



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 2

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

December 2009

### About this guide

This is a guide for applicants applying for an Australian financial services (AFS) licence or to vary their AFS licence.

- complete the AFS licence application form (FS01), or an application to vary an AFS licence (FS03); and
- prepare 'core' supporting proof documents.

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

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This version was issued on 7 December 2009 and is based on legislation and regulations as at 7 December 2009.

Previous versions:

- Superseded Regulatory Guide 2, rebadged as a regulatory guide July 2007, reissued November 2007, January 2008
- Superseded AFS Licensing Kit Part 2, issued February 2002 (version 1), updated October 2002 (version 2), April 2003 (version 3), October 2003 (version 4), March 2004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

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

# Contents

<b>Overview</b> .....	<b>4</b>
Starting your online application.....	4
How the FS01 application is structured .....	5
How the FS03 application is structured .....	6
Using the eLicensing system .....	7
<b>A Part A of the application: Applicant and AFS licence details .....</b>	<b>9</b>
A1 & A2: Applicant and contact details.....	9
A3 & A4: AFS licence authorisations .....	11
Financial services .....	12
Financial products.....	19
Authorisation to use certain terms .....	21
Other issues for market participants .....	23
A5: Business description .....	23
A6: Adding responsible managers (for variation applications) .....	26
<b>B Part B of the application: AFS licensee requirements.....</b>	<b>27</b>
B1 & B2: Organisational competence.....	28
B3: Compliance arrangements .....	31
B4: Representatives .....	33
B5: Adequacy of resources.....	34
B6: Dispute resolution.....	35
B7: Risk management .....	37
B8: Compensation and insurance arrangements .....	38
B9: Research and benefits .....	40
<b>C Part C of the application: Certain complex services or products ..</b>	<b>41</b>
<b>D Part D of the application: Making declarations and certifications ..</b>	<b>42</b>
<b>E Part E of the application: Core proofs .....</b>	<b>43</b>
What are the core proofs? .....	43
A5 Business Description core proof .....	45
People Proofs for each responsible manager .....	47
B1 Organisational Competence core proof .....	51
B5 Financial Statements and Financial Resources core proof.....	52
<b>Appendix 1: Sample proof—Business reference for a responsible manager (part of People Proofs) .....</b>	<b>58</b>
<b>Appendix 2: Sample proof—B1 Table of Organisational Competence..</b>	<b>64</b>
<b>Appendix 3: Sample proof—Cash needs requirement (part of B5 Financial Statements and Financial Resources) .....</b>	<b>70</b>
<b>Key terms .....</b>	<b>76</b>
<b>Related information.....</b>	<b>77</b>

## Overview

### Key points

The electronic AFS licence application (FS01) and licence variation application (FS03) are available from the ASIC website: see RG 2.1 and RG 2.15.

You will need to select a user name and password when you start your online application: see RG 2.3–RG 2.10 and RG 2.16–RG 2.17.

The form automatically tailors itself to your business so that you are only asked questions that might be relevant to you: see RG 2.11–RG 2.14.

Once you've started your application you can save and resume it as many times as you like before you finalise and submit it to us. You can also print off a copy of your draft application at any time: see RG 2.2 and RG 2.19–RG 2.26.

## Starting your online application

- RG 2.1 To find the online application (form FS01) on our website go to **www.asic.gov.au/afsl** and click on 'Start a new application for an AFS licence'. Before you start your application you must read the ASIC Electronic Lodgement Protocol and agree to be bound by its terms and conditions. This protocol covers your responsibilities and ours when you lodge documents with us electronically.
- RG 2.2 One of the benefits of applying online is that you can start your application, save it as a draft and resume it as many times as you like before you finalise and submit it to us. You can also print off a copy of your draft application at any time.

### ABN, ACN or ARBN

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

- (b) phone the Business Infoline on 13 28 66 to ask for a registration package; or
  - (c) speak to your tax agent.
- RG 2.5 If you are a corporate trustee of superannuation funds you should enter your ACN, even if the individual funds have ABNs attached to them.
- RG 2.6 If you are a foreign company operating in Australia and you don't have an ABN or ACN, you should enter your ARBN.
- RG 2.7 If you don't have an ABN, ACN or ARBN, you won't be able to apply for an AFS licence online. You will need to complete the paper pre-application form, FS05. You can download this from our website via [www.asic.gov.au/forms](http://www.asic.gov.au/forms).

### **Controlling access to your application**

- RG 2.8 The eLicensing system will ask you to select a user name and password so that you can control access to your online application. Your user name must have a minimum of 6 characters (all letters) and your password a minimum of 6 characters (including at least one numeric character). Both your user name and password are case-sensitive, so remember whether you have used upper or lower case.
- RG 2.9 The eLicensing system will also generate a reference number for your application and ask you to make a note of it. The security of your application reference number, user name and password is your responsibility.
- RG 2.10 You will need your user name, password and reference number to resume your application at a later time. If you forget your password you can get a new one from the system using your reference number and user name. However, if you forget your user name or reference number you won't be able to resume your application—you will need to start again.

## **How the FS01 application is structured**

- RG 2.11 The online application has five parts:
- (a) Part A is where you enter your details as the applicant and the details of a contact person, select the financial services you want to be authorised to provide and answer questions that give us a basic description of your business.
  - (b) Part B is where you will be asked questions that relate to the obligations you will have as an AFS licensee and your ability to meet them.

- (c) If you have selected complex financial services or products in Part A, the eLicensing system will trigger more detailed questions about those services or products in Part C.
  - (d) In Part D the eLicensing system will generate declarations and certifications based on your answers in Parts A and B (and C, if relevant). You will be signing these declarations when you sign a print-out of your application.
  - (e) Part E is where the system lists the core proofs you need to send with your application, as well as listing some other proofs. If we later ask you to provide additional proofs, these will generally be one or more of the other proofs listed in Part E.
- RG 2.12 The system tailors the application form to your business so that you are only asked questions about the financial services and products you are applying for. If you feel that any of the questions do not exactly fit your circumstances, you should still answer them as best you can.
- RG 2.13 If you want to see all of the possible questions in the application form, download the sample application on our website at [www.asic.gov.au/afsl](http://www.asic.gov.au/afsl) or click on a link to it when you are in your online application. Looking at the sample application is particularly useful if someone else is filling out your application for you.
- RG 2.14 The guidance in this guide (RG 2) generally follows the structure of the online application to make it easier for you to refer to this guide as you work your way through your online application. However, Section E of this guide only covers the core proofs you need to send us. For guidance on the additional proofs you may be asked to provide later, you need to refer to Part 3 of the AFS Licensing Kit, which is Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3).

## How the FS03 application is structured

- RG 2.15 The online application to vary an AFS licence (form FS03) follows the same five-part structure as the FS01 online application. To access it, go to the Licensees portal at [www.asic.gov.au/licensees](http://www.asic.gov.au/licensees). Before you use the Licensees portal you should click on 'How the Licensees portal works'.
- RG 2.16 To enter the Licensees portal you will need your AFS licence number and the user name and password you used when you applied for your AFS licence. If you have forgotten these or you need extra ones for staff, apply for them online via the Licensees portal.
- RG 2.17 When you start your variation application the eLicensing system will fill in the details of your current licence authorisations. You will need to work your

way through the various parts of the online application that relate to the variation you are asking for. When you apply to vary your licence you will also make declarations and certifications and be asked to provide proofs to support your application.

- RG 2.18 For more information about the process of applying to vary your AFS licence, read Section F of Part 1 (RG 1). To find out more about the various financial service and product authorisations you may want to add to your licence or the proofs you may need to provide, see the relevant sections of this guide (RG 2).

## Using the eLicensing system

- RG 2.19 Both the FS01 and FS03 online applications are designed so that you can't progress to the next screen until you have completed the screen you are on, although you can go back to a completed screen to amend it. Your application is automatically saved to the ASIC server every time you hit 'Next'. If you are disconnected from the internet or you close out of the application, you will have saved all information up until the question you were last entering.
- RG 2.20 If you want to know more about how the application works onscreen, including screen layout and browser requirements, go to **[www.asic.gov.au/afsl](http://www.asic.gov.au/afsl)** and click on 'How the AFS licence application works'.
- RG 2.21 If you experience technical problems when using the eLicensing system, read the 'technical FAQs' on **[www.asic.gov.au/afsl](http://www.asic.gov.au/afsl)**. You can also click on a link to them when you are working on your online application. If you are still having problems after reading the technical FAQs, call the ASIC Infoline on 1300 300 630.

### How to resume your online application

- RG 2.22 To resume your application for an AFS licence (FS01), go to **[www.asic.gov.au/afsl](http://www.asic.gov.au/afsl)** and click on 'Resume an application for an AFS licence'.
- RG 2.23 To resume your application to vary your AFS licence, enter the Licensees portal at **[www.asic.gov.au/licensees](http://www.asic.gov.au/licensees)** and select your FS03 application from your 'Work in progress' list.

### How to reapply using a copy of your original application

- RG 2.24 If your FS01 application is rejected at the pre-lodgement stage, we will send your application and proofs back to you and you will have to re-apply. We

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

- RG 2.25 You can re-apply using a copy of your original application so that you won't have to start again from scratch. You can make a copy by going to **www.asic.gov.au/afsl** and clicking on 'Resume an unfinished application for an AFS licence'. You will need your application reference number, user name and password to resume your initial application. Select 'Copy Application' from the left-hand menu and data from your original application will be copied to a new application with a new reference number.
- RG 2.26 If your FS03 application to vary your licence is rejected at the pre-lodgement stage, we will follow the same process and you will also be able to re-apply using a copy of your original application. To do this, go to the Licensees portal (you will need your licence number, user name and password to do this) and select your original FS03 variation application from the 'Forms Submitted' section. Select 'Copy Application' from the left-hand menu and data from your original variation application will be copied to a new variation application with a new application number.



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

### Key points

All applicants for an AFS licence must complete Part A of the application: see RG 2.27–RG 2.28.

Part A asks questions about you, your business and the financial services and products you want to provide: see RG 2.30–RG 2.140.

- RG 2.27 All applicants for an AFS licence must complete Part A of the online application. You will need to provide:
- (a) your details as the applicant for the AFS licence; as well as
  - (b) the details of a person we can contact during the application process and afterwards.
- RG 2.28 In Part A you will also be asked questions about:
- (a) the financial services and products you want to be authorised to provide under your licence; and
  - (b) your proposed business and how it will operate.
- RG 2.29 Throughout this guide we refer to particular sections of the *Corporations Act 2001* (Corporations Act). All section references are to the Corporations Act, unless otherwise stated. You can find a copy of the Corporations Act at [www.comlaw.gov.au](http://www.comlaw.gov.au).

## A1 & A2: Applicant and contact details

### Applicant details

- RG 2.30 You will need to select whether you are applying for an AFS licence as an individual, partnership, company, trustee of a trust or ‘other’ entity and fill in your entity name and details. If someone else is filling out the application for you, they need to fill in your entity name and the details that will appear on your AFS licence.
- RG 2.31 If you are an individual with a registered business name, you must apply as an individual at A1.1—you cannot apply for an AFS licence using your business name. Your AFS licence will be in your name as an individual. You should provide your business name at A1.5, however it will not appear on your AFS licence.

- RG 2.32 If you are a company, the name and details of your directors and secretary will be pre-filled from our public database when you enter your ABN or ACN.
- RG 2.33 If you are applying as a partnership, trustee of a trust or ‘other’ entity (i.e. not an individual or company), we may ask you to provide more information in an A1 additional proof (Entity Details). The additional proofs are explained in Part 3 (RG 3).
- RG 2.34 An AFS licence cannot be held by a trust, so if you are the trustee(s) of a trust, e.g. a family, business or private trust, you must apply in your own name(s) and not in the name of the trust. For example, you should apply in the name of ‘John Smith’ or ‘ABC Pty Ltd’ and not as ‘The Trustee of ABC Trust’.

### **If you operate under a business name**

- RG 2.35 Your business name must be registered under the law of the state or territory in which you operate. You are responsible for ensuring that your business name is not misleading and that it complies with the restrictions under the Corporations Act on using certain terms such as ‘stockbroker’, ‘futures broker’ and ‘insurance broker’. For more information on these restricted terms, see RG 2.103–RG 2.111.
- RG 2.36 If your business name is registered in more than one state or territory, you should identify which you consider to be your principal place of operation and only provide the details of registration in that state or territory. However, if you will be using more than one registered business name, you must provide details for each business name you will be using.

### **Applicant’s contact person**

#### **During the application process**

- RG 2.37 During the application process we will direct any questions and correspondence about your application to the contact person you nominate at A2.1. The contact person can be you (as the applicant), one of your officers or employees, or another person who is preparing the application on your behalf, such as your lawyer, accountant or licensing consultant.

