are not compromised.

RG 183.74 Without such a body, there is a risk that oversight of industry compliance with the code will be reduced, systemic problems will not be identified, and industry and consumer awareness of the code will be low.

RG 183.75 The code administration body should also be responsible for:

- (a) establishing appropriate data reporting and collection procedures;
- (b) monitoring compliance with the code;
- (c) publicly reporting annually on code compliance;
- (d) hearing complaints about breaches of the code and imposing sanctions and remedial measures as appropriate;
- (e) reporting systemic code breaches and instances of serious misconduct to ASIC;
- (f) recommending amendments to the code in response to emerging industry or consumer issues, or other issues identified in the monitoring process;
- (g) ensuring that the code is adequately promoted;

Note: Examples include providing training for community sector case workers about code provisions, ensuring that all subscribers have copies of the code at public offices, or communicating code information via call centre hold messages or in Product Disclosure Statements.

- (h) ensuring that their staff are appropriately trained about the code and that code subscribers make provision for employee training about the code; and
- (i) ensuring that there is a regular, independent review of the content and effectiveness of the code and its procedures (see RG 183.79–RG 183.81).

RG 183.76 The monitoring process overseen by the code administration body should also provide for some form of external or independent monitoring or auditing from time to time. Further, if the monitoring process relies on self-reporting by subscribing members, then the code administration body should consider selected shadow shopping exercises to verify code compliance.

RG 183.77 Where a code does not apply to a specific industry or sector, alternative types of arrangements may need to be made to effectively oversee the code. Even in these cases, however, we consider that there must still be mechanisms to ensure that:

- (a) the code is appropriately monitored, reported upon, reviewed and promoted;
- (b) systemic issues are identified;
- (c) staff are appropriately trained about the code; and
- (d) breaches are appropriately followed up.

RG 183.78 In rare instances, there may be a role for ASIC in administering and/or monitoring the code (e.g. where the code is a functional code that covers a range of industries and providers). We will consider this on a case-by-case basis.

### **Review**

RG 183.79 As a condition of approval, a code must be independently reviewed at intervals of no more than 3 years. Independent code reviews are essential to ensuring that a code remains current and continues to deliver real benefits to consumers and subscribers. Reviews provide an opportunity for stakeholders to provide feedback about how a code has operated in the past and how it might operate in the future.

RG 183.80 The role of the independent reviewer is to consider, without bias, the broad range of stakeholder views. The independent reviewer should base their review on the procedures described in RG 183.51 as the principles applying to code development also apply to ongoing code review.

RG 183.81 The review and implementation of its recommendations must be completed within a reasonable timeframe to retain confidence in the process. We will discuss this timeline with each applicant at the start of the review process, which will commence 3 years after the code was approved.

## **D How to obtain and retain approval**

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### **Our policy**

#### ***Getting a code approved***

RG 183.82 We will apply the approval criteria in this guide consistently to both new codes and to existing industry codes that have not yet been approved. However, if an existing code has been operating for more than 3 years without an independent review, we will require it to be independently reviewed before we will consider an application for approval.

RG 183.83 All applications for approval of new codes, existing codes or amendments to codes must follow the procedures set out in this section. Applications that do not meet the criteria in RG 183.92 or include all the required information in RG 183.93 will be rejected.

Note: For details of how to apply for approval, see RG 183.91–RG 183.94.

RG 185.84 In determining whether or not to approve a code, we may decide to make any approval conditional. When evaluating an existing code, we will look at the how the code has operated (and been amended) over time, and the extent of its continuing relevance, given market and other developments.

#### ***How long does approval last?***

RG 183.85 An ASIC-approved code will generally continue to enjoy its approved status unless:

- (a) amendments to an approved code (other than ‘purely technical’ amendments) have been implemented without ASIC agreement to a transition period or prior ASIC approval of the amendments (see RG 183.95–RG 183.98); or
- (b) approval has been expressly revoked by ASIC (see RG 183.101–RG 183.104).

RG 183.86 We will also consider investigative or enforcement action where misrepresentations are made about a code: see RG 183.107–RG 183.108.

#### ***Consulting other regulators about your code***

RG 183.87 Codes which apply to activities regulated by ASIC may also come within the jurisdiction of other regulators. For example, if a code contains any anti-competitive measures, it may need to be authorised by the Australian Competition and Consumer Commission (ACCC). If it contains privacy requirements, you should consult the

Office of the Federal Privacy Commissioner. The requirements of this policy are not intended to impact on the application of other regulatory regimes.

