

Our Reference: CCU-15\0286



19 June 2015

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Dear Ms Matulick

ASTARRA INVESTIGATION

The Parliamentary Joint Committee on Corporations and Financial Services' (**PJC**) letter of 22 May 2015 has been forwarded to me for a response on behalf of the Australian Securities and Investments Commission (**ASIC**).

Statutory Provisions

ASIC is required to assess applications for an Australian Financial Services Licence (**AFS licence**) in accordance with section 913B of the *Corporations Act 2001*. As you will be aware, this section has recently been amended following concerns ASIC raised during the Parliamentary Inquiry into the collapse of Trio Capital and also the earlier Inquiry on Financial Products and Services. A copy of the current section is attached (see **Attachment A**).

The test to be applied is a "good fame and character" test rather than a "fit and proper test" (see section 913B(3)). Where the applicant for an AFS licence is a corporation ASIC must now be satisfied of the following before it grants an AFS licence:

- (i) there is no reason to believe that any of the corporation's responsible officers are not of good fame and character;
- (ii) if a responsible officer is not of good fame and character then the applicant's ability to provide the financial services covered by the licence would nevertheless not be significantly impaired.

A responsible officer is defined in section 9 of the Act as:

"in relation to a body corporate that applies for an Australian financial services licence, means an officer of the body who would perform duties in connection with holding of the licence."

Section 913B(4) outlines the matters that ASIC must have regard to when determining whether a person is of good fame and character, namely:

- (i) Any conviction of the person within 10 years before the application was made, for an offence that involves dishonesty that is punishable by imprisonment of at least 3 months;
- (ii) Whether the person held an AFS licence that was suspended or cancelled;
- (iii) Whether a banning or disqualification order has been made against the person; and
- (iv) Any other matter that ASIC considers relevant.

Questions

- **How does ASIC conduct fit and proper checks? Does ASIC regularly monitor and conduct licensing checks?**

ASIC publishes on its website regulatory guides 1, 2 and 3, which contain the "AFS Licensing Kit" that outlines the processes for applying for an AFS licence or applying to vary an AFS licence. A copy of the licensing kit is available at <http://asic.gov.au/for-finance-professionals/afs-licensees/applying-for-and-managing-an-afs-licence/afs-licensing-kit/>

Part 1 of the licensing kit (RG 1.36) and Part 2 (RG 2.270) of the licensing kit provides details of the proofs that are to be provided by responsible managers to enable ASIC to assess their competence and good fame and character.

A "responsible manager" is a person or persons nominated in the licence application as being responsible for significant day-to-day decisions about the business. ASIC Regulatory Guide RG 105: *Licensing: Organisational competence* provides more guidance about who can be put forward as a "responsible manager". A copy of the Regulatory Guide is attached (please see **Attachment B**).

These proofs for a responsible manager are to be provided to ASIC when:

- (i) An applicant is applying for a licence;
- (ii) Adding a new responsible manager for the variation to the financial services or financial products authorised to be provided under the AFS licence; or
- (iii) A new responsible manager is otherwise being appointed.

The required proofs to be lodged in respect of a responsible manager are:

- (i) Statement of Personal Information;
- (ii) Copies of qualification certificates;
- (iii) Copy of a bankruptcy check;
- (iv) Copy of a national criminal history check;
- (v) Copies of two business references; and
- (vi) A table setting out organisational competence.

In addition, each responsible manager should satisfy one of five options for demonstrating that they have the requisite knowledge and skill for their role as set out in RG 105, at part C.

- **ASIC's Trio Capital Investigation commenced in 2009 – when did ASIC's surveillance start?**

ASIC's surveillance of Trio Capital Ltd (**Trio**) and the Astarra Strategic Fund (**ASF**) commenced on 21 September 2009.

However, in mid-2009 ASIC had started work on a 'red flags project' for hedge funds more generally with the view to identifying hedge funds for further surveillance as part of that project. ASF was identified as a fund where there were potential issues.

Given that ASIC had already identified ASF as a target for surveillance as part of the 'red flags project', ASIC moved quickly and commenced its surveillance of Trio and ASF on receipt of a credible complaint about ASF.

ASIC's formal investigation commenced on 2 October 2009.

- **Why did ASIC choose not to publish internationally available warnings on the ASIC web site?**

At the time of the collapse of Trio in late 2009 ASIC did not as a rule publish material from foreign web sites on our web site.

ASIC recently relaunched our web site. The new web site now has a page "Overseas regulators public warnings and alerts", which provides links to the public warnings published on the web sites of key overseas regulators. These links include links to the web sites operated by the United States Securities and Exchange Commission, the United Kingdom Financial Conduct Authority and the Hong Kong Securities and Futures Commission.