#### **On an ongoing basis**

- RG 2.38 At A2.3 you will also need to nominate a person we can contact after your licence is granted. For example, we might contact you to tell you about prospective changes that could affect your licence and business. This ongoing contact person can be the same person you nominate at A2.1.

RG 2.39 As an AFS licensee you will be obliged to keep the details of your ongoing contact person (including their email address) up-to-date by notifying us of any changes using form FS20, available via the Licensees portal on our website.

### **If you are applying to vary your AFS licence**

RG 2.40 The questions you will be asked at A1 and A2 are different on the variation application.

RG 2.41 At A1 you will be asked to select whether you are applying to vary:

- (a) the ‘authorisation conditions’ on your licence (i.e. your financial service and/or product authorisations);
- (b) the ‘other conditions’ on your licence (e.g. key person or standard licence conditions); or
- (c) both.

RG 2.42 If you are varying the ‘other conditions’ on your licence, at A2 the system will provide a free-text box to type in so that you can explain to us which conditions you want to vary and why you should be allowed to do this.

RG 2.43 If you are varying your ‘authorisation conditions’, the system will fill in the current authorisations on your licence. You need to add any new services and/or products by clicking on them. If you want to remove any services or products, click on them to de-select them. For help with answering the questions at A3 and A4, see RG 2.44–RG 2.114.

## **A3 & A4: AFS licence authorisations**

RG 2.44 At A3 and A4 you will be asked to select the financial services and products you want to be authorised to provide under your AFS licence. Choosing your licence authorisations is one of the most important steps in applying for an AFS licence. Your authorisations affect:

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

RG 2.45 The rest of the questions you will be asked in your application will be triggered by your answers in this section of your application, as well as the answers you give at A5 to describe your business. You will need to provide core proofs to demonstrate that you have the competence, resources and processes in place to be able to provide the services and products you have

selected. The core proofs are explained in Section E. We may also ask you to provide additional proofs before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

- RG 2.46 You should read RG 2.49–RG 2.114 and work out which authorisations you will need before you answer the questions at A3 and A4. If you don't choose the right authorisations you may not be authorised to provide the financial services and products you want to provide. You may find it useful to:
- (a) first, identify which financial services you will provide (e.g. 'Provide financial product advice', 'Deal in a financial product'); then
  - (b) identify each financial product those financial services will cover (e.g. superannuation, general insurance, derivatives etc.).
- RG 2.47 You will not necessarily want, or need to be authorised to provide, the same financial services for each financial product. For example, you can choose to provide advice relating to superannuation, securities and derivatives, and provide dealing services in relation to superannuation only.
- RG 2.48 If you are applying to vary your AFS licence by varying your service and/or product authorisations, make sure all of the services and products you want to be authorised for have been selected, not just the new ones.

## Financial services

- RG 2.49 At A3.1 you will be asked to select one or more financial services from the following list:
- (a) Provide Financial Product Advice (commonly referred to as 'advising');
  - (b) Deal in a Financial Product (commonly referred to as 'dealing');
  - (c) Make a Market for a Financial Product;
  - (d) Operate a Registered Scheme;
  - (e) Provide a Custodial or Depository Service.

### Provide Financial Product Advice

#### Types of financial product advice

- RG 2.50 *Financial product advice* is defined in s766B. Financial product advice may be either:
- (a) *personal advice*—this is defined in s766B(3). Generally, you will be giving personal advice if you have considered, or a reasonable person might expect you to have considered, one or more of the client's objectives, financial situation and needs; or

(b) *general advice*—this is defined in s766B(4). It covers all financial product advice that is not personal advice.

RG 2.51 For more information on financial product advice and the distinction between personal and general advice, see Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) and Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175), which are available on our website at [www.asic.gov.au/rg](http://www.asic.gov.au/rg).

RG 2.52 At A4.1.1 you will be asked to select the type of financial product advice that you want to be authorised to provide. You can only choose **one** of the following:

- (a) Provide Financial Product Advice—this authorisation will cover both personal and general advice to both wholesale and retail clients; **or**
- (b) Provide General Financial Product Advice Only—this authorisation will cover general advice to both wholesale and retail clients (i.e. it does not cover personal advice); **or**
- (c) Provide General Financial Product Advice Only To Wholesale Clients—this authorisation will only cover general advice to wholesale clients (i.e. it does not cover personal advice or general advice to retail clients).

RG 2.53 The terms *retail clients* and *wholesale clients* are defined in s761G.

### Choosing your financial products

RG 2.54 You will then be asked at A4.1.2 to select the financial product(s) that you want to advise on.

RG 2.55 The range of financial products regulated under the financial services regime is relatively broad. To help you select your authorisations, see the 11 broad financial product categories and the product tips in RG 2.92.

### Deal in a Financial Product

RG 2.56 *Dealing* in a financial product is defined in s766C. You will be dealing if you do any of the following, either as principal or as an agent of another person:

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

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

RG 2.57 Dealing also includes ‘arranging’ for another person to do any of the above activities (this is commonly referred to as ‘arranging’). For example, if you

have the authority to bind your client when applying for a product, you will generally be ‘dealing’ and not ‘arranging’. However, if you merely display brochures and provide no other services to bring about a transaction, you will generally only be arranging. For more information on dealing and arranging, see Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) and the frequently asked question QFS 125, ‘What is our approach to arranging?’, available from [www.asic.gov.au/fsrfaq](http://www.asic.gov.au/fsrfaq).

### Types of dealing services

- RG 2.58 At A4.2.1 you will be asked to select **either**:
- (a) Deal in a financial product (i.e. dealing)—select this authorisation if you will be dealing, or dealing and arranging; **or**
  - (b) Arrange for a person to deal in a financial product (i.e. arranging)—select this authorisation if you will only be arranging. If you choose arranging you will not be able to deal as principal or as an agent of another person.
- In the application you can only choose dealing or arranging because dealing includes arranging.
- RG 2.59 At A4.2.2 you will be asked to select the particular types of dealing or arranging services that you want to be authorised for. You can choose **one or more** of the following:
- (a) Issue, apply for, acquire, vary or dispose of a financial product—this authorisation generally applies to product issuers, such as responsible entities, life companies, fund managers and general insurers. However, it can apply to anyone who wants to provide any of these types of dealing or arranging services as principal or as an agent; and/or
  - (b) ‘Apply for, acquire, vary or dispose of a financial product on behalf of another’—select this authorisation if you intend to provide any of these types of dealing or arranging services on behalf of another person); and/or
  - (c) ‘Underwrite an issue of securities or interests in managed investments’—this includes interests in both unregistered and registered managed investment schemes.
- RG 2.60 If you want to be authorised for dealing on behalf of another person and arranging for another person to issue financial products, the application won’t let you select these as separate authorisations because it assumes that your dealing authorisation will include arranging for another person to deal. You need to select A4.2.1.1 (dealing) and then A4.2.2.1 (Issue, apply for, acquire, vary or dispose of a financial product). This authorisation will cover both dealing on behalf of another person and arranging for another person to issue financial products.

### Choosing your financial products

- RG 2.61 You will then be asked at A4.2.3 to select the financial products that you want to deal in.
- RG 2.62 The range of financial products regulated under the financial services regime is relatively broad. To help you select your authorisations, see the 11 broad financial product categories and the product tips in RG 2.92.

### Make a Market for a Financial Product

- RG 2.63 *Makes a market* is defined in s766D. You will be making a market if you regularly quote prices at which you will buy or sell financial products, and other persons could reasonably expect to be able to regularly sell to you, or buy from you, financial products at the prices you have quoted.
- RG 2.64 For more information on making a market, see the frequently asked question QFS 122 ‘What guidance can ASIC give me about when I “make a market”?’’, available from [www.asic.gov.au/fsrfaq](http://www.asic.gov.au/fsrfaq).
- RG 2.65 If you select this financial service authorisation at A3.1, you will be asked at A4.3.1 what financial products you want to be authorised to make a market for. The options include foreign exchange contracts, derivatives, bonds and debentures and ‘other financial products’. If you select the ‘other financial products’ category at A4.3.1, we may ask you for further information about the financial products you intend to make a market for. If you make a market for securities, you need to select ‘other financial products’.
- RG 2.66 Selecting ‘Make a Market for a Financial Product’ at A3.1 will also trigger further questions in Part C of your application.

### Other related authorisations you may need

- RG 2.67 If you are making a market, you are likely to also be providing other financial services. For example, you will typically also be dealing in a financial product (e.g. issuing and acquiring a financial product). If so, you will need to select the dealing authorisation at A3.1.
- RG 2.68 If you are making a market for over-the-counter (OTC) products (e.g. OTC derivatives), you should also consider whether you need to be authorised to provide financial product advice (e.g. if you will be advising the counterparty to the contract). If so, you will need to select the advising authorisation at A3.1.

## Operate a Registered Scheme

- RG 2.69 If you will be the responsible entity of a registered scheme, you will be *operating a registered scheme*. A registered scheme is a managed investment scheme that is registered with ASIC under s601EB.
- RG 2.70 To operate a registered scheme, you must be a public company that holds an AFS licence authorising you to do so: see s601FA.

### Unregistered schemes

- RG 2.71 You don't need the 'Operate a Registered Scheme' authorisation if you will operate a managed investment scheme that is not, and does not need to be, registered with ASIC.
- RG 2.72 Unregistered schemes include Investor Directed Portfolio Services (IDPSs) and Managed Discretionary Account (MDA) services covered by ASIC's class order relief. To provide IDPS and MDA services you will still need the financial service authorisation for dealing and, if relevant, for advising and/or providing a custodial or depository service. You will need to select these at A3.1. For more information on IDPS and MDA services, see Regulatory Guide 148 *Investor directed portfolio services* (RG 148) and Regulatory Guide 179 *Managed discretionary account services* (RG 179).

### Choosing what type of registered scheme you will operate

- RG 2.73 At A4.4.1 you will be asked to select whether you want to be licensed to operate:
- (a) Named scheme(s)—these are specific schemes that will be named on your licence; and/or
  - (b) Scheme(s) of a particular asset kind(s)—if you select this authorisation, what will appear on your licence is not the individual scheme name(s) but the particular kind(s) of asset or business they invest in. You can be authorised to operate more than one kind of scheme.
- RG 2.74 If you select scheme(s) of a particular asset kind you won't have to apply to vary your licence every time you want to register a scheme of that kind. However, you should only apply for this authorisation if you can demonstrate that you have the organisational competence and the capacity (e.g. systems and resources) to operate schemes with assets or businesses of that type: see Section D of RG 105. Otherwise, you should apply to operate a named scheme.

### Kinds of registered scheme

- RG 2.75 At A4.4.2 you will be asked to select what kind(s) of scheme you want to operate. Even if you apply to operate a named scheme, you still need to select what kind of scheme that named scheme is.



RG 2.76 Where you intend to operate a scheme that is made up of more than one asset kind, you need to select each particular asset kind that is relevant to the scheme. However, if you hold assets that are only ‘incidental property’ (as defined in Pro Forma 209 *Australian financial services licence conditions* (PF 209)), you don’t need to select an asset kind for these assets. ‘Incidental property’ covers certain assets necessary or incidental to the effective operation of your registered scheme that are a small proportion of assets of the scheme, as well as certain liquid financial assets held for a short period, and derivatives for certain limited purposes.

RG 2.77 The following are the kinds of scheme you can apply for authorisation to operate:

- (a) Derivatives—this covers schemes that hold derivatives for hedging or other purposes, other than as incidental property;
- (b) Direct real property—this includes listed property trusts, serviced strata schemes and stable property trusts or syndicates;
- (c) Film schemes—this covers schemes with the sole purpose of producing and/or exploiting a cinematograph film (as defined in the *Copyright Act 1968*);
- (d) Financial assets—this covers schemes that hold cash, cheques, orders for payment of money, bills of exchange, promissory notes, securities, deposit products and interests in managed investment schemes, but does not include derivatives;
- (e) IDPS-like—this covers IDPS-like services provided through a registered scheme under Chapter 5C of the Corporations Act. For more information see RG 148;
- (f) Mortgages—this covers both pooled mortgage schemes and contributory mortgage schemes. For more information see Regulatory Guide 144 *Mortgage investment schemes* (RG 144);
- (g) Primary production—this covers aquaculture, cattle breeding, forestry, horse breeding, horticulture, livestock grown for fleece, ratites (ostriches/emus), tea trees, viticulture or other specialised schemes; and
- (h) Time-sharing schemes—for further information see Regulatory Guide 160 *Time-sharing schemes* (RG 160).

#### **Other authorisations that you may need**

RG 2.78 When you operate a registered scheme, you will generally also be carrying on dealing activities (e.g. issuing interests in the scheme and perhaps dealing in scheme investments that are financial products). Most applicants who apply to operate a registered scheme will also need the dealing authorisation. For example, if you operate a managed investment scheme that holds derivatives to hedge your scheme asset holdings, you will generally need an authorisation to deal in derivatives.

