



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 3

# AFS Licensing Kit: Part 3— Preparing your additional proofs

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.

This guide forms Part 3 of the AFS Licensing Kit and explains the 'additional' proof documents applicants may be asked to send us.

Before reading this guide, applicants should read:

- Part 1 (RG 1), which explains the process of applying for and varying an AFS licence; and
- Part 2 (RG 2), which helps applicants complete the AFS licence application form (FS01) or variation application form (FS03) and prepare 'core' 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- Superseded Regulatory Guide 3, rebadged as a regulatory guide July 2007, reissued November 2007, January 2008
- Superseded AFS Licensing Kit Part 3, issued November 2005

### 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.

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## Overview

### Key points

In some cases, we might ask you to send us additional proofs before we can complete our assessment of your application: see RG 3.1.

If you need to prepare additional proofs we will contact you during the assessment stage and let you know exactly which ones to prepare: see RG 3.2–RG 3.3.

This guide explains in detail the information we expect to see in the various additional proofs: see RG 3.4–RG 3.10.

## When to prepare additional proofs

- RG 3.1 In some cases, we might ask you to send us additional proofs before we can complete our assessment of your application. How many and which ones we ask for (if any) will depend on the complexity of the services and products you have applied for, as well as our analysis of your business and the market you propose to operate in.
- RG 3.2 If you need to prepare additional proofs we will contact you during the assessment stage and let you know exactly which ones to prepare. These will usually be one or more of the non-core proofs listed in Part E of your application print-out. However, we may need to ask you for others not listed on your print-out if, for example, you haven't selected your authorisations correctly.
- RG 3.3 If we ask you to send us additional proofs, you will need to make sure we receive them **within 10 business days** of our request.

## What should your additional proofs cover?

- RG 3.4 This guide explains in detail the information we expect to see in the various additional proofs. If you have to provide any additional proofs, you should make sure they specifically cover this information. For example, if you are asked to provide an additional proof relating to your internal procedures (e.g. a B3 Compliance Arrangements proof or a B7 Risk Management System Statement), don't just send us a copy of your internal manuals—your proof must address the specific issues described in this guide.

- RG 3.5 Your additional proofs must also be tailored to your business. For example, if you are part of a corporate group, your proofs should cover your specific AFS licensee obligations, as distinct from being standardised proofs generally relating to licensees within your corporate group. If you provide generic or outdated proof documents, this will delay the processing of your AFS licence application or we may not even accept them.
- RG 3.6 If you are applying to vary your licence, any additional proofs you are asked to provide should cover **all** of the services and products you will be providing under your licence, not just those relating to the variation you are requesting.

## How to send your additional proofs

- RG 3.7 Each additional proof you send us should be labelled with the following information:
- (a) your name;
  - (b) application number;
  - (c) document name and relevant number, e.g. 'B2 proof: Development Program for Responsible Managers';
  - (d) the date the proof was prepared;
  - (e) its status (if applicable), e.g. 'Draft', 'Commercial-in-Confidence' etc.; and
  - (f) the number of pages.
- RG 3.8 Only send us paper copies of your additional proofs. Don't send original documents (unless specifically requested) and don't email electronic copies or send disks.
- RG 3.9 If we require any additional information, we will contact you by letter, email or telephone during the assessment process.
- RG 3.10 We'll scan your proofs into our document imaging system and then destroy them, so please do **not** send originals, unless we specifically ask for them.

## A Part A additional proofs

### Key points

The Part A additional proofs relate to your answers to the questions in Part A of the application form.

These proofs cover information about you, your business and the financial services and products you want to provide.

### A1 proof: Entity Details

#### Partnership

RG 3.11 If you are applying for an AFS licence as a partnership, we may ask you to provide the names of all the partners in the partnership.

#### Trustee(s) of a trust

RG 3.12 If you are applying for an AFS licence as a trustee of a trust (i.e. where you are a group of individuals who act as the trustees of a trust), we may ask you to provide a list of the names of all trustees. Note that we won't ask you for this proof if you are a company and you apply under the company name.