The ASIC web site, since April 2011, has also had a link to the IOSCO "Investor Alerts Portal". This is an IOSCO initiative, launched in July 2010, where it publishes in a central place alerts and warnings that members have issued about firms that are not authorised to provide financial services in the jurisdictions which issued the alert.

ASIC strongly supported the establishment of this portal and uploads copies of its warnings about unlicensed firms operating in Australia for inclusion on the portal.

- **Following the acquisition of Tolhurst Funds Management Pty Ltd (holding company for Tolhurst Capital Ltd, which later changed its name to Astarra Capital Ltd, then Trio) did ASIC complete license checks for the fund's new manager.**

By way of background, prior to the introduction of the AFS licensing regime Tolhurst Capital Ltd (**Tolhurst**) held a dealers' licence under a previous regulatory regime. This meant that Tolhurst was entitled under the law (section 1433 of the *Corporations Act 2001*) to be assessed for an AFS licence under a streamlined process during the transition period from the old licensing regime to the AFS licensing regime between 10 March 2002 and 10 March 2004. By law, the streamlined licensing process was less rigorous than the process now applied to new applicants for AFS licences.

Tolhurst applied for an AFS licence under the streamlined process on 23 September 2003.

ASIC was in the process of considering this application, when Tolhurst Funds Management Pty Ltd (the holding company for Tolhurst) was sold and new directors appointed to Tolhurst on 12 November 2003.

A draft AFS licence was issued to Trio on 20 November 2003. Trio accepted the draft licence on 26 November 2003.

The application for an AFS licence was finally approved and the AFS licence issued on 2 December 2003, with an effective date of 1 February 2004.

As indicated above, under the AFS licence regime, good fame and character checks are applied to responsible managers when their appointment or change is notified to ASIC. However, when Tolhurst was streamlined into the AFS licensing regime there was no change in the responsible managers. The responsible managers for Tolhurst/Trio did not change until March 2004.

- **Since the investigation have there been any changes to fit and proper person checks and granting of AFSL's?**

Since the collapse of Trio, ASIC has been applying more scrutiny where there is a change of control of a licensee. This was a key concern raised in the Trio Inquiry. ASIC's most recent initiative is the implementation of a requirement for details of the controller of a licensee to be included in the information that an applicant is to provide to ASIC when applying for an AFS licence. ASIC is in the process of including this amendment in the standard form that applicants for a licence are to lodge with ASIC. Capturing information about the controller of an AFS licences should assist ASIC in monitoring who are the controllers of an AFS licensee and identifying whether there has been a change in control. However, there are still real limits about what ASIC can do where there is such a change.

- **Are there any guidelines regarding AFSLs that have affected action taken by ASIC with regard to Astarra Strategic? What are the relevant guidelines for the provision of AFSLs?**

There have been various versions of the Licensing Kit since the AFS licensing regime came into force in March 2002.

The Licensing Kit reflects the statutory provisions governing the licensing regime as well as providing practical guidance about what practically ASIC requires in order to be able to assess a licence application or application to vary a licence.

ASIC's AFS Licensing Kit was most recently updated in July 2014.

Yours sincerely

John Price
Commissioner

Encl.

Section 913A

Division 4—Australian financial services licences

Subdivision A—How to get a licence

913A Applying for a licence

A person may apply for an Australian financial services licence by lodging an application with ASIC that:

- (a) includes the information required by regulations made for the purposes of this paragraph; and
- (b) is accompanied by the documents (if any) required by regulations made for the purposes of this paragraph.

Note: For fees in respect of lodging applications, see Part 9.10.

913B When a licence may be granted

- (1) ASIC must grant an applicant an Australian financial services licence if (and must not grant such a licence unless):
 - (a) the application was made in accordance with section 913A; and
 - (b) ASIC has no reason to believe that the applicant is likely to contravene the obligations that will apply under section 912A if the licence is granted; and
 - (c) the requirement in whichever of subsection (2) or (3) of this section applies is satisfied; and
 - (ca) the applicant has provided ASIC with any additional information requested by ASIC in relation to matters that, under this section, can be taken into account in deciding whether to grant the licence; and
 - (d) the applicant meets any other requirements prescribed by regulations made for the purposes of this paragraph.

Note: ASIC must not grant an Australian financial services licence to a person contrary to a banning order or disqualification order (see Division 8).