- RG 2.79 You may also need to be authorised to provide financial product advice, depending on how you distribute interests in your scheme.
- RG 2.80 If you need the advising or dealing authorisations, you need to select these at A3.1.

### **When to register your scheme(s)**

- RG 2.81 Before you can register the scheme(s) you are applying to be authorised for, you need to lodge your AFS licence application and be assessed as having the organisational competence and capacity to operate those scheme(s).
- RG 2.82 If you are, we will send you a draft licence. After you receive your draft licence you have up to four months to register your scheme(s) with us. You should not lodge your scheme documents with us before you receive a draft licence.
- RG 2.83 If we agree to register the scheme(s) and you have met the licensing requirements and agreed to the draft licence conditions, we will grant your licence and register the scheme(s) on the same day.
- RG 2.84 For more information about registering schemes see our website at [www.asic.gov.au/mis](http://www.asic.gov.au/mis).

### **Provide a Custodial or Depository Service**

- RG 2.85 *Custodial or depository service* is defined in s766E. You generally don't need an authorisation to provide custodial or depository services if you only operate a registered scheme or a regulated superannuation fund, or if you only hold a basic deposit product or client money under Part 7.8 of the Corporations Act: see s766E(3) and reg 7.1.40.
- RG 2.86 At A4.5.1 you will be asked whether your custodial or depository service will be operated as either:
- (a) an Investor Directed Portfolio Service (IDPS); or
  - (b) a Custodial or Depository Service that is not an IDPS.

### **IDPSs**

- RG 2.87 You should only select this authorisation if you will be an IDPS operator under Class Order (CO 02/294) *Investor directed portfolio services*. If you will be a badged or dual IDPS operator who will not be responsible for performing the custody functions for the IDPS (i.e. you will only provide reporting and transaction services), generally you won't need the 'Provide a Custodial or Depository Service' authorisation. See RG 148 for the definition of an IDPS and our policy and licensing requirements in relation to IDPSs.

**Custodial or depository services that are not an IDPS**

RG 2.88 This authorisation covers all other types of custodial or depository service, including those provided by:

- (a) professional custodians; or
- (b) Managed Discretionary Account (MDA) operators or external MDA custodians.

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

**Incidental custodial or depository services**

RG 2.89 Even if your custodial or depository services will be ‘incidental’ to the other financial services you will provide, you still need the ‘Provide a Custodial or Depository Service’ authorisation. While we impose different financial requirements for ‘incidental’ custodial or depository services, this doesn’t change the need for you to be authorised to provide those services. For more information on the financial requirements for incidental custodial or depository services, see Regulatory Guide 166 *Licensing: Financial Requirements* (RG 166) at RG 166.82(a) and RG 166.83.

**Other authorisations you may need**

RG 2.90 If you provide a custodial or depository service, you are also likely to be dealing (e.g. applying for, or acquiring a financial product on behalf of another person). If so, you will need to select the dealing authorisation at A3.1.

**Financial products**

RG 2.91 In the application the financial product authorisations are grouped under 12 broad categories based on the definitions in s761A and 764A. Before you select your product authorisations you need to think about each particular product you will be providing and what category it fits under. We encourage you to carefully check the definitions.

RG 2.92 The following broad categories are designed to cover all types of financial products:

- (a) deposit and payment products—this includes basic deposit, non-basic deposit and non-cash payment products;
- (b) derivatives;
- (c) foreign exchange contracts;
- (d) general insurance;

- (e) government debentures, stocks or bonds;
- (f) life products—this includes any products issued by a registered life insurance company that are backed by one or more of its statutory funds;
- (g) managed investment schemes—this includes interests in both registered and unregistered schemes;
- (h) retirement savings accounts;
- (i) securities;
- (j) superannuation;
- (k) margin lending facilities—this includes standard margin lending facilities and non-standard margin lending facilities;
- (l) miscellaneous financial facilities.

## Tips on some products and the categories they fit under

### Consumer credit insurance

- RG 2.93 Some consumer credit insurance products are underwritten by both a general insurance company and a life insurance company. If you want to provide services in relation to these products you will need authorisations for both ‘general insurance’ and ‘life products’. You can limit your authorisations to only these products (i.e. you can be authorised to deal in general insurance and life products limited to consumer credit insurance).

### Derivatives and foreign exchange contracts

- RG 2.94 In some cases, a product can be both a ‘derivative’ and a ‘foreign exchange contract’ (as defined in s761A and 761D). However, for the purposes of AFS licence authorisations, we have redefined ‘derivative’ so that it no longer includes derivatives that are foreign exchange contracts. For more information see the definitions in Pro Forma 209 *Australian financial services licence conditions* (PF 209).
- RG 2.95 If you want to provide derivatives that are foreign exchange contracts you need to select the ‘foreign exchange contracts’ product authorisation, not the ‘derivatives’ authorisation (unless you want to provide other types of derivative as well).

### Managed Discretionary Account (MDA) services

- RG 2.96 MDA services generally fit under both the ‘managed investment schemes’ and ‘miscellaneous financial facility’ categories. Depending on the nature of your business, you can select to be authorised under either or both of these categories.

**Warrants**

- RG 2.97 Warrants, depending on their type, can fit under the ‘securities’, ‘derivatives’ or ‘miscellaneous financial facility’ categories. If you want to provide warrants, you need to look at the features of the particular product in question to work out which product authorisation you need to select.
- RG 2.98 Managed investments warrants are generally covered by the ‘derivatives’ category.

**Margin lending facilities**

- RG 2.99 A margin lending facility is defined in s761EA to include a standard margin lending facility and a non-standard margin lending facility.
- RG 2.100 If you want to provide a financial service in relation to margin lending facilities you will need to look at the features of the facility and work out whether you need to select a standard margin lending facility authorisation or a non-standard margin lending facility authorisation. Where you provide financial services in relation to both standard margin lending facilities and non-standard margin lending facilities, you will need to select both categories.

**Miscellaneous financial facilities**

- RG 2.101 This is not a ‘catch-all’ category. It only covers products that don’t fit into categories (a) to (j) in RG 2.92.
- RG 2.102 We expect that applicants will only select ‘miscellaneous financial facility’ in rare situations. If you select this category we may ask you for an A4 additional proof (Miscellaneous Financial Facility Statement) explaining why the particular product you want to provide does not fall under any of the other product categories. The additional proofs are explained in Part 3 (RG 3).

**Authorisation to use certain terms**

- RG 2.103 Under s923B AFS licensees are restricted from using certain terms to describe their financial services business unless they are expressly authorised to do so under a condition on their AFS licence.
- RG 2.104 These restrictions apply to the following (or similar) terms:
- (a) ‘stockbroker’ or ‘share broker’;
  - (b) ‘futures broker’;
  - (c) ‘insurance broker’ or ‘insurance broking’;
  - (d) ‘general insurance broker’;

(e) ‘life insurance broker’.

RG 2.105 At A3.3 you will be asked if you want to use any of these terms. You can only be authorised to use them (or similar terms) if you select the dealing service authorisation at A3.1 and then the appropriate dealing activities and products at A4.2. Depending on the particular term, other eligibility criteria may also apply.

RG 2.106 You don’t have to use them, even if you meet the eligibility criteria in RG 2.108–RG 2.111. For example, if you intend to be a financial planner authorised to advise and deal in general insurance, you don’t have to use the term ‘general insurance broker’ if you don’t want to.

RG 2.107 If you have said ‘yes’ at A3.3, you will be asked at A4.6 which of the terms (or similar terms) you want to use.

### **‘Stockbroker’ or ‘sharebroker’**

RG 2.108 To be eligible to use these terms you must be:

- (a) applying to deal in securities; and
- (b) a member participant of a licensed market that covers dealings in securities, for example Australian Securities Exchange, Bendigo Stock Exchange, National Stock Exchange of Australia, Australian Pacific Exchange.

### **‘Futures broker’**

RG 2.109 To be eligible to use this term you must be:

- (a) applying to deal in derivatives; and
- (b) a member participant of a licensed market that covers dealings in derivatives, for example Sydney Futures Exchange.

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

RG 2.110 To be eligible to use these terms you must be applying to deal in:

- (a) general and/or life insurance products (for ‘insurance broker’ and ‘insurance broking’);
- (b) general insurance products (for ‘general insurance broker’); or
- (c) life insurance products (for ‘life insurance broker’).

RG 2.111 You must also act on behalf of the intending insured (i.e. the client), as opposed to acting on behalf of the insurance company.

## Other issues for market participants

- RG 2.112 At A3.2.1 you will be asked whether you want to provide financial services under your licence as a Principal Trader only. This term is defined in section 2.1 of the Australian Securities Exchange Market Rules. To be a principal trader you need both:
- (a) an AFS licence; and
  - (b) to be approved by the Australian Securities Exchange.
- RG 2.113 If your business is solely as a principal trader, you are likely to need the financial service authorisations for making a market and dealing. You can select these authorisations at A3.1.
- RG 2.114 At A3.3.2 you will be asked whether you want to be subject to the licence condition requiring a market participant (e.g. stockbroker) to assume responsibility for the acts or omissions of a nominee company subsidiary. This condition allows your nominee company (which must be a wholly-owned subsidiary) to take advantage of the exemption under reg 7.6.01(1)(v).

## A5: Business description

- RG 2.115 At A5 you will be asked about your proposed business activities so that we can understand how your business will work and the relevance of the licence authorisations you have selected. Your answers will trigger questions in Part B of the application and may trigger further questions in Part C.
- RG 2.116 You must provide an A5 Business Description core proof to support this part of your application, whether you are applying for your initial licence or applying to vary either the ‘authorisation conditions’ or ‘other conditions’ on your licence. This core proof must be specific to your business: see RG 2.243–RG 2.248 for more detail.

### Your clients

- RG 2.117 You will need to identify whether your clients are *retail clients* and/or *wholesale clients*. These terms are defined in s761G.
- RG 2.118 In some cases ‘professional investors’ (previously known as ‘sophisticated investors’ under the old Corporations Act) will fall under the definition of wholesale clients: see s761G(7)(d).
- RG 2.119 If you identify that you will have retail clients, we expect that you will have a greater focus on consumer protection through, for example, your dispute resolution procedures and your compensation arrangements. The types of

clients you have can also affect the licence conditions we put on your AFS licence.

- RG 2.120 Some applicants, such as principal traders, have told us that they do not have clients. If you believe that you do not have clients, you should select ‘wholesale clients’ in your application.

### **Bodies regulated by APRA**

- RG 2.121 At A5.3 you will be asked whether you are, or have applied to be, a body regulated by the Australian Prudential Regulation Authority (APRA). APRA is responsible for the prudential regulation of banks, life insurers, general insurers, the superannuation industry, building societies, credit unions and friendly societies.
- RG 2.122 If you are a subsidiary or a related body corporate of a body regulated by APRA, you should answer ‘no’.
- RG 2.123 If you have applied to become a body regulated by APRA but your application has not yet been approved, you should answer ‘yes’. You should also answer ‘yes’ if you have applied to vary your existing APRA authorisation (e.g. you are a trustee of a superannuation fund who has applied to be authorised to operate a public offer superannuation fund), but your application has not yet been approved. In both cases we will assess your AFS licence application and send you a draft AFS licence, but we won’t grant your final AFS licence until your APRA application has been approved.

### **Activities that may trigger financial requirements**

- RG 2.124 If you are not regulated by APRA, your AFS licence will include conditions that you meet certain minimum financial requirements. The financial requirements that will apply to you will depend on the nature, scale and complexity of your business.
- RG 2.125 At A5.2 you will be asked about how you will transact with clients under your AFS licence. These questions are designed to help us identify which financial requirements will apply to you. To find out which financial requirements apply to various types of activities, see RG 166.
- RG 2.126 For the final wording of the conditions that may be imposed on your AFS licence, see Pro Forma 209 *Australian financial services licence conditions* (PF 209). PF 209 and RG 166 are available on our website via [www.asic.gov.au/afsl](http://www.asic.gov.au/afsl).



**If you transact with clients as principal**

- RG 2.127 If you are likely to have liabilities or contingent liabilities to clients of \$100,000 or more (in total) from transactions you enter into with them as principal, you should answer ‘yes’ at A5.2.1. For example, you are likely to be in this position if you are a market maker or underwriting securities or managed investment products. You are also likely to be in this situation if you are an issuer of non-standard margin lending facilities.
- RG 2.128 In this case you will generally need to meet the adjusted surplus liquid funds (ASLF) financial requirements in Section F of RG 166. However, if your only liabilities to clients are under debentures you issue under Chapter 2L, you won’t need to meet the ASLF requirements: see RG 166.114(b).