#### Other entity types

RG 3.13 If you are some other type of entity (i.e. not an individual, partnership, company or trustee of a trust), we may ask you to provide:

- (a) a description of the nature of the entity; and
- (b) a list of the names of the persons responsible for managing the entity.

### A4 proof: Miscellaneous Financial Facility Statement

RG 3.14 This proof includes:

- (a) a description of the features of the product and how it will operate and/or be used; and
- (b) a legal opinion that:
  - (i) supports the view that the product is a financial product;

- (ii) supports the view that the product does not fit into any of the other financial product categories listed in Part 2 of the AFS Licensing Kit (RG 2) at RG 2.92; and
- (iii) gives a detailed legal analysis of why the other financial product categories do not apply.

RG 3.15 You do not need to provide the legal opinion if the product is a Managed Discretionary Account (MDA) service.

## **A4 proof: Membership of a Licensed Market**

RG 3.16 This proof includes documents showing that you are a participant of:

- (a) a licensed market (i.e. a financial market covered by an Australian market licence); and/or
- (b) a licensed clearing and settlement (C&S) facility (i.e. a clearing and settlement facility covered by an Australian C&S facility licence).

RG 3.17 For example, for stockbrokers or share brokers, this should include evidence of your participating membership in a market that holds an Australian market licence covering dealing in securities. For futures brokers, this proof should include evidence of your participating membership in a market that holds an Australian market licence covering dealing in derivatives.

## B Part B additional proofs

### Key points

The Part B additional proofs relate to your answers to the questions in Part B of the application form.

These proofs cover information about the AFS licensee obligations.

### B2 proof: Development Program for Responsible Managers

- RG 3.18 This proof includes:
- (a) a description of your processes for ensuring that your responsible managers:
    - (i) are of good fame and character; and
    - (ii) maintain adequate skills and competence;
  - (b) a description of the development program you offer to your responsible managers and how it is conducted, including:
    - (i) your training needs analysis process for new and existing staff;
    - (ii) training programs—both internal and external; and
    - (iii) your training register and how it is maintained.

### B2 proof: Industry Standards Compliance

- RG 3.19 This proof includes documents showing:
- (a) an independent third party has assessed your compliance with relevant industry standards and codes; and
  - (b) the results of that assessment.

### B3 proof: Compliance Arrangements

- RG 3.20 This proof includes a description of:
- (a) your organisational structure, clearly showing compliance reporting lines;
  - (b) the role, seniority and capabilities of compliance management personnel;

- (c) the frequency, extent and nature of reviews for each of your compliance measures;
- (d) the frequency, extent and nature of your compliance reporting;
- (e) how compliance will be reported and/or breaches resolved;
- (f) your process for ensuring that compliance reporting is complete and accurate;
- (g) your process for monitoring and rectifying systemic breaches;
- (h) your process for notifying us of breaches; and
- (i) your process for managing client funds, including who has access to them, how often they are reconciled/audited and the security measures in place.

RG 3.21 This proof also includes a table describing your compliance arrangements (to be provided in the format shown below). This must include details of your:

- (a) compliance obligations;
- (b) procedures for maintaining compliance with those obligations;
- (c) how you will monitor your procedures; and
- (d) who will do the monitoring and how often.

**Table 1: Description of compliance arrangements**

Compliance obligation under the Corporations Act, ASIC policy and PF 209	Procedure(s) for maintaining compliance with it	How procedure(s) will be monitored	Who will monitor procedure(s), and how often (e.g. monthly, quarterly)

## B3 proof: Arrangements for Managing Conflicts of Interests

RG 3.22 This proof includes a description of:

- (a) the structural arrangements you have in place to manage conflicts of interest. This may include your organisational structure, your conflict monitoring and/or reporting lines and any other structural arrangements relevant to your procedures for managing conflicts of interest (e.g. the separation of certain functional areas of your business);
- (b) your procedures for identifying, assessing and evaluating conflicts of interest;

- (c) your procedures for controlling, avoiding and disclosing conflicts of interest;
- (d) your procedures for identifying, and dealing with, instances of non-compliance with your conflicts management arrangements;
- (e) your procedures for ensuring that the quality of your services is not significantly compromised by the presence of conflicts of interest; and
- (f) the person(s) within your organisation responsible for implementing, reviewing and updating your conflicts management arrangements.