## **Underlying principles**

RG 183.88 It is not mandatory for any industry in the financial services sector to develop a code. Where a code exists, that code does not have to be approved by ASIC. However, where approval by ASIC is sought and obtained, it will be a signal to consumers that this is a code they can have confidence in.

RG 183.89 ASIC approval of any code is not guaranteed. It is up to the code applicant to establish how the code meets the approval requirements.

RG 183.90 Further, ASIC approval must be continuous. A code (including any amendments) must continue to comply with the criteria set out in this guide if an approval, once granted, is to remain in place. An approved code will be a living document that is responsive to emerging industry and consumer issues and will deliver substantial benefits to consumers.

## **Explanation**

### ***Getting a code approved***

RG 183.91 An application for code approval must be in writing and should be made by the relevant sponsoring industry group or groups. However, in some cases, an existing code administration body may apply.

RG 183.92 Before you apply for approval of a code, you should ensure that you can demonstrate that:

- (a) this is a code that ASIC can approve (see Section A); and
- (b) the code satisfies the statutory approval criteria (see Section B);  
and
- (c) the code satisfies the additional approval criteria (see Section C).

RG 183.93 The application for approval should also include (as appropriate):

- (a) details (and the outcomes) of any review conducted to precede the application, including evidence of broad consultation with stakeholders;

- (b) details of what changes were made to the code as a result of that review;
- (c) details of the history of the operation of the code;
- (d) details of code subscribers including samples of agreements that members are required to sign to affirm that they will comply with the code; and
- (e) all relevant code-related documents.

RG 183.94 We will reject a code submitted for approval that is not written in plain language. We will not redraft or rewrite a code. This is the job of the applicant.

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### **How to apply for approval**

Written applications for approval of a code of conduct should be sent to:

Executive Director  
Consumer Protection and International Directorate  
GPO Box 9827  
Brisbane QLD 4001

The application should:

- meet the criteria in RG 183.92
- include the information described in RG 183.93.

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

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### ***Amendments to an approved code***

RG 183.95 Generally, when a code is amended, we consider that it is no longer the same code as the one we approved. An approved code may need to be amended because of:

- (a) recommendations resulting from its regular, independent review;
- (b) the emergence of new consumer or market problems;
- (c) changes to the relevant laws that regulate the conduct of the industry participants who are members of the code;
- (d) expanded membership which involves the code covering a new sector of the industry; and/or
- (e) any other circumstance requiring procedural or technical change to the code.

RG 183.96 Because the amended code as a whole must continue to meet our approval criteria, all amendments resulting from the circumstances in RG 183.95 will need to be approved by us unless they are purely technical.

Note: A 'purely technical' change includes a change in the name of an organisation or statute referred to in a code. We will not need to approve such changes, but should be formally notified of them at the earliest opportunity.

RG 183.97 If we do not approve these amendments, the code will cease to be approved when the amendments come into effect. This is subject to any period agreed with ASIC to allow us time to adequately assess the impact of the amendments.

RG 183.98 When considering code amendments, we will focus on promoting consumer protection and market integrity without unduly interrupting existing industry arrangements or imposing increased costs.

### ***Our assessment of other code-related documents***

RG 183.99 The consumer commitments embedded in a code must be set out in a freestanding, plain language document. There may however, be other related documents which will be key to how the code is administered and operates in practice. These may include procedural documents setting out how the administration body handles issues of non-compliance, and the form of agreement by which firms agree to be bound by the code.

RG 183.100 While we will not seek to specifically approve these code-related documents, we will examine whether the code, when read in conjunction with them, meets the approval criteria set out in this paper. We will also consider if any of these related documents need to be made publicly available.

### ***When will we consider revoking an approval?***

RG 183.101 Codes are living documents. They must continue to be relevant in achieving their stated objectives to be considered as effective. As market conditions change, so codes can date. Similarly, as attention moves on and off specific industries, so too can an industry's level of commitment to a code vary.

RG 183.102 If ASIC approval of a code is to operate as a signal to consumers about the worth of a code, approval should not apply to codes that are not delivering significant benefits to consumers. Consumers need to be confident that a code that is being promoted as being approved by ASIC meets the criteria set out in this guide.