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

- RG 2.129 If you will be holding client money or other client property to a total value of more than \$100,000 in a trust account, or you will have the power to dispose of client money or property to a total value of more than \$100,000, you should answer ‘yes’ at A5.2.3.2. In this case you will generally need to meet the surplus liquid funds (SLF) financial requirements in Section E of RG 166.
- RG 2.130 When calculating whether you will be holding \$100,000 or more, you can exclude certain insurance premiums you will receive from clients: see RG 166.106(a).

**If you operate an IDPS**

- RG 2.131 If you will be providing services as an IDPS operator under RG 148, you should answer ‘yes’ at A5.2.4. You will need to meet the net tangible assets (NTA) financial requirements under Section C of RG 166.

**General insurance underwriting agent or broker acting under a binder**

- RG 2.132 At A5.4 you will be asked whether you will be acting as a general insurance underwriting agent, or a general insurance broker acting under a binder. This includes acting under an agency agreement, binder or any other arrangement under which you can act on behalf of an insurer in accepting risks. If you will be conducting this type of business, you will be asked additional questions in Part C about these activities.

**Description and size of your business**

- RG 2.133 At A5.5 you will be asked to select up to four activities that best describe the type of business you will be operating. For example, you might select ‘Financial Planner’, ‘General Insurance Multi Agent’ and ‘Superannuation

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

- RG 2.134 If you select activities such as ‘Stockbroker / Sharebroker’ or ‘Futures Broker’ at A5.5, this does not automatically entitle you to use these terms to describe your business. The use of these and other similar terms is restricted under s923B. For more information on applying to be authorised to use these and other similar restricted terms, see RG 2.103–RG 2.111.
- RG 2.135 At A5.6 you will be asked about the size of your business. These questions are designed to help us determine what arrangements you should have in place to meet your licensee obligations under s912A. Your answers at A5.6 are not binding. However, if you are not sure what the size of your business will be, you should either estimate the size or rely on forecasted estimates for your first year of operation.
- RG 2.136 If you are a responsible entity or superannuation trustee, when estimating the size of your business don’t include the assets and revenue of your managed investment scheme(s) or superannuation fund(s).

## **A6: Adding responsible managers (for variation applications)**

- RG 2.137 If you are completing a variation application (form FS03) and you are applying to vary your financial services and/or product authorisations, you will be asked at A6 whether you are adding any new responsible managers for the variation you are applying for.
- RG 2.138 If you answer ‘yes’, you must complete and submit form FS20, as well as form FS03. Form FS20, which is available via the Licensees portal, is used to notify ASIC of changes to details of an AFS licence. When you complete form FS20 you will be asked questions at B1 about your responsible managers. For help with answering these questions, see RG 2.144–RG 2.164.
- RG 2.139 You must also provide People Proofs for each new responsible manager with your form FS20. For a brief explanation of the People Proofs, see RG 2.148. For more detailed information on them, see Section E.
- RG 2.140 If you are applying to vary only the ‘other conditions’ on your licence, you won’t be asked anything at A6.

## B Part B of the application: AFS licensee requirements

### Key points

In Part B of the application you will be asked questions about the obligations you will have as an AFS licensee: see RG 2.141.

The questions you are asked will depend on the answers you provided in Part A: see RG 2.142.

You will need to support some of your Part B answers with core proofs: see RG 2.143 and Section E.

- RG 2.141 The questions in Part B of the application cover the obligations you will have as an AFS licensee. In Part B you will be asked about:
- (a) your organisational competence and the processes you have in place to maintain it;
  - (b) your compliance arrangements;
  - (c) the training, supervision and monitoring of your representatives;
  - (d) the adequacy of your financial, human and information technology resources;
  - (e) your dispute resolution system;
  - (f) your risk management procedures;
  - (g) your compensation and insurance arrangements; and
  - (h) your product and market research and any benefits your representatives will receive.
- RG 2.142 The questions you are asked will depend on the answers you provided about your business in Part A. For example, if you are a body regulated by APRA, you won't be asked questions about the adequacy of your resources (at B5) or your risk management systems (at B7).
- RG 2.143 You will need to support some of your Part B answers with core proofs. These are explained in Section E. We may also ask you to send us additional Part B proofs before we can complete our assessment of your application. Additional proofs are explained in detail in Part 3 (RG 3).

## B1 & B2: Organisational competence

RG 2.144 Before we can grant you an AFS licence you need to demonstrate that you have the organisational competence for the financial services and products you are asking to be authorised for under your licence. To do this you need to nominate in your application the people you will depend on for your organisational competence. These people are your responsible managers and you will be asked at B1 about their role, qualifications, training and experience.

Note: We previously used the term ‘responsible officer’ to identify the category of people we look at when assessing organisational competence: see RG 105.29–RG 105.30.

RG 2.145 Your responsible managers must have the necessary knowledge and skills to carry out their roles. The five options for demonstrating appropriate knowledge and skills are explained in Section C of Regulatory Guide 105 *Licensing: Organisational competence* (RG 105).

RG 2.146 To support your answers in this part of your application you will need to provide a B1 Organisational Competence core proof indicating which of the five options in RG 105 each responsible manager meets and detailing their experience and qualifications against each authorisation you’ve selected. This core proof is explained in detail in Section E. If you are completing a variation application (FS03) that involves varying your service or product authorisations, you will also need to provide this core proof.

RG 2.147 You must also have processes in place for maintaining your organisational competence, as well as measures to ensure your responsible managers are of good fame and character. You will be asked about this at B2. We expect that you will have documented your processes in some form: see RG 105.7–RG 105.8. Using a documented process can help you show that you know whether or not you are complying with your obligations. How often you review your compliance will depend on how often your business changes and on staff turnover.

RG 2.148 To support your answers in this part of your application you will need to provide the People Proofs core proof for each responsible manager. This includes:

- (a) a Statement of Personal Information;
- (b) certified copies of qualification certificates;
- (c) certified copy of a bankruptcy check;
- (d) certified copy of a criminal history check; and
- (e) certified copies of two business references (at least one of these should be from someone external to your organisation).

This core proof is explained in detail in Section E.

## Answering the questions at B1

### Nominating your responsible managers

- RG 2.149 The people you nominate in your application must have the knowledge and skills to ensure you discharge your obligations as a licensee.
- RG 2.150 You should only nominate someone as a responsible manager if they are directly responsible for significant day-to-day decisions about the ongoing provision of financial services under your licence.
- RG 2.151 For more information on nominating your responsible managers, see Section B of RG 105.

#### *Number of responsible managers*

- RG 2.152 You can nominate up to 15 responsible managers. The appropriate number of responsible managers will depend on the nature, scale and complexity of your business. In the case of a large business, we expect that there will be several responsible managers. In the case of a small business, we recognise that there may only be one responsible manager, but generally we expect that a licensee will have at least two responsible managers.

#### *Nominating only one responsible manager*

- RG 2.153 If you are nominating only one responsible manager, you will need to be able to demonstrate that you have a documented risk management strategy in place to ensure you will continue to meet your organisational competence obligations if your responsible manager is unavailable at any time. For example, you will need to have procedures in place to ensure that your business could continue operating even if the sole responsible manager is unexpectedly unavailable.
- RG 2.154 If you are applying for a licence as an individual you must nominate yourself as the sole responsible manager.

#### *Key person AFS licence condition*

- RG 2.155 If a licensee is heavily dependent on the expertise of one or more responsible managers, we refer to these people as ‘key persons’ and will usually name them on the licence in a ‘key person condition’.
- RG 2.156 If we put a key person condition on your licence, you will have additional obligations. These will include:
- (a) notifying us if your key person leaves or is about to leave your business; and
  - (b) nominating another suitably qualified person to take over from them.

For more information on key person conditions see RG 105.83–RG 105.84 and condition 3 of Pro Forma 209 *Australian financial services licence conditions* (PF 209).

#### *Responsible managers acting on behalf of multiple AFS licensees*

- RG 2.157 If you nominate a person who is already a responsible manager for another licensee, you will need to be able to demonstrate in your B1 Organisational Competence core proof that this person will actually be able to spend enough time fulfilling their duties as your responsible manager. This core proof is explained in Section E.

#### **Role of responsible managers**

- RG 2.158 You will be asked at B1.4 to select the role that best describes each responsible manager's duties in your organisation. When you are asked at B1.5.1 how much time a responsible manager will spend on 'duties related to the provision of financial services', you should include in your estimation the time that the responsible manager will spend on all of the activities that they may undertake in connection with your financial services business, including the day-to-day administration of your business.

#### **Experience**

- RG 2.159 You will be asked at B1.7 to select a category for each responsible manager that best describes their overall experience. We generally classify a 'small entity' as meeting two or more of the following requirements at the end of the last financial year:
- (a) net assets less than \$5 million;
  - (b) gross revenue of less than \$5 million;
  - (c) less than 20 current employees.

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

#### **Five options for demonstrating appropriate knowledge and skills**

- RG 2.160 At B1.9 you will be asked to select which of the five options for demonstrating knowledge and skills each responsible manager meets. The five options are explained in Section C of RG 105. Each option includes a skills component (which considers the responsible manager's past experience) and a knowledge component (which generally requires completion of a relevant qualification and/or training).
- RG 2.161 If you select 'Other demonstration of knowledge and skills' (i.e. Option 5), you will need to provide a submission on the responsible manager's experience in your B1 Organisational Competence core proof. This core proof is explained in Section E.

## Answering the questions at B2

### Good fame and character

- RG 2.162 At B2.2 you will be asked about your processes for ensuring that your responsible managers are of good fame and character. Some factors that may indicate a person is not of good fame and character include:
- (a) whether the person has been convicted of serious fraud within the last 10 years;
  - (b) where the person has held an AFS licence that was suspended or cancelled; or
  - (c) whether a banning order or disqualification order has previously been made against the person: see s913B(4).

### Industry codes or standards

- RG 2.163 At B2.5 you will be asked whether you use a documented process for ensuring that you comply with relevant industry codes and/or standards. If there are no relevant codes and/or standards, you should answer 'no'.
- RG 2.164 If an independent third party has assessed whether you are complying with relevant codes and/or standards in the last two years, we may ask you to provide a copy of the assessment as a B2 additional proof (Industry Standards Compliance). Additional proofs are explained in detail in Part 3 (RG 3).

## B3: Compliance arrangements

### Compliance and conflicts management arrangements

- RG 2.165 You must have compliance measures in place to meet the AFS licensee obligations: see Section C of Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104). You must also have adequate arrangements for managing conflicts of interest that may arise in relation to your financial services business: see s912A(1)(aa). Our policy on managing conflicts of interest is set out in Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181).
- RG 2.166 We expect you to establish and maintain compliance measures and conflicts management arrangements that are appropriate to the nature, scale and complexity of your business. In many cases there may be a number of possible ways for you to comply with these obligations. We expect that you will have documented your processes and procedures in some form: see RG 104.24–RG 104.26 and RG 181.44.

RG 2.167 We may ask you to provide more information in a B3 additional proof (Compliance Arrangements and/or Managing Conflicts of Interest). The additional proofs are explained in Part 3 (RG 3).

### **Outsourcing**

RG 2.168 At B3.2 you will be asked whether you will outsource any substantial activities under your AFS licence. You should only answer ‘yes’ if you will be outsourcing any parts of your financial services business, e.g. training of representatives or part of your compliance function. Don’t answer ‘yes’ if the activities you will be outsourcing are not related to your financial services business, e.g. professional advice outsourced to lawyers.

RG 2.169 If you outsource activities under your AFS licence, under the Corporations Act you will still be responsible for complying with all of your AFS licensee obligations in relation to them: see s769B and RG 104.33–RG 104.36. For example, if you outsource the training of your representatives, you will still be responsible for ensuring that your representatives are competent and adequately trained.

RG 2.170 If you are going to outsource any of your activities under your AFS licence (whether or not within your corporate group), we expect that you will have appropriate processes in place to ensure that you:

- (a) have taken due skill and care in choosing a suitable service provider;
- (b) will monitor their ongoing performance; and
- (c) can deal effectively with any breaches of the outsourcing agreement or actions that lead, or might lead, to a breach of your licensee obligations.

RG 2.171 We may ask you to provide more information in a B3 additional proof (Outsourcing Statement). The additional proofs are explained in Part 3 (RG 3).

### **ASIC-registered auditor**

RG 2.172 At B3.3 you will be asked whether you have appointed an ASIC-registered auditor or firm of auditors. You will generally need to appoint an ASIC-registered auditor within one month of being granted an AFS licence: see s990B(1).

RG 2.173 If you have already appointed an auditor because you are a public company, you don’t need to reappoint the auditor—just provide your auditor’s details at B3.3.1.

RG 2.174 If you have not appointed an auditor and you are not a public company, you must:



- (a) appoint an ASIC-registered auditor within a month of being granted your licence; and
- (b) notify us of the appointment within 14 days by completing form FS06, available from the Licensees portal on our website.

RG 2.175 If you have provided the name of your auditor at B3.3.1, you don't need to notify us using form FS06.