RG 3.23 This proof also includes a table describing your conflicts management arrangements (to be provided in the format shown below). This must include details of:

- (a) any identified conflicts of interest;
- (b) your arrangements for managing these conflicts; and
- (c) your procedures for monitoring your arrangements.

**Table 2: Description of conflicts management arrangements**

Description of identified conflict(s) of interest	Arrangements for managing conflict(s)	Procedures for monitoring conflicts management arrangements

## B3 proof: Outsourcing Statement

RG 3.24 This proof includes a description of:

- (a) your processes for determining the suitability of external service providers you will engage to perform any of your substantial activities under your AFS licence;
- (b) how you will engage external service providers, including whether you have written agreements setting out service standards, dispute resolution processes etc.; and
- (c) how often and by what means you will monitor and review external service providers (including monitoring and reporting compliance with service standards and/or written agreements). This should include:
  - (i) details of who the service provider will report to within your business, and how often;

- (ii) the format in which such reports will be given (e.g. written report, verbal feedback, signed monthly risk register); and
- (iii) how you will satisfy yourself that the outsourced activity is adequate for you to meet your AFS licensee obligations.

RG 3.25 This proof also includes a table describing your outsourcing arrangements (to be provided in the format shown below). This must include details of:

- (a) the activities you will outsource;
- (b) the service provider;
- (c) how you will monitor the provision of the service; and
- (d) who will do the monitoring and how often.

**Table 3: Description of outsourcing arrangements**

Activities to be outsourced	Service provider	How the provision of the service will be monitored (e.g. inspection, review of reports)	Who will monitor the provision of the service, and how often (e.g. monthly, quarterly)

## B4 proof: Program for Monitoring, Supervision and Training of Representatives

### All representatives (including authorised representatives)

RG 3.26 This proof includes a description of:

- (a) your processes for supervising and monitoring your representatives (including employees and authorised representatives). These should cover:
  - (i) how, when and to whom your representatives will report;
  - (ii) how often and by what means you will review the conduct of your representatives;
  - (iii) details of whether you will conduct independent reviews or audits of your representatives' conduct and/or how you will supervise and monitor them;
  - (iv) how you will address any non-compliance by representatives; and
  - (v) how you will handle complaints about representatives; and

- (b) how you will determine whether your representatives (including authorised representatives) are adequately trained, including how you will ensure they comply with the training requirements in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146) (where applicable).

### Authorised representatives

RG 3.27 If you plan to appoint authorised representatives, this proof also needs to include a description of your processes for:

- (a) ensuring that authorised representatives will not act outside the scope of their authorisation (e.g. if they are only authorised to provide general advice, how will you ensure your authorised representatives do not provide personal advice?);
- (b) ensuring that you will notify us within 15 business days of any changes in relation to your authorised representatives (see s916F); and
- (c) liaising with other AFS licensees in relation to authorised representatives who represent more than one licensee (see s916C).

## B5 proof: Human Resources Capacity Statement

Note: You will not be asked to provide this proof if you are regulated by APRA.

RG 3.28 This proof includes a description of your processes for ensuring that you have adequate human resources available to meet your AFS licensee obligations. This description should include:

- (a) your processes for recruiting appropriately skilled employees; and
- (b) your succession planning framework if a responsible manager is unexpectedly unavailable. Succession planning is particularly important for small businesses if you only have one or two responsible managers.

## B5 proof: Information Technology Capacity Statement

Note: You will not be asked to provide this proof if you are regulated by APRA.

RG 3.29 This proof includes a description of your processes for ensuring that you have adequate information technology (IT) resources available to meet your AFS licensee obligations. This description should include:

- (a) your IT strategic plan—see the Australian and New Zealand Standard *AS/NZS 4360–2004: Risk management systems* for further information;
- (b) your IT disaster recovery plan; and

- (c) your IT systems and systems functionality—you need to demonstrate that your IT capacity is appropriate for your business capacity (e.g. how often your electronic data is backed-up, whether you archive electronic files and/or store them offsite).