RG 183.103 It is therefore essential that we take appropriate action when we consider that a code no longer meets these criteria. We may revoke any code approval we have granted:

- (a) on application of the person or organisation that applied for its approval or on application of the code administrator;
- (b) where we are satisfied that the code no longer meets (or substantially meets) any of the statutory criteria in s1101A(3) of the Act (see Section B) or the other relevant criteria set out in Section C of this guide;
- (c) where a code no longer has any current members or ceases to have a sufficient number of members to be viable; or
- (d) where a 3-year review has not been conducted or where the review is not completed in accordance with RG 183.79–RG 183.81.

We will publicise code revocations through media release on our website at [www.asic.gov.au](http://www.asic.gov.au).

RG 183.104 When deciding whether to revoke approval of a code, we will balance the need to ensure consumer protection outcomes with the need to avoid unduly interrupting industry arrangements. We will apply the principles of procedural fairness in making our decision including giving the code sponsors an opportunity to state their case and, usually, an opportunity for corrective action.

### Monitoring

RG 183.105 One of the key ongoing obligations of code administrators and industry participants must be to ensure that their code continues to comply with the relevant approval criteria and any conditions of approval: see Sections B and C. Codes that are not effectively reviewed and amended will not last.

RG 183.106 From time to time, we will also monitor approved codes through a variety of means, including:

- (a) examining periodic reporting to us by the code administrator or compliance committee (e.g. annual reports and special reports dealing with systemic issues or serious breaches);
- (b) information derived through:
  - (i) liaison work with consumers and consumer bodies;
  - (ii) information received from external dispute resolution schemes;
  - (iii) industry consultations; or

- (iv) compliance monitoring and surveillance work and other intelligence sources; and
- (c) evidence of the results of the regular independent review of the code.

***Misrepresentations about codes***

RG 183.107 In some circumstances, representations about codes may result in a contravention of the ASIC Act and/or the prohibited conduct provisions of Part 7.10 of the Act (including the prohibitions against misleading or deceptive conduct, making false or misleading statements and engaging in dishonest conduct).

RG 183.108 These representations may include:

- (a) representing a code as having ASIC approval when it does not;
- (b) representing that an organisation complies with a code (whether ASIC-approved or not) when it does not; and
- (c) misrepresenting the effect of a code including what it means to be approved (e.g. by representing that ASIC has also endorsed the firms that subscribe to the code and/or the products or services that the code covers).

## Key terms

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**RG 183.109** In this guide, unless a contrary intention appears, terms have the following meaning.

**ACCC** The Australian Competition and Consumer Commission.

**Act** The *Corporations Act 2001* including regulations made for the purposes of the Act.

**ASIC** The Australian Securities and Investments Commission.

**ASIC Act** The *Australian Securities and Investments Commission Act 2001* and includes the regulations made under that Act.

**authorised representative** (of a financial services licensee)  
A person authorised by the licensee, in accordance with s916A or 916B to provide a financial service or financial services on behalf of the licensee.

**code of conduct** Has the same meaning as code of practice.

**dispute resolution provisions** Section 912A(1)(g), 912A(2) and 1017G of the Act.

**EDR scheme** An ASIC-approved external dispute resolution scheme.

**Explanatory Memorandum** The Explanatory Memorandum to the *Financial Services Reform Bill 2001*.

**financial services licensee** A person who holds an Australian financial services licence.

**FSR Act** The *Financial Services Reform Act 2001* (or the *Corporations Act 2001* as amended by the FSR Act).

**IDR process** An internal dispute resolution process that complies with standards and requirements made or approved by ASIC.

**issuer** (in relation to a financial product) Has a meaning affected by s761E of the Act.

**retail client** A client as given in s761G of the Act.

## Related information

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RG 183.110

### **Headnotes**

Codes approval; industry codes; statutory criteria, not inconsistent; compliance; harmonisation; codes development; content, scope; core rules; enforceability; internal and external dispute resolution; remedies; sanctions; code administration; code review; code monitoring; code amendments; revoking code approval; misrepresentations about codes.

### **Legislation**

Corporations Act Chapter 7 Part 7.1, Part 7.6, Part 7.9, Part 7.12 Div 2, s761E, 761G, s912A, 916A, 916 B, 1017G, s1101A, ASIC Act Part 2, Div 2, Insurance Contracts Act 1984.

### **Consultation papers**

CP 21 *Approval of codes* (June 2001)