RG 2.176 You can check whether your auditor is registered with us by searching our Professional Registers at [www.asic.gov.au/search](http://www.asic.gov.au/search) or asking your auditor for their ASIC registration details. A registered company auditor is also an ASIC-registered auditor.

## B4: Representatives

RG 2.177 Your 'representatives' are the people who act on your behalf. They can include people who are:

- (a) internal to your organisation (i.e. employees and directors); and/or
- (b) external to your organisation (i.e. authorised representatives authorised to act on your behalf).

RG 2.178 Don't confuse the term 'representatives' with 'responsible managers'. Your responsible managers are the people you nominated at B1 as directly responsible for the significant day-to-day decisions about your financial services business. Your representatives are the people who provide financial services or otherwise act on your behalf.

### Monitoring, supervision and training

RG 2.179 You must monitor and supervise the activities of your representatives (including authorised representatives) to ensure they are complying with the financial services laws. You must also ensure they are properly trained and competent to provide the financial services you are applying to be authorised for, and will continue to be so: see s912A(1)(ca) & (f) and Section E of RG 104.

RG 2.180 The questions you will be asked at B4 are designed to show us whether you have adequate arrangements in place to comply with these obligations. We expect that you will have documented your processes and procedures in some form: see RG 104 24–RG 104.26. We may ask you to provide a B4 additional proof (Program for Monitoring, Supervision and Training of Representatives). The additional proofs are explained in Part 3 (RG 3).

RG 2.181 If your representatives (including authorised representatives) provide financial product advice to retail clients, we have set minimum training

standards: see Section E of RG 104 and Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

- RG 2.182 We have not specified minimum training standards for other financial services. It is your responsibility to determine the appropriate knowledge and skills your representatives (including authorised representatives) need to have in order to competently perform their tasks and functions: see RG 104 82–RG 104.83.
- RG 2.183 You must keep up-to-date and accurate records of the training undertaken by each of your representatives: see reg 7.6.04(1)(d).

### **Authorised representatives**

- RG 2.184 At B4.2 you will be asked about your authorised representatives. For a person to be your authorised representative, they must be authorised under s916A or 916B to provide financial services on your behalf.
- RG 2.185 After you receive your AFS licence you will generally need to notify us of the appointment of your authorised representatives within 15 business days: see s916F. You can do this by completing form FS30, which is available from the Licensees portal on our website.

## **B5: Adequacy of resources**

- RG 2.186 Unless you are a body regulated by APRA, you must be able to demonstrate that you have sufficient financial, human and technological resources available to you to:
- (a) provide the financial services you are applying for under your AFS licence, and
  - (b) carry out supervisory arrangements: see s912A(1)(d).
- RG 2.187 If you anticipate growth in your business, you must be able to demonstrate how your capacity will grow to match business growth.
- RG 2.188 If you are regulated by APRA you won't be asked questions at B5 and you won't have to provide any B5 core or additional proofs.

### **Financial resources**

- RG 2.189 Our policy on financial requirements is set out in RG 166. The financial requirements that will apply to you will depend on the nature, scale and complexity of your business. To help you work out which requirements apply, refer back to RG 2.124–RG 2.131. You should also see Table 1 in RG 166.

- RG 2.190 To support this part of your application, you must provide the B5 Financial Statements and Financial Resources core proof. This is explained in detail in Section E.

### Human and technological resources

- RG 2.191 Our policy on the non-financial resources you should have available (i.e. the human and technological resources) is set out in Section F of RG 104. What we consider to be adequate resources will vary from one applicant to another and will depend on the nature, scale and complexity of your business.
- RG 2.192 You may be asked to provide one or more B5 additional proofs (Human Resources Capacity Statement and/or Information Technology Capacity Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

## B6: Dispute resolution

- RG 2.193 If you have applied to provide financial services to retail clients, you must have a dispute resolution system in place: see s912A(1)(g) and s912A(2). Your dispute resolution system must consist of both:
- (a) an internal dispute resolution procedure (IDR) that satisfies the requirements set out in Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165); and
  - (b) membership of an ASIC-approved external dispute resolution (EDR) scheme or schemes that cover complaints about all of the financial services to be provided under your AFS licence.
- RG 2.194 You will be asked questions about your dispute resolution system if you selected at A5.1 that you will have retail clients.
- RG 2.195 We may also ask you to provide a B6 additional proof (Dispute Resolution System Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

### Internal dispute resolution procedure

- RG 2.196 Under our requirements for IDR procedures, set out in detail in RG 165, you must:
- (a) have IDR procedures that cover the majority of complaints clients make;
  - (b) adopt the definition of ‘complaint’ in Australian Standard (AS) ISO 10002-2006 *Customer satisfaction—Guidelines for complaints handling in organisations* when handling complaints;

- (c) satisfy the Guiding Principles in Section 4 of AS ISO 10002-2006 and comply with Section 5.1—Commitment, Section 6.4—Resources, Section 8.1—Collection of Information and Section 8.2—Analysis and evaluation of complaints in AS ISO 10002-2006;
- (d) provide a final response within 45 days, which involves writing to the complainant informing them of the outcome of their complaint (or if this is not possible, the reasons for delay), their right to complain to EDR and the name and contact details of the relevant EDR scheme to which they can complain; and
- (e) appropriately document your IDR procedures.

Note: AS ISO 10002-2006 is available for purchase from [www.saiglobal.com/shop](http://www.saiglobal.com/shop).

### External dispute resolution scheme(s)

- RG 2.197 Before you apply for your AFS licence you must belong to one or more EDR schemes that:
- (a) are approved by ASIC; and
  - (b) cover complaints about all of the financial services to be provided under your AFS licence (other than complaints that may be dealt with by the Superannuation Complaints Tribunal).
- RG 2.198 If you need to belong to one or more EDR schemes but you don't have these in place at the time you apply for your licence, we will assess your application but we cannot grant your final licence until you have the necessary arrangements in place. We will ask for details of your EDR scheme(s) membership when we send you your draft licence. The EDR schemes approved by us are listed in Table 1.
- RG 2.199 You must have a person in your organisation who is responsible for liaising with the EDR scheme(s) you belong to. At B6.2.1 you need to select the role that best describes this person.
- RG 2.200 At B6.2.2 you will be asked to enter details (e.g. financial services covered, membership number and commencement date) for all EDR schemes of which you are a member. Some EDR schemes do not provide membership numbers and, in this case, you may leave this field blank. If you don't have a formal commencement date, you should use the date on which you became a member of, or were first covered by, the EDR scheme(s).

**Table 1: Approved EDR schemes**

EDR scheme	Contact details
Financial Ombudsman Service (FOS)	Phone: 1300 780 808 (toll free) Website: <a href="http://www.fos.org.au">www.fos.org.au</a> Email: <a href="mailto:info@fos.org.au">info@fos.org.au</a>
Credit Ombudsman Service Ltd (COSL)	Phone: 1300 780 808 (toll free) Website: <a href="http://www.creditombudsman.com.au">www.creditombudsman.com.au</a> Email: <a href="mailto:info@creditombudsman.com.au">info@creditombudsman.com.au</a> Fax: (02) 9267 3125

### Superannuation Complaints Tribunal

RG 2.201 If the Superannuation Complaints Tribunal (SCT) covers complaints about all of the financial services you are applying to be authorised to provide, you don't need to join an approved EDR scheme: see s912A(2)(b). However, if some, but not all, of the financial services you are applying for are covered by the SCT, you must also join an approved EDR scheme for the services that are not covered by the SCT: see Section A of RG 165.

RG 2.202 If some, or all, of the financial services you are applying for are covered by the SCT, you should still answer 'yes' at 6.2 (i.e. you are a member of one or more approved EDR schemes).

The contact details of the SCT are:

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

## B7: Risk management

RG 2.203 Unless you are a body regulated by APRA, you must be able to demonstrate that you have adequate processes for managing risks associated with your business: see s912A(1)(h). Our policy on risk management systems is set out in Section D of RG 104.

RG 2.204 We may ask you to provide a B7 additional proof (Risk Management System Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).

- RG 2.205 If you are regulated by APRA you won't be asked questions at B7 and you won't be asked for a B7 additional proof.

### **Establishing adequate risk management systems**

- RG 2.206 A risk management system is not necessarily a computer system. Some applicants have misunderstood this and answered 'no' at B7.1 when in fact they did have risk management processes in place.
- RG 2.207 We expect your risk management processes to be tailored to your financial services business. You will need to identify and address the risks associated with your particular business. For example, if you are a small business with only one responsible manager, your risk management processes should address what will occur if that person is unexpectedly unavailable. Or if you operate a managed investment scheme, your risk management processes should identify and address operational risks related to the loss of, or damage to, scheme property.

## **B8: Compensation and insurance arrangements**

- RG 2.208 If you have applied to provide financial services to retail clients, you will need to have arrangements in place for compensating those clients for loss they suffer if you breach your obligations under the Corporations Act. The primary way to comply with this obligation is to have professional indemnity insurance cover: see s912B, reg 7.6.02AAA, condition 29 of PF 209 (for responsible entities and IDPS operators) and CO 04/194 (for MDA operators). Our policy on compensation and insurance arrangements is set out in Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (RG 126).
- RG 2.209 You will be asked questions about your compensation and insurance arrangements if you selected at A5.1 that you will have retail clients.
- RG 2.210 We may also ask you to provide a B8 additional proof (Compensation Capacity Statement) when we send you your draft licence and a 'requirements letter' listing any outstanding matters you need to finalise before we can grant your final licence: see RG 1.54. The additional proofs are explained in Part 3 (RG 3).

### **Professional indemnity insurance**

- RG 2.211 B8.1 asks whether you are required to have adequate professional indemnity insurance. You do not need to have professional indemnity insurance if:
- (a) you have alternative arrangements approved in writing by ASIC: see Section E of RG 126 and RG 2.214–RG 2.217;

- (b) you are a general insurance company, life insurance company or an authorised deposit-taking institutions regulated by APRA: see Section F of RG 126; or
- (c) you are related to one of the APRA-regulated entities listed in subparagraph (b) and have a guarantee from the APRA-regulated entity that has been approved by ASIC: see Section F of RG 126 and RG 2.218.

RG 2.212 B8.1.1 asks if you already have professional indemnity insurance that complies with our policy on compensation and insurance arrangements. Our policy on what we consider to be adequate insurance is set out in Sections C and D of RG 126.

RG 2.213 It can take several weeks or longer to obtain professional indemnity insurance, so start organising it early. If you need professional indemnity insurance but you don't have it in place at the time you apply for your licence, we will assess your application but we cannot grant your final licence until you have the necessary arrangements in place. We will ask for details of your insurance policy when we send you your draft licence.

### How to apply for ASIC approval of alternative arrangements

RG 2.214 If you wish to apply for ASIC approval of alternative arrangements, you will need to apply in writing to **applications@asic.gov.au**. In deciding whether to approve alternative arrangements, we will consider the same factors used to assess adequacy of professional indemnity insurance: see Section E of RG 126.

RG 2.215 Applications for approval should address the following issues:

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

RG 2.216 We will generally ask for an expert's report (e.g. actuarial report) to be submitted with the application to assess whether the arrangements give no less protection than professional indemnity insurance.

RG 2.217 It will take time to assess alternatives submitted to us for approval so start the application process early. If you wish to rely on alternative arrangements but have not obtained ASIC approval at the time you apply for your licence, we will assess your licence application but we cannot grant your final licence until you have obtained the necessary approval.

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

RG 2.218 If you wish to apply for ASIC approval of a guarantee from an APRA-regulated entity, you will need to apply in writing to **applications@asic.gov.au**. In deciding whether to approve a guarantee, we will consider the same factors used to assess adequacy of professional indemnity insurance: see Section F of RG 126.

RG 2.219 It will take time to assess guarantees submitted to us for approval so start the application process early. If you wish to rely on a guarantee but have not obtained ASIC approval at the time you apply for your licence, we will assess your licence application but we cannot grant your final licence until you have obtained the necessary approval.

## **B9: Research and benefits**

RG 2.220 If you have applied to be authorised to provide financial product advice to retail clients, you will be asked at B9 about the nature of your product research and your approved or recommended product list. These questions relate to your obligation to provide personal advice that is appropriate to the objectives, financial situation and/or needs of your retail clients: see s945A.

RG 2.221 We may also ask you to provide a B9 additional proof (Research Statement) before we can complete our assessment of your application. The additional proofs are explained in Part 3 (RG 3).



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

### Key points

If you selected certain complex financial services or products in Part A of your application, you will be asked further questions about those services or products in Part C: see RG 2.222.

You may also need to provide additional Part C proofs relating to these services or products: see RG 2.223.