## B6 proof: Dispute Resolution System Statement

### Internal dispute resolution

- RG 3.30 This proof includes a description of your internal dispute resolution procedures, including an explanation of:
- (a) how you will receive and deal with complaints;
  - (b) the maximum time frames you will apply for dealing with complaints;
  - (c) the remedies you may offer for resolving complaints;
  - (d) how you will record and monitor complaints and use this information to identify and address recurring or systemic issues;
  - (e) the information you will give to clients about internal and external dispute resolution procedures; and
  - (f) how and when you will refer unresolved complaints to the relevant approved EDR scheme(s).
- RG 3.31 Your internal dispute resolution procedures need to satisfy among other things, the Guiding Principles in Section 4 of Australian Standard (AS) ISO 10002-2006 *Customer satisfaction—Guidelines for complaints handling in organisations* and 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. For more information, see Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165).

### External dispute resolution

Note: You will generally only be asked to provide this part of the proof 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.

- RG 3.32 This proof also includes:
- (a) showing you are member of one or more ASIC-approved EDR schemes that cover all of the financial services you are applying to provide under your AFS licence; and
  - (b) where relevant, showing that some or all of the financial services you will provide are covered by the Superannuation Complaints Tribunal.

## B7 proof: Risk Management System Statement

Note: You will not be asked to provide this proof if you are regulated by APRA.

- RG 3.33 This proof includes:
- (a) a description of your strategy for integrating risk management into your business operations—see Australian and New Zealand Standard *AS/NZS 4360–2004: Risk management systems* for more information;
  - (b) a diagram illustrating your risk management reporting lines; and
  - (c) a description of the frequency and nature of your internal and external risk review/audit processes.
- RG 3.34 This proof also includes a table (to be provided in the format shown below) describing the main risks your business will face focusing on risks that adversely affect consumers or market integrity (this includes risks of non-compliance with the financial services laws). This must include details of:
- (a) the risks you have identified;
  - (b) how they will arise;
  - (c) their likelihood;
  - (d) their potential impact;
  - (e) measures you have in place to deal with these risks (i.e. to monitor, mitigate and manage the risks); and
  - (f) the responsible manager.

**Table 4: Risk management arrangements**

Identified risks	How the risks will arise	Likelihood that the risks will arise	Impact on the business if the risks arise	Measures to manage risks, including frequency of review of measures	Responsible manager or other supervisor

### Identifying your risks

- RG 3.35 When identifying your risks, you will need to think about the nature, scale and complexity of your particular business. Some common examples of risks include:
- (a) the risk of you breaching a condition on your licence or your AFS licensee obligations;
  - (b) the risk of your representatives acting outside the scope of their authority; or

- (c) if you are heavily dependent on one responsible manager, the risk of that person being unavailable or unable to perform their functions.

### **Describing your processes**

- RG 3.36 When describing the processes you have in place to monitor, mitigate and manage your business risks, you need to explain each of the steps you will use to achieve this outcome. For example, you need to explain if you will undertake random monthly file checks, or use call centre scripts and record client phone calls.
- RG 3.37 We also generally expect that you will describe how you will implement your risk management processes at an operational level.

## **B8 proof: Compensation Capacity Statement**

Note: You will generally only be asked to provide this proof 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.

### **Professional indemnity insurance**

- RG 3.38 This proof includes evidence of your professional indemnity insurance—that is a certificate of currency (on the letterhead of the insurer, its agent or the placing broker) that confirms the insurance is in place.
- RG 3.39 This proof also includes the following details in relation to each professional indemnity insurance policy you have in place:
- (a) the name of the insurer;
  - (b) the period of insurance;
  - (c) whether the policy is an individual policy or a group policy;
  - (d) whether the policy covers:
    - (i) all of the financial services and products that you wish to offer under your AFS licence;
    - (ii) breaches of Chapter 7 of the Corporations Act by both you and your representatives;
    - (iii) fraud of representatives, employees and agents; and
    - (iv) external dispute resolution scheme awards;
  - (e) the amount of cover;
  - (f) whether the policy covers legal costs in addition to the amount paid out as a result of a successful claim;