- RG 2.222 If, in Part A of your application, you select one or more of the following services or products, you will be asked further questions in Part C that are aimed at making sure you have the capacity to provide these services or products:
- (a) Custodial or Depository Service;
  - (b) Operate a Registered Managed Investment Scheme;
  - (c) Make a Market;
  - (d) Derivatives;
  - (e) Foreign exchange contracts;
  - (f) Horse racing syndicate;
  - (g) Life products;
  - (h) Insurance underwriting;
  - (i) Managed discretionary account services;
  - (j) Margin lending facilities.
- RG 2.223 You may also need to provide additional Part C proofs relating to these services or products. These proofs are explained in detail in Part 3 (RG 3).

## D Part D of the application: Making declarations and certifications

### Key points

Part D of the application generates declarations and certifications based on your answers in Parts A and B (and C, if relevant): see RG 2.224–RG 2.226.

You will be signing these declarations when you sign a print-out of your application: see RG 2.227–RG 2.229.

- RG 2.224 The eLicensing system automatically generates declarations and certifications relevant to your application, based on your answers in Parts A, B and C. These will be at the end of your application when you print it off and you will be signing these when you sign your application.
- RG 2.225 The declarations and certifications fall into the following categories:
- (a) general declarations made by all applicants (see RG 2.226);
  - (b) a declaration specific to bodies regulated by APRA; and
  - (c) specific certifications relating to answers given in Parts A, B and C.
- RG 2.226 The general declarations include that:
- (a) you have taken reasonable steps to ensure that, to the best of your knowledge, the information supplied in, and with, your application is complete and accurate;
  - (b) if granted an AFS licence, you will comply with your AFS licence obligations;
  - (c) you acknowledge that we may take action to verify that the statements and certifications you have made in your application are not false or misleading; and
  - (d) you acknowledge that you have read the ASIC Electronic Lodgement Protocol and agree to be bound by its terms and conditions.
- RG 2.227 Make sure you read all of the declarations and certifications carefully and that they are consistent with your answers in the application before you sign your application. Making false declarations is a criminal offence and may be grounds for us to refuse to grant you an AFS licence or to later cancel your licence.
- RG 2.228 Remember that the declarations and certifications apply at the time you are making your application and not to the time when you might commence business in the future.
- RG 2.229 We may conduct surveillances of licensees to verify that certifications and declarations are correct.

## E Part E of the application: Core proofs

### Key points

Part E of the application lists the core proofs you need to send with your application, as well as listing some other proofs: see RG 2.230–RG 2.231 and RG 2.233–RG 2.350.

If we later ask you to provide additional proofs, these will generally be one or more of the other proofs listed in Part E of your application print-out: see RG 2.232.

- RG 2.230 You will need to support your licence or variation application with proofs. How many and what type will depend on the complexity of the financial services and products you apply for as well as our analysis of your business and the market you propose to operate in.
- RG 2.231 All applicants must supply **core proofs** when lodging their application: see RG 2.233–RG 2.235. You need to send all required core proofs to the address shown in Part E of your application. You need to make sure we receive these **within 20 business days** of you submitting your online licence or variation application. If you don't provide all your core proofs in time, or they are incomplete, your application will be rejected at the pre-lodgement stage.
- RG 2.232 In some cases, we may need to ask you to send us **additional proofs** before we can complete our assessment of your application. You'll need to make sure we receive these **within 10 business days** of our request. Additional proofs will generally be one or more of the proofs listed in Part E of your application print-out. However, we may need to ask you for other proofs not listed on your print-out if, for example, you haven't selected your authorisations properly. Part 3 (RG 3) explains in detail the specific information your additional proofs must include.

### What are the core proofs?

#### AFS licence application

- RG 2.233 For an AFS licence application (form FS01), the core proofs are:
- (a) A5 Business Description;
  - (b) People Proofs for each responsible manager;

- (c) B1 Organisational Competence—this includes a Table of Organisational Competence and, if relevant, a Submission on Responsible Manager’s Competence; and
- (d) B5 Financial Statements and Financial Resources—you don’t need to send us this proof if you are regulated by APRA.

### Variation application

- RG 2.234 For a variation application to vary your service or product authorisations (form FS03), the core proofs are:
- (a) A5 Business Description; and
  - (b) B1 Organisational Competence.
- RG 2.235 For a variation application to vary the other conditions on your licence (also form FS03), the only core proof is the A5 Business Description.

### Information that must be included in your core proofs

- RG 2.236 This section of RG 2 (i.e. Section E) explains in detail the specific information your core proofs must include.
- RG 2.237 Note that if you are applying to vary your licence, your core proofs should cover all of the services and products that will be provided under your licence, not just the variation you are requesting. Even if you have previously given these core proofs to us as part of an earlier licence application, you must still provide them with your variation application and they must be up-to-date.
- RG 2.238 The information in your core proofs must be tailored to your business. For example, if you are part of a corporate group, your core proofs should cover your specific AFS licence obligations, as distinct from being standardised proofs that generally relate to licensees within your corporate group.
- RG 2.239 If you provide generic and/or outdated core proofs, this may delay the processing of your AFS licence application or we may not even accept them.

### How to send your proofs

- RG 2.240 Each core or additional proof should be labelled with the following information:
- (a) your name;
  - (b) application number;
  - (c) document name and relevant number, e.g. ‘B1 core proof: Organisational Competence—Submission on Responsible Manager’s Competence;

- (d) the date the proof was prepared;
- (e) its status (if applicable), for example ‘Draft’, ‘Commercial-in-Confidence’ etc; and
- (f) the number of pages.

RG 2.241 Only send us paper copies of your proofs. Do not send original documents (unless specifically requested) and do not email electronic copies or send disks. The only proofs that need to be certified (i.e. signed by a solicitor, justice of the peace or commissioner for declarations) are copies of qualification certificates and criminal history, bankruptcy checks and business references.

RG 2.242 We’ll scan your proofs into our document imaging system and then destroy them, so only send us copies of your proofs (or, where required, certified copies), not your original documents.

## A5 Business Description core proof

RG 2.243 You must provide this core proof if you are:

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

RG 2.244 We need this information so that we can understand how your business will work and the relevance of the licence authorisations you have selected (including any new ones).

RG 2.245 This core proof includes an overview of your business and an organisational chart.

### Overview of your business

RG 2.246 At a minimum, the description of your business must include:

- (a) the financial services and products you will provide, including details of the particular types of products involved. For example:
  - (i) if you will be operating a managed investment scheme, the types of asset(s) the scheme services hold, whether it will issue stapled securities, whether it will operate as a hedge fund etc.; and/or
  - (ii) if you will be dealing in or advising on derivatives or foreign exchange contracts, the particular products this involves (e.g. exchange traded options, OTC transactions, trading warrants, contracts for difference etc.);

- (b) how you will generate income from providing those financial services and products (e.g. whether you will charge a fee-for-service, receive commissions, use a buy–sell spread etc.);
- (c) the proportion of your total income that you estimate each type of financial service and product will generate;
- (d) how quickly you anticipate your business will grow;
- (e) who your typical client(s) will be for each type of financial service and product you will provide, whether they will typically be retail and/or wholesale clients, and what their typical financial goal(s) in using your services or product will be (e.g. investing in long-term growth assets, hedging risks, speculating etc.);
- (f) if you are a product issuer, the distribution channels you will use to distribute your products (e.g. authorised representatives, other AFS licensees etc.);
- (g) how you will deliver those financial services and products to your clients—that is, who will provide the services and by what means (e.g. through a call centre, face-to-face interviews, internet etc);
- (h) whether your business will operate from a location other than your principal place of business (e.g. other offices within Australia or within other countries). If so, indicate where the other locations are and describe the services that will be provided and how will you supervise and monitor compliance across these different locations; and
- (i) whether some of your financial service-related functions will be outsourced. If so, describe the functions that will be outsourced, how and who will perform these functions, and in what location.

RG 2.247 If your business involves complex or unusual products, transactions or arrangements, you may want to include a diagram to help explain your business.

### **Organisational chart**

RG 2.248 As part of this core proof you must also provide an organisational chart illustrating the overall structure of your business and clearly identifying:

- (a) the number of employees and authorised representatives in each functional area;
- (b) the position(s) held by each of your responsible managers;
- (c) the person responsible for monitoring ongoing compliance with your AFS licence obligations, and their reporting lines;
- (d) the person responsible for reporting breaches of your AFS licence obligations directly to ASIC (e.g. under s912D); and

- (e) if applicable, the relationship between you, as the applicant entity, and any ultimate holding company or other companies in your corporate group.

## People Proofs for each responsible manager

- RG 2.249 You must provide this core proof if you are:
- (a) applying for an AFS licence; or
  - (b) adding new responsible managers (form FS20) for a variation to the financial service and/or product authorisations on your AFS licence.
- RG 2.250 We need this information to help us assess your organisational competence and whether your responsible managers are of good fame and character.
- RG 2.251 This core proof includes the following information for each responsible manager you have nominated in your application:
- (a) a Statement of Personal Information;
  - (b) certified copies of their relevant qualification certificates;
  - (c) certified copy of a criminal history check (also called a police check);
  - (d) certified copy of a bankruptcy check; and
  - (e) certified copies of two business references (at least one of these should be from someone external to the nominated responsible manager's current organisation).
- RG 2.252 If you are a body regulated by APRA, you don't need to provide a bankruptcy check, criminal history check or business references for your responsible managers.

### Preparing certified copies

- RG 2.253 We will accept a document as being 'certified' if it has been signed by a solicitor, justice of the peace, notary or other equivalently qualified person, and the signatory attests that the document is a true copy of the original.
- RG 2.254 We cannot accept uncertified photocopies, or a photocopy or scanned copy of a certified document.
- RG 2.255 Only certified documents written in English will be accepted. If your documents are not in English, you must also provide a certified translation of the document.

### Statement of Personal Information

- RG 2.256 The eLicensing system will print a Statement of Personal Information for all responsible managers you have nominated at B1 in your online application.

RG 2.257 All responsible managers must answer all of the questions in the Statement of Personal Information and it must be signed and witnessed.

RG 2.258 Part B of the Statement of Personal Information requires you to provide, for each responsible manager, details of their educational qualifications that are relevant to the types of financial services and products you are applying for under your AFS licence.

### **Certified copies of qualification certificates**

RG 2.259 You must provide certified copies of all relevant qualification certificates for each of your responsible managers.

### **Overseas qualifications**

RG 2.260 We will generally only accept an overseas qualification where you can show that it is comparable to an Australian qualification that meets one of the five options in RG 105. If a responsible manager has a relevant foreign university qualification, you can apply to have the qualification assessed as comparable by Australian Education International–National Office of Overseas Skills Recognition (AEI–NOOSR).

RG 2.261 Alternatively, you can send us a copy of the relevant AEI–NOOSR Country Education Profile and a submission setting out the responsible manager’s relevant overseas qualification and explaining how it is relevant to the option selected under RG 105. The Country Education Profiles are publications that provide assessment guidelines for higher education qualifications, naming specific universities in the overseas location and indicating equivalence with Australian university qualifications. Profiles are available for more than 90 countries and can be purchased individually from Commonwealth government information centres.

RG 2.262 If there is any doubt about the adequacy of your responsible manager’s qualification based on the information in the Country Education Profile, you can have the qualification individually assessed by AEI–NOOSR. This process may take some weeks.

RG 2.263 To find out more about AEI–NOOSR’s assessment of qualifications and their Country Education Profiles, go to [www.dest.gov.au/noosr](http://www.dest.gov.au/noosr).

### **Certified copy of criminal history check**

RG 2.264 You can get criminal history (or police) checks on your responsible managers from the Australian Federal Police (AFP). The criminal history checks you provide to us must be no more than 12 months old.



- RG 2.265 Criminal history checks can take up to 6 weeks or more to obtain, so apply for them early. You should send us a certified copy of the criminal history check and retain the original.

#### **How to apply for a criminal history check**

- RG 2.266 The check you need is called a ‘Name Check—ASIC Licensing’. We will not accept other police documents or police checks, such as those for applications for firearm licences.
- RG 2.267 You can get a form from the AFP or download one from **www.afp.gov.au**. Make sure you select the special form to request a check for ASIC purposes. This check will not include convictions that are ‘spent’ or ‘quashed’: see the definition of ‘spent conviction’ in Part VII of the *Crimes Act 1900*. You are not obliged to disclose a spent conviction to us.
- RG 2.268 Carefully read the instructions before completing the form. The AFP will return any forms that are incomplete. You need to pay a fee to the AFP when you apply for the check.
- RG 2.269 Send your form and cheque or money order to:  
Australian Federal Police  
Criminal History Branch  
Locked Bag No 1  
WESTON ACT 2611

#### **Overseas criminal history checks**

- RG 2.270 If a responsible manager has never lived in Australia or has only recently arrived, an Australian criminal history check will not be relevant. In this situation, you must provide us with a criminal history check, no more than 12 months old, from the countries in which the responsible manager has lived in the last 10 years.
- RG 2.271 The criminal history check must be obtained from a national government authority in the relevant country. If this is not possible, you must provide a criminal history check issued by a state or provincial authority for each state or province where the responsible manager has lived over the last 10 years.
- RG 2.272 If authorities in the relevant country do not provide criminal history checks, you must provide a statutory declaration declaring that the responsible manager has no criminal history and detailing the attempts you have made to obtain a criminal history check from the relevant authorities. If the responsible manager is still overseas at the time you lodge your licence application, the statutory declaration must be notarised and registered at the Australian Consulate of the country where the responsible manager lives. If the responsible manager is living in Australia at the time the statutory

declaration is made, the declaration must be signed and witnessed by a solicitor, justice of the peace, notary or other equivalently qualified person.

### **Certified copy of bankruptcy check**

- RG 2.273 You can get bankruptcy checks on your responsible managers from the Insolvency Trustee Service of Australia (ITSA). The bankruptcy checks you provide to us must be **no more than 12 months old**. You should send us a certified copy of the bankruptcy check and retain the original.
- RG 2.274 ITSA maintains the National Personal Insolvency Index (NPII), which contains information on proceedings and administrations under the *Bankruptcy Act 1966*. You can either request a bankruptcy check through an ITSA office or via information brokers who have been authorised by ITSA. Go to the ITSA website at [www.itsa.gov.au](http://www.itsa.gov.au) for more information about brokers or to download a search request form. A fee applies to bankruptcy checks.

### **Overseas bankruptcy checks**

- RG 2.275 If a responsible manager has never lived in Australia or has only recently arrived, an Australian bankruptcy check will not be relevant. In this situation, you must provide us with a bankruptcy check, no more than 12 months old, from the countries in which the responsible manager has lived in the last 10 years.
- RG 2.276 The bankruptcy check must be obtained from a national government authority in the relevant country. If this is not possible, you must provide a bankruptcy check issued by a state or provincial authority for each state or province where the responsible manager has lived over the last 10 years.
- RG 2.277 If authorities in the relevant country do not provide bankruptcy checks, you must provide a statutory declaration declaring that the responsible manager has never been bankrupt and detailing the attempts you have made to obtain a bankruptcy check from the relevant authorities. If the responsible manager is still overseas at the time you lodge your licence application, the statutory declaration must be notarised and registered at the Australian Consulate of the country where the responsible manager lives. If the responsible manager is living in Australia at the time the statutory declaration is made, the declaration must be signed and witnessed by a solicitor, justice of the peace, notary or other equivalently qualified person.

### **Certified copies of two business references**

- RG 2.278 The two business references you need to provide for each responsible manager must be in a similar format to the example reference in Appendix 1.
- RG 2.279 The references must:

- (a) be signed and dated and clearly state the full name and title of the referee. References must be **no more than 12 months old** at the time you lodge your application;
  - (b) specifically relate to the work the responsible manager has performed in the industry in connection with the types of financial services and products that you are applying for; and
  - (c) confirm whether the responsible manager is of good fame and character.
- RG 2.280 Where the first reference is provided from an internal source (e.g. the human resources branch, chairperson or CEO of the responsible manager's current organisation), the second reference must be from an external source (e.g. previous employer or industry body).
- RG 2.281 We will not accept references where your responsible managers provide references for each other.
- RG 2.282 Referees are reminded that providing false or misleading information to ASIC is an offence.

## B1 Organisational Competence core proof

- RG 2.283 You must provide this core proof if you are:
- (a) applying for an AFS licence; or
  - (b) varying the financial service and/or product authorisations on your AFS licence.
- RG 2.284 We need this information to help us assess whether you meet the organisational competence requirements for the financial services and products you are applying for under your AFS licence.
- RG 2.285 This core proof includes a Table of Organisational Competence and, if applicable, a Submission on a Responsible Manager's Competence.

### Table of Organisational Competence

- RG 2.286 If you set out your Table of Organisational Competence in the same format as the example provided in Appendix 2, it will help us to assess your application efficiently. For each responsible manager you must set out:
- (a) their experience and qualifications in relation to each financial service and product authorisation you are applying for under your AFS licence;
  - (b) which of the five options in RG 105 for demonstrating appropriate knowledge and skills they meet; and

- (c) if you will be operating a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service, their knowledge and skills in relation to:
  - (i) the operation of the scheme; and
  - (ii) the assets under management or the business operated by the scheme.

## **Submissions on a Responsible Manager's Competence**

### **If a responsible manager is relying on Option 5**

- RG 2.287 You must provide a submission describing:
- (a) the nature of the role performed by the responsible manager;
  - (b) any relevant qualifications or courses completed by the responsible manager and the dates they were completed;
  - (c) the responsible manager's relevant experience over the past 10 years (this does not necessarily mean they need 10 years relevant experience);
  - (d) any relevant credentials of the responsible manager, including association memberships or affiliations, or skills or knowledge recognised by an industry association, a regulator such as APRA, or some relevant overseas body; and
  - (e) why you think the responsible manager has appropriate knowledge and skills for the financial services and products their role relates to.

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

- RG 2.288 You must provide a submission demonstrating that you will be able to meet your ongoing organisational competence obligations, even though a responsible manager will have responsibilities to other AFS licensees.
- RG 2.289 Your submission must include a description of:
- (a) how the responsible manager will allocate their time to ensure that they can properly perform their role as both your responsible manager and the responsible manager of another AFS licensee; and
  - (b) how you will manage any conflicts of interest that may arise from the responsible manager acting on behalf of multiple AFS licensees.

## **B5 Financial Statements and Financial Resources core proof**

- RG 2.290 You must provide this core proof if you are applying for an AFS licence, unless you are a body regulated by APRA.

- RG 2.291 We need this information to assess whether you have adequate financial resources available to you to comply with your obligations as an AFS licensee.
- RG 2.292 For this core proof you need to:
- (a) identify which financial requirement(s) under Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) apply to you and provide financial documents demonstrating that you can comply with these financial requirements; and
  - (b) provide a description of your processes for ensuring that you comply with RG 166, including your processes for:
    - (i) monitoring and reporting on financial obligations, including reporting lines and the frequency of reporting;
    - (ii) ensuring that you have adequate funds to properly carry out your responsibilities under your AFS licence, now and in the future; and
    - (iii) ensuring compliance with all ongoing record keeping obligations.
- RG 2.293 As an alternative to RG 2.292(a) above, you can get your accountant to provide a statement that:
- (a) specifies which financial requirements apply to you;
  - (b) confirms that you can comply with these financial requirements; and
  - (c) states/confirms that there are no other financial requirements that apply to you.
- RG 2.294 Your accountant must be a qualified accountant who is external to your organisation. A ‘qualified accountant’ is an accountant who satisfies the requirements in Regulatory Guide 154 *Certificate by a qualified accountant* (RG 154).
- RG 2.295 Your accountant’s statement must also be accompanied by a statutory declaration, signed by you or a person authorised to sign on your behalf, stating that:
- (a) you comply with the RG 166 financial requirements described by the accountant; and
  - (b) no other financial requirements apply to you.
- RG 2.296 You still need to provide RG 2.292(b), that is, a description of your processes for ensuring that you comply with RG 166. You cannot rely on a statement from a qualified accountant to demonstrate that you have adequate processes in place for ensuring you comply with RG 166.

## Identifying which financial requirements apply to you

- RG 2.297 It will help you if you refer back to the information in RG 2.124–RG 2.131. You should also see Table 1 in RG 166.

## Financial documents to show compliance with RG 166 financial requirements

- RG 2.298 Any financial documents you give us, except for cash flow projections, must comply with all relevant accounting standards.

### Base level financial requirements

#### *Financial statements*

- RG 2.299 The base level requirements in Section B of RG 166 apply to all applicants except bodies regulated by APRA and market and clearing participants that are exempt from them under Section D of RG 166.
- RG 2.300 If Section B of RG 166 applies to you, you must provide financial statements demonstrating that you have positive net assets and solvency: see RG 166.22. These must include:
- (a) a balance sheet;
  - (b) an income statement (if already operating); and
  - (c) a statement of cash flows (if already operating).
- RG 2.301 Your financial statements must be **no more than 3 months old**. You should preferably provide audited financial statements. However, if your last audited financial statements are more than 3 months old, you should provide signed unaudited financial statements that are no more than 3 months old.
- RG 2.302 Unaudited financial statements should be signed by the authorised person(s) and include the printed name and capacity of the signatory and the date of signing. People authorised to sign unaudited financial statements are:
- (a) for an individual, that person;
  - (b) for a company, a director or secretary;
  - (c) for a partnership, a partner who would perform duties in connection with the holding of the AFS licence; and
  - (d) for non-corporate trustees, a trustee.

#### *Cash needs requirement*

- RG 2.303 If Section B of RG 166 applies to you, you must also provide documents demonstrating you meet the cash needs requirement by complying with one of Options 1 to 5 described in RG 166.23–RG 166.24.

- RG 2.304 Your documents must clearly identify which of Options 1 to 5 you are relying on, for example, whether you have chosen Option 1 (reasonable estimate projection plus cash buffer) or Option 2 (contingency based projection). Options 3 to 5 are generally only available for licensees within corporate groups or those with financial support from an Australian ADI.
- RG 2.305 **If you choose Option 1 or Option 2**, you must provide a signed 3-month (month-by-month) cash flow projection demonstrating that you have met the cash needs requirement. In preparing your cash flow projection you must document the projections, calculations and your assumptions. You must explain why these assumptions are appropriate, particularly when relying on the conduct of people not under a legal commitment, e.g. sales from repeat business. This helps to show that you will comply with your obligations.
- RG 2.306 For a worked example of how to calculate cash flow projections under Option 1 or Option 2, see Appendix 3 of this guide.
- RG 2.307 **If you choose Options 3, 4 or 5**, you must provide documents showing that you will satisfy the requirements under RG 166.37, RG 166.39 or RG 166.41. You don't need to provide cash flow projections if you choose one of these options.

#### **Managed investments, custody services and margin lending facilities**

- RG 2.308 The financial requirements in Section C of RG 166 generally apply to:
- (a) responsible entities of managed investment schemes;
  - (b) IDPS operators;
  - (c) providers of custodial or depository services; and
  - (d) issuers of margin lending facilities.
- RG 2.309 If Section C of RG 166 applies to you, you must provide:
- (a) a calculation of the amount of net tangible assets (NTA) you are required to hold;
  - (b) a calculation of the amount of NTA you actually hold;
  - (c) if you are the responsible entity of a managed investment scheme, an IDPS operator or an issuer of a margin lending facility who uses a third party custodian, a statement verifying the NTA of the custodian, signed by the auditor or by two directors of the custodian; and
  - (d) if you provide custodial or depository services and you believe your custodial function is only incidental to the provision of another financial service (see RG 166.82(a) and RG 166.83), a description of your circumstances and why you believe the custodial function is only incidental. Your submission should include information about:

- (i) the estimated proportion of your financial services business that your custody service will comprise; and
- (ii) who will hold the legal title to the client's assets.

RG 2.310 Your NTA calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your NTA calculation.

#### **Licensees holding client money and property**

RG 2.311 If Section E of RG 166 applies to you, you must provide a calculation of the amount of surplus liquid funds (SLF) you actually hold.

RG 2.312 Your SLF calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your SLF calculation.

#### **Licensees transacting with clients as principal**

RG 2.313 If Section F of RG 166 applies to you, you must provide calculations of:

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

RG 2.314 Your ASLF calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your ASLF calculation.

RG 2.315 In calculating ASLF, if you intend to rely on a system for calculating risk exposures rather than the standard adjustments to SLF, you must provide a submission including evidence that the model is substantially the same as a model accepted by regulators with a prudential focus. Your submission must comply with Regulatory Guide 51 *Applications for relief* (RG 51). You must include certification from your chief executive and a report by a registered company auditor: see RG 166.176–RG 166.179.

#### **Tier one capital requirements**

RG 2.316 If Section G of RG 166 applies to you, you must provide a calculation of the amount of tier one capital you actually hold. Foreign exchange dealers can generally choose to comply with either Section F or Section G of RG 166.

RG 2.317 The amount of tier one capital you hold should be determined according to APRA Prudential Standard APS 111 *Capital Adequacy: Measurement of Capital* and APRA Guidance Note AGN 111.1 *Tier 1 Capital*. These are available from APRA's website, [www.apra.gov.au](http://www.apra.gov.au).



- RG 2.318 Your calculation must be based on a recent balance sheet (preferably no more than 3 months old). The balance sheet must be signed and dated by a director and provided to us with your calculation.