- (g) the estimated total gross revenue of your business for the next financial year;
- (h) how many automatic reinstatements are allowed under the policy;
- (i) the amount of the excess/deductible;
- (j) whether you consider the excess/deductible at a level that the business can confidently sustain as an uninsured loss;
- (k) whether you have the financial resources necessary to cover the excess/deductible and any gaps in cover;
- (l) whether the policy provides retroactive cover and, if so, from what date;
- (m) whether the policy provides run-off cover and, if so, until what date; and
- (n) whether the policy has exclusions for any of the following matters:
  - (i) external dispute resolution scheme awards;
  - (ii) loss caused by the conduct of representatives generally;
  - (iii) fraud and dishonesty by agents and representatives; or
  - (iv) claims arising from incidents that have been notified to ASIC.

## B9 proof: Research Statement

### Research and analysis

RG 3.40 This proof includes a description of:

- (a) your processes for assessing and meeting the research needs relevant to the performance of your functions under your AFS licence;
- (b) how you select products for inclusion on your approved or recommend product list (including your processes for ensuring your list is kept up-to-date); and
- (c) any software you use for the purposes of research and analysis.

### Benefits and conflicts

RG 3.41 This proof also includes a description of:

- (a) the remuneration structure for your representatives, including how and on what basis remuneration is calculated and paid, for example salary, commission, profit-share, volume bonuses etc.; and
- (b) your processes for ensuring that, where you have an association with a product issuer, you and/or your representatives disclose any conflicts of interest and provide appropriate advice about their products.

## C Part C additional proofs

### Key points

The Part C additional proofs relate to your answers to the questions in Part C of the application form.

These proofs cover information about certain complex financial services and products.

### C1 proof: Custodial/Depository Service Statement

- RG 3.42 This proof includes:
- (a) details of the custodial or depository services you intend to provide;
  - (b) a copy of your pro forma or standard agreement used to cover the custodial or depository services you will provide;
  - (c) a description of how your clients will authorise transactions you perform on their behalf;
  - (d) a description of systems, including service-specific accounting, computing and operating systems, and how you will monitor and maintain these systems;
  - (e) a description of how you will identify and determine the status of investments you hold;
  - (f) a description of how you will manage access to and security of client accounts;
  - (g) a description of how you will market your products/services in the market place;
  - (h) copies of your agreements with service providers undertaking transactional, custodial or sub-custodial functions on your behalf; and
  - (i) if you are an external MDA custodian, a description of your procedures to ensure that each MDA client's assets are managed as a discrete portfolio.

### C1 proof: IDPS Statement

- RG 3.43 This proof includes:
- (a) a description of what you will define as IDPS property and how it will be held and protected; and

- (b) where a third party custodian has been or will be employed, a description of:
  - (i) the process you have undertaken to ensure the custodian will maintain minimum standards for holding IDPS property;
  - (ii) the custodian's organisational structure, including the identification and segregation of IDPS property;
  - (iii) the process you will use to monitor the custodian; and
  - (iv) the custodian's business and compliance reporting structure.

## **C1 proof: Funds under Management/Custody Statement**

RG 3.44 This proof includes a description of:

- (a) the anticipated growth of the assets or funds you will hold as custodian over the next 5 years; and
- (b) any inherent risks associated with the anticipated growth of your business and your strategies for managing these risks.

## **C1 proof: Product/Service Distribution Statement**

RG 3.45 This proof includes a description of the types of product and/or service distribution channels you intend to use.