#### **Eligible undertakings and eligible providers**

- RG 2.319 If you are relying on an eligible undertaking (i.e. a financial commitment from an eligible provider: see RG 166.146(e) and RG 166.181–RG 166.189) to meet your financial requirements, you must provide information showing us that the undertaking and provider meet the requirements described in RG 166.181 and RG 166.185. You can usually demonstrate this by providing us with a copy of the eligible undertaking.
- RG 2.320 If you want to apply for our approval of an eligible provider under paragraphs (e) or (g) of RG 166.181 or of an eligible undertaking under RG 166.187, you will need to make a submission to us as described in Section H of RG 166 under ‘How to apply for approval of an eligible provider’ and ‘How to apply for approval of an eligible undertaking’.
- RG 2.321 If, after being granted an AFS licence, you want to apply for our consent to cancel the eligible undertaking, you should apply to us in writing.

#### **Deeds of subordination**

- RG 2.322 If you need to subordinate debt for the purposes of excluding it from your adjusted liabilities (see RG 166.147(a) and RG 166.148), you must provide us with **three original** executed deeds of subordination for **each lender** in the same form as Pro Forma 63 *Deed of Subordination* (PF 63).
- RG 2.323 If, after being granted an AFS licence, you want to release the deed of subordination, you can obtain a pro forma of a deed of mutual release by calling the ASIC Infoline on 1300 300 630.

#### **Trading trusts**

- RG 2.324 If you will be conducting your financial services business through a trading trust, you cannot rely on the assets of the trading trust to meet SLF or NTA requirements.
- RG 2.325 You may, however, rely on your right to use the assets of a trading trust to meet the cash needs requirement under Option 1 or Option 2 of RG 166.23.
- RG 2.326 If you are using Option 1, you must include all the cash flows of the trust in your cash projections, as well as any cash flows specifically relating to you.
- RG 2.327 If you are using Option 2, one of the contingencies you would need to take into account would be the possible loss of access to the funds of the trust.

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

1. Date *[insert date]*

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

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

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

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

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

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

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

*[tick the appropriate boxes]*

- Provide Financial Product Advice** to
- Retail clients and/or  Wholesale clients

## Deposit and payment products

- Basic deposit products
- Non-basic deposit products
- Non-cash payment products
  
- Derivatives
- Derivatives—wool only
- Derivatives—electricity only
- Derivatives—grain only

- Foreign exchange contracts

- General insurance products

- Consumer credit insurance

- Government debentures, stocks or bonds

## Life products

- Investment life insurance product

- Life risk insurance products

- Consumer credit insurance

## Miscellaneous financial facility

- Miscellaneous financial investment products

- Miscellaneous financial investment products—MDA services

- Miscellaneous financial risk products

## Managed investment schemes (registered or unregistered)

- Managed investment schemes, excluding IDPS

- Managed investment schemes, including IDPS

- IDPS only

- Own managed investment scheme only

- Horse racing syndicate

- Time-sharing scheme

- MDA services

- Retirement savings account products

- Securities

- Superannuation

## Margin lending facility

- Standard margin lending facility

- Non-standard margin lending facility

**Provide General Financial Product Advice Only** Retail clients and/or Wholesale clients **Underwrite an issue of securities or interests in a managed investment scheme** **Deal in a Financial Product** Retail clients and/or Wholesale clients*or* **Arrange for a Person to Deal in a Financial Product** Retail clients and/or Wholesale clients

## Deposit and payment products

 Basic deposit products Non-basic deposit products Non-cash payment products Derivatives Derivatives—wool only Derivatives—electricity only Derivatives—grain only Foreign exchange contracts General insurance products Consumer credit insurance

## Managed investment schemes (registered or unregistered)

 Managed investment schemes, excluding IDPS Managed investment schemes, including IDPS IDPS only Own managed investment scheme only Horse racing syndicate Time-sharing scheme MDA services Retirement savings account products Securities

- Government debentures, stocks or bonds
- Superannuation
- Life products
- Life risk insurance products
- Standard margin lending facility
- Consumer credit insurance
- Non-standard margin lending facility
- Miscellaneous financial facility
- Miscellaneous financial investment products
- Miscellaneous financial investment products—MDA services
- Miscellaneous financial risk products
- Make a Market for a Financial Product**
- Derivatives
- Foreign exchange contracts
- Derivatives—wool only
- Bonds and debentures
- Derivatives—electricity only
- Other financial products
- Derivatives—grain only
- Operate a Registered Scheme, namely**  
[insert name of scheme(s)]
- Type of scheme *[please tick appropriate type]*
- Derivatives
- Mortgages
- Direct real property
- Primary production
- Film schemes
- Time-sharing scheme
- Financial assets
- Other specialised scheme
- IDPS-like
- Provide General Financial Product Advice Only**
- IDPS
- non-IDPS

**7.** On a

full-time basis

part-time basis

**8.** For the period *[please specify]*

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

**10.** In their capacity as *[provide details of position held]*

(e.g. an authorised representative of [please specify licensee] for [insert period of time]).

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

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

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

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

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

Yours faithfully

**15.** [Referee's signature]

**16.** [Referee's full name]

**17.** [Title]

**18.** [Firm or self-employed]

## Appendix 2: Sample proof—B1 Table of Organisational Competence

- RG 2.328 The following table is an example of the B1 Table of Organisational Competence outlined in RG 2.286. It illustrates the type of information you need to give us and how to set it out in a table format. Note that the example is not exhaustive.
- RG 2.329 For each responsible manager you must set out which RG 105 option they are relying on and their experience and qualifications in relation to each financial service and product authorisation. When describing their experience, you should describe the roles they perform or have performed that enable them to understand their responsibilities as a responsible manager. The experience that you describe needs to be relevant to the financial services and products you are applying for under your licence.
- RG 2.330 Your table will be easier for us to understand if you include no more than two responsible managers per page.



**Table 2: Table of organisational competence**

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

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

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

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

<b>Details of Responsible Manager(s)</b>	<b>Name of Responsible Manager 1 RG 105 option they are relying on</b>	<b>Responsible Manager 2 RG 105 option they are relying on</b>
<p><b>Experience in:</b></p> <p><b>Make a Market</b></p> <p>[Specify whether to retail and/or wholesale clients]</p>	<p><b>Dates in Role</b></p> <p><b>Entity Name and, if applicable, AFS licence or old licence no.</b></p> <p><u>Business Description:</u> [Provide an overview of the business that the responsible manager has worked for]</p> <p><u>Position:</u> [Set out the position title held by the responsible manager]</p> <p><u>Clients:</u> [Are the clients wholesale, retail or both?]</p> <p><u>Financial Products:</u> [List the financial products relevant to this role] e.g. derivatives</p> <p><u>Role:</u> [Provide an overview of the role including day-to-day functions performed] e.g.</p> <ul style="list-style-type: none"> <li>• Derivatives: [Provide a description of experience attained in this role, and how that experience is relevant to the make a market authorisation applied for; give details of the specific types of products and underlying assets that experience relates to; give an estimate of the proportion of time spent in relation to this service]</li> </ul> <p>[Insert other relevant product experience]</p>	<p>No make a market experience</p>

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

- RG 2.331 The tables in this appendix are examples of documents showing how to comply with the cash needs requirement under Section B of RG 166. These documents form part of the B5 Financial Statements and Financial Resources core proof outlined in RG 2.290–RG 2.327.
- RG 2.332 These examples cover Options 1 and 2 of the cash needs requirements and illustrate the type of information you need to give us and how you can set it out. Please note that these examples are not exhaustive.
- RG 2.333 The examples in this appendix do not cover Options 3, 4 or 5 of the cash needs requirement. For further information on these options, see Section B of RG 166.

### Option 1: Reasonable estimate projection plus cash buffer

#### Cash flow projections

- RG 2.334 If you rely on Option 1 of the cash needs requirement, you must prepare a projection of cash flows (i.e. cash inflow and outflow) based on your reasonable estimate of what is likely to happen over at least the next 3 months: see Table 3.
- RG 2.335 In projecting your cash flows, we would normally expect you to take into account:
- (a) assets you hold at the start of the projection term that can be used to pay your liabilities; and
  - (b) inflows you may receive including:
    - (i) income from your business or sale of your business;
    - (ii) amounts that you may borrow (e.g. under an overdraft); and
    - (iii) amounts that you may receive from your owners or associates as financial support.

**Table 3: Cash projections at 31 October 2007 under Option 1**

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

**Assumptions**

RG 2.336 You must document your assumptions and explain why you think they are appropriate, particularly when relying on the conduct of people not under a legal commitment (e.g. sales from repeat business): see Table 4.

**Table 4: List of assumptions under Option 1**

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

**Financial resources**

RG 2.337 Using your cash flow projections, you must be able to show that you will have access as needed to enough financial resources to meet your liabilities over the projected term, including any additional liabilities you project you will incur during that term. This means your projections must not show a negative cash balance at any time during the projected term.

RG 2.338 You must also show you have as a cash buffer an amount equal to 20% of the greater of:

- (a) the cash outflow for the projected period (i.e. 3 months); or
- (b) your actual cash outflow for the most recent financial year for which you have prepared a profit and loss statement, adjusted to produce a 3-month average.

See Table 5.

RG 2.339 You can meet this cash buffer requirement by:

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

**Table 5: Cash buffer amount under Option 1**

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

RG 2.340 This example for Option 1 assumes that this is a new business that did not need to prepare financial statements for the previous financial year and, therefore, the actual cash outflow for the last financial year (adjusted to produce a 3-month average) is zero.

RG 2.341 If, in this example, the entity did not hold the necessary amount of cash, then it could choose to rely on a commitment to provide cash from an eligible provider. This, for example, could be in the form of an overdraft facility from an Australian bank.



## Option 2: Contingency based projections

### Cash flow projection

- RG 2.342 Under Option 2 of the cash needs requirement, you must prepare a projection of cash flows that shows your estimate of what would happen if your ability to meet your liabilities over the projected term were adversely affected by commercial contingencies. The projection must cover at least the next 3 months: see Table 6.
- RG 2.343 This cash flow preparation is prepared in a similar way to Option 1 except that you must reduce the amounts of cash inflows to take into account all events or contingencies that are sufficiently likely to occur for a reasonable licensee to plan for them. This includes many events that probably will not occur.

**Table 6: Cash projections at 31 October 2007 under Option 2**

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

### Assumptions

- RG 2.344 You must document your calculations and assumptions and describe in writing why they are the appropriate: see Table 7. It is not enough to just state that you have considered the possible contingencies and decided that

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

**Table 7: Documenting your assumptions under Option 2**

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

### Financial resources

RG 2.345 You must be able to show that, based on the cash flow projections, you will have access as needed to enough financial resources to meet your liabilities over the projected term, including any additional liabilities you project you will incur during that term. This means you must not have a negative cash balance at any time during the projected period.

RG 2.346 Unlike Option 1, there is no cash buffer amount required under Option 2.

### **Things to remember about cash flow projections for both options**

- RG 2.347 All expenses of running the financial services business must be included.
- RG 2.348 Projected cash inflows and outflows must be shown on a gross basis. That is, you must show all the amounts you actually receive and all the amounts you actually pay. Cash flows must not be shown on a net basis. For example, you must not exclude certain cash inflows and outflows on the basis that the amounts offset each other.
- RG 2.349 As this is a projection of cash flows, amounts should be recorded in the month when they will be paid or received. You cannot ‘smooth’ inflows and outflows by allocating a proportion of a large amount across several months unless receipts or payments will actually occur during those months.
- RG 2.350 You must update the projection of cash flows when it ceases to cover the next 3 months, or if you have reason to suspect that an updated projection would show you were not meeting your licence conditions.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
body regulated by APRA	Has the meaning given in s3(2) of the <i>Australian Prudential Regulation Authority Act 1998</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of this Act
financial services laws	Has the meaning given in s761 of the Corporations Act
general obligations	The obligations of a licensee under s912A(1) of the Corporations Act
IDPS	Investor directed portfolio service
MDA	Managed discretionary account
PF 209 (for example)	An ASIC pro forma (in this example numbered 209)
reg 7.6.04 (for example)	A regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04)
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
representative	Has the meaning given in s910A of the Corporations Act
RG 166 (for example)	An ASIC regulatory guide (in this example numbered 166)
you	Applicant for an AFS licence or a variation to an AFS licence

## Related information

### Headnotes

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

### Pro formas

Pro Forma 209 *Australian financial services licence conditions* (PF 209)

### Regulatory guides

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

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

RG 36 *Licensing: Financial product advice and dealing*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 146 *Licensing: Training of financial product advisers*

RG 165 *Licensing: Internal and external dispute resolution*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

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

RG 181 *Licensing: Managing conflicts of interest*

### Legislation

Corporations Act Chapter 7, s9, s761A, 910A, 911B, 912A, 912B, 913B, 914A, *Australian Prudential Regulation Authority Act 1998* s3(2)

## **Information releases**

IR 05-61 *ASIC cuts paperwork for AFS licence applicants* (24 November 2005)

## **ASIC forms**

FS01 *Australian Financial Services licence application*

FS03 *Licence authorisation variation application*

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