## **C2 proof: Scheme Operating Capacity Statement**

RG 3.46 This proof includes a description of:

- (a) the scheme(s) you intend to operate, including the nature of scheme property, the target market (wholesale/retail) and the proposed number of investors;
- (b) if applicable, any existing registered schemes that you operate;
- (c) who will hold the legal title to the scheme property and how it will be kept separate from other property;
- (d) your Compliance Committee/Board:
  - (i) if a Compliance Committee is in place, how it will fulfil its responsibilities; or
  - (ii) if a Compliance Committee is not in place, how the Board of Directors will undertake this function;
- (e) any scheme-specific accounting, computing and operating systems and how you will monitor and maintain these systems;

- (f) how you will identify and determine the status of investments held by you and/or a custodian;
- (g) how you will manage access to and security of client records;
- (h) how you will value and price your investments; and
- (i) a description of how you will market your products and/or services.

## **C2 proof: Scheme Property Statement**

RG 3.47 This proof includes:

- (a) a description of what you will define as scheme property and how it will be held and protected; and
- (b) where a custodian has been or will be employed, a description of:
  - (i) the process you have undertaken to ensure the custodian will maintain minimum standards for holding scheme property;
  - (ii) the custodian's organisational structure, including the identification and segregation of scheme property;
  - (iii) the process you will use to monitor the custodian;
  - (iv) the custodian's business and compliance reporting structure; and
  - (v) how conflicts of interest will be managed between custody and operational areas.

## **C2 proof: Funds under Management Details**

RG 3.48 This proof includes a description of:

- (a) the anticipated growth of the assets or funds under your management over the next 5 years; and
- (b) any inherent risks associated with the anticipated growth of your business and your strategies for managing these risks.

## **C2 proof: Product Distribution Channel Report**

RG 3.49 This proof includes a description of the types of product or service distribution channels you intend to use.

## C3 proof: Market Maker Statement

### **‘Make a market’ related activities**

RG 3.50 This proof includes:

- (a) a description of each of the ‘make a market’ related activities you intend to provide under your AFS licence;
- (b) details of the typical purpose(s) for which clients will use your services and/or products (e.g. hedging, speculating etc.);
- (c) details of who will be informing these clients about the risks associated with using your services and/or products; and
- (d) details of the responsible manager(s) who will supervise these activities and the estimated proportion of their time these activities will take.

### **‘Make a market’ transaction details**

RG 3.51 This proof also includes:

- (a) a diagram illustrating your proposed ‘make a market’ activities, including who else is involved, their roles and obligations (e.g. who will receive and execute client instructions, who the counterparty will be); and
- (b) a description of who will be doing the following, and how:
  - (i) marketing or promoting the products and/or services;
  - (ii) referring clients to you;
  - (iii) receiving and executing client instructions;
  - (iv) issuing products to clients;
  - (v) holding client money; and
  - (vi) holding any underlying assets (including who will hold the legal and beneficial title to the underlying asset).

### **Your internal controls**

RG 3.52 This proof also includes:

- (a) details of the types of risk inherently associated with your ‘make a market’ activities, including operational, market volatility, liquidity and counterparty risks;
- (b) a description of how you assess, monitor and mitigate these risks, including:
  - (i) the controls you have in place to monitor and mitigate these risks;

- (ii) the frequency at which you will review your risk management control measures (e.g. how often you will review how your control measures and assumptions are derived, and the suitability of your exposure limits);
- (iii) the procedures you have in place if risk management internal controls, such as exposure limits, are breached; and
- (iv) who is responsible for managing and reporting on these risks.

## C4 proof: Derivatives Statement

### Derivatives products

- RG 3.53 This proof includes details of the types of derivative your proposed financial services will relate to, that is:
- (a) whether the products will be exchange traded (ET) and/or over the counter (OTC) derivatives;
  - (b) the nature of the products (e.g. will they be options, warrants, forwards, CFDs etc.); and
  - (c) what the underlying asset or index will be (e.g. ASX 200 shares, interest rates, currency, grain, electricity etc.).

### Derivatives related activities

- RG 3.54 This proof also includes:
- (a) details of the types of client your services and/or products will be targeted to, how you identify your target market, and how you will promote your services and/or products;
  - (b) details of the typical purpose(s) for which clients will use your services and/or products (e.g. hedging, speculating etc.);
  - (c) details of who will be informing these clients about the risks associated with buying and selling derivatives; and
  - (d) details of which responsible manager(s) will supervise these activities and the estimated proportion of their time these activities will take.

### Derivatives transaction details

- RG 3.55 This proof also includes:
- (a) details of:

- (i) whether or not you will deal in derivatives as principal and, if so, who your typical counterparty will be (e.g. retail clients or wholesale clients); and
- (ii) whether you will enter into transactions directly with clients or whether you will only deal in derivatives through a licensed market or other AFS licensees;
- (b) a diagram illustrating your proposed derivatives activities, including who else is involved, their roles and obligations (e.g. who will receive and execute client instructions, who the counterparty will be); and
- (c) a description of who will be doing the following, and how:
  - (i) marketing or promoting the products and/or services;
  - (ii) referring clients to you;
  - (iii) receiving and executing client instructions;
  - (iv) holding client money;
  - (v) holding any underlying assets (including who will hold the legal and beneficial title to the underlying asset); and
  - (vi) executing derivatives transactions on behalf of clients.

### Your internal controls

RG 3.56 This proof also includes:

- (a) a description of how your derivatives positions and related activities will be monitored on a day-to-day basis. This needs to include details of the responsible manager(s) who will be supervising your derivatives-related front, middle and back office functions;
- (b) details of the types of risk associated with your proposed derivatives transactions, including operational, market volatility, liquidity and counterparty risk;
- (c) a description of how you assess, monitor and mitigate these risks, including:
  - (i) the controls you have in place to manage these risks (e.g. your internal controls relating to exposure limits etc.);
  - (ii) the frequency at which you will review your risk management control measures (e.g. how often you will review how your control measures and assumptions are derived, and the suitability of your exposure limits);
  - (iii) the procedures you have in place if risk management internal controls, such as exposure limits, are breached; and
  - (iv) who is responsible for managing and reporting on these risks.

## C5 proof: Foreign Exchange Operating Statement

### Foreign Exchange (FX) activities

- RG 3.57 This proof includes:
- (a) a description of FX products your proposed financial services will relate to (e.g. FX spots, forwards, swaps, futures);
  - (b) details of the types of client your services and/or products will be targeted to, how you identify your target market, and how you will promote your services and/or products;
  - (c) details of the typical purpose(s) for which your clients will use your services and/or products (e.g. hedging, speculating etc.);
  - (d) details of who will be informing these clients about the risks associated with buying and selling FX products; and
  - (e) details of which responsible manager(s) will supervise these activities and the estimated proportion of their time these activities will take.

### FX transaction details

- RG 3.58 This proof also includes:
- (a) details of:
    - (i) whether or not you will deal in FX products as principal and, if so, who your typical counterparty will be (e.g. retail clients or wholesale clients); and
    - (ii) whether you will enter into transactions directly with clients or whether you will only deal in derivatives through a licensed market or other AFS licensees;
  - (b) a diagram illustrating your proposed FX-related activities, including who else is involved, their roles and obligations (e.g. who will receive and execute client instructions, who the counterparty will be); and
  - (c) a description of who will be doing the following, and how:
    - (i) marketing or promoting the products and/or services,
    - (ii) referring clients to you;
    - (iii) receiving and executing client instructions,
    - (iv) issuing products to clients;
    - (v) holding client money; and
    - (vi) executing FX transactions on behalf of clients.

## Your internal controls

- RG 3.59 This proof also includes:
- (a) a description of how your FX positions and related activities will be monitored on a day-to-day basis. This needs to include details of the responsible manager(s) who will be supervising your FX-related front, middle and back office functions;
  - (b) details of the types of risk associated with your proposed FX transactions, including operational, market volatility, liquidity and counterparty risks;
  - (c) a description of how you assess, monitor and mitigate these risks, including:
    - (i) the controls you have in place to monitor and mitigate these risks (e.g. your internal controls relating to exposure limits etc.);
    - (ii) the frequency with which you will review your risk management control measures (e.g. how often you will review how your control measures and assumptions are derived, and the suitability of your exposure limits);
    - (iii) the procedures you have in place if risk management internal controls, such as exposure limits, are breached; and
    - (iv) who is responsible for managing and reporting on these risks.

## C6 proof: Horse Racing Syndicate Statement

- RG 3.60 This proof includes:
- (a) a description of:
    - (i) how you will comply with Regulatory Guide 91 *Horse racing and breeding schemes* (RG 91) and Class Order (CO 02/319); and
    - (ii) your processes for ensuring you comply with your obligations under RG 91 and Schedule C of CO 02/319, for example your systems and processes for managing the scheme accounting obligations; and
  - (b) a letter from a Lead Regulator confirming your status as a registered Approved Promoter with the Lead Regulator: see RG 91.

## C7 proof: Life Insurance Capacity Statement

- RG 3.61 This proof includes a description of your processes for:
- (a) ensuring that ‘churning’ or ‘twisting’ do not occur; and

- (b) monitoring commissions (including volume bonuses, override commissions and soft dollar commissions) and how they are disclosed to clients.

## C8 proof: Underwriting Agency Capacity Statement

RG 3.62 This proof includes:

- (a) the names of the insurer(s), including any unauthorised foreign insurers, you intend to act as an underwriting agent for;
- (b) copies of your agency agreements with insurers;
- (c) an explanation of your processes for recording, and notifying insurers of, the risks you have undertaken on behalf of insurers;
- (d) a description of the types of product and/or service distribution channels you intend to use; and
- (e) how premiums will be held (e.g. a separate nominated trust account).

## C9 proof: MDA Operator Capacity Statement

RG 3.63 This proof includes:

- (a) a pro forma or standard agreement used to cover the MDA services you provide;
- (b) details of the financial products that will comprise the MDA service you provide;
- (c) details of the trading discretions offered by the MDA operator to the client;
- (d) a description of the manner in which clients will be making contributions;
- (e) a description of your processes for ensuring that client assets are managed as a discrete portfolio, including the custody arrangements in relation to portfolio assets;
- (f) details of the scope of the investment program offered to retail clients, including:
  - (i) how appropriateness is determined;
  - (ii) review procedures; and
- (g) a description of how you will enable clients to monitor the performance of, and trading in, their portfolio.

## C10 proof: Margin Lending Facilities Provider Statement

RG 3.64 This proof includes:

- (a) a pro forma or standard agreement used to cover the margin lending facilities you provide;
- (b) a description of your processes for ensuring that the margin lending facilities you provide or the limit increases you grant are not unsuitable for the client within the meaning of s985H(2);
- (c) a description of your processes for ensuring that a client who requests a copy of the assessment of unsuitability is given a copy of the assessment in the time and manner required by s985J;
- (d) a description of your processes for ensuring that margin lending facilities are actively monitored to detect when the facility goes into margin call;
- (e) a description of your processes for ensuring that reasonable steps are taken to notify clients when a margin call occurs in the time and manner required by s985M;
- (f) where you have arrangements with an agent (i.e. another financial services licensee, such as a financial adviser) and a client to notify the client of margin calls on your behalf:
  - (i) details of your processes for ensuring that appropriate contractual arrangements are in place between all parties requiring notification of margin calls in the time and manner required by s985M; and
  - (ii) details of your processes for ensuring these contractual arrangements are followed;
- (g) in addition to the materials in paragraphs (a)–(f), where you provide non-standard margin lending facilities a description of your processes for ensuring that clients are made aware of the significant risks associated with acquiring a non-standard margin lending facility in any Product Disclosure Statement and on an ongoing basis. This includes but is not limited to a description of following risks:
  - (i) the risk associated with the client transferring title to their marketable securities. In the event that the party with title becomes insolvent, the client becomes an unsecured creditor and could lose all or part of the marketable securities transferred;
  - (ii) the risk that, if the party providing the consideration for title of the securities becomes insolvent, the client may not get full payment for the securities they have already transferred and that existing amounts that have been paid to them might be challenged; and
  - (iii) the risk that despite the transfer of the securities clients may still need to provide extra funds to meet any margin calls relating to any securities that have been transferred under the facility.

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

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*