Section 913B

- (2) If the applicant is a natural person, ASIC must be satisfied that there is no reason to believe that the applicant is not of good fame or character.
- (3) If the applicant is not a single natural person, ASIC must be satisfied:
- (a) that:
 - (i) if the applicant is a body corporate—there is no reason to believe that any of the applicant’s responsible officers are not of good fame or character; or
 - (ii) if the applicant is a partnership or the trustees of a trust—there is no reason to believe that any of the partners or trustees who would perform duties in connection with the holding of the licence are not of good fame or character; or
 - (b) if ASIC is not satisfied of the matter in paragraph (a)—that the applicant’s ability to provide the financial services covered by the licence would nevertheless not be significantly impaired.
- (4) In considering whether there is reason to believe that a person is not of good fame or character, ASIC must (subject to Part VIIC of the *Crimes Act 1914*) have regard to:
- (a) any conviction of the person, within 10 years before the application was made, for an offence that involves dishonesty and is punishable by imprisonment for at least 3 months; and
 - (b) whether the person has held an Australian financial services licence that was suspended or cancelled; and
 - (c) whether a banning order or disqualification order under Division 8 has previously been made against the person; and
 - (d) any other matter ASIC considers relevant.
- Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.
- (5) However, ASIC may only refuse to grant a licence after giving the applicant an opportunity:
-

Section 913C

- (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
- (b) to make submissions to ASIC in relation to the matter.

913C Licence numbers

- (1) ASIC must give each Australian financial services licence a unique licence number when it is granted, and must notify the licensee of that number.
- (2) If:
 - (a) a person is granted an Australian financial services licence; and
 - (b) the person holds an Australian credit licence (within the meaning of the *National Consumer Credit Protection Act 2009*);the licence number that ASIC gives to the Australian financial services licence held by that person must be the same number as the person's Australian credit licence number (within the meaning of that Act).

Subdivision B—The conditions on the licence

914A The conditions on the licence

- (1) Subject to this section, ASIC may, at any time, by giving written notice to a financial services licensee:
 - (a) impose conditions, or additional conditions, on the licence; and
 - (b) vary or revoke conditions imposed on the licence.

Note: Subsection 923B(3) restricts the circumstances in which ASIC can impose a condition authorising a person to assume or use a restricted word or expression under that section.

- (2) ASIC may do so:
 - (a) on its own initiative; or
 - (b) if the licensee lodges with ASIC an application for ASIC to do so, which is accompanied by the documents, if any,



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 105

Licensing: Organisational competence

October 2007

About this guide

This is a guide for Australian financial services (AFS) licensees and licence applicants.

This guide describes what we look for when we assess compliance with the 'organisational competence obligation', which is one of the general obligations under s912A(1) of the *Corporations Act 2001*.

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 regulatory guide was issued on 11 October 2007 and is based on legislation and regulations as at 11 October 2007.

This guide replaces:

- Section E of Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164), issued 28 November 2001, updated 8 November 2002
- parts of Regulatory Guide 130 *Management investments: Licensing*, issued 3 August 1998, updated 4 November 1998, 2 June 1999 and 4 October 1999
- *Responsible officers: Demonstrating compliance with organisational competency obligations—An ASIC guide*, issued July 2003, withdrawn June 2007

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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A Overview

Key points

Licensees must comply with the organisational competence obligation in s912A(1)(e) and licence applicants must be able to demonstrate in their licence application that they can comply with it: see RG 105.1 and RG 105.9–RG 105.10.

We assess your compliance with this obligation by looking at the knowledge and skills of your ‘responsible managers’: see RG 105.2 and RG 105.14–RG 105.15.

What you need to do to comply will depend on the nature, scale and complexity of your business. However, this guide sets out our minimum expectations for demonstrating organisational competence: see RG 105.3–RG 105.8.

The organisational competence obligation

- RG 105.1 If you are a licensee, you must maintain the competence to provide the financial services covered by your AFS licence: s912A(1)(e). We refer to this obligation as the ‘organisational competence obligation’. This is because this obligation requires you to be competent at the organisational level.

Note: This is not the same as the obligation under s912A(1)(f) to ensure that the representatives who provide financial services on your behalf are trained and competent to do so: see RG 105.20.

- RG 105.2 We assess your compliance with this obligation by looking at the knowledge and skills of people who manage your financial services business. We refer to these people as your ‘responsible managers’.

Note: We used to refer to these people as ‘responsible officers’. We have replaced this term with ‘responsible managers’: see RG 105.29–RG 105.30.

What do you need to do to comply?

- RG 105.3 The *Corporations Act 2001* (Corporations Act) places responsibility on you to ensure you maintain the competence to provide the financial services covered by your AFS licence.

- RG 105.4 What you need to do to comply will depend on the nature, scale and complexity of your business, including the size of your business, the financial services and products you provide, and the roles that individuals

play in your business. However, this regulatory guide sets out our minimum expectations for demonstrating organisational competence.

- RG 105.5 At a minimum, you need to nominate responsible managers who:
- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of your financial services (see Section B);
 - (b) together, have appropriate knowledge and skills for all of your financial services and products (see Section B); and
 - (c) individually, meet one of the five options for demonstrating appropriate knowledge and skills (see Section C).
- RG 105.6 You also need to have measures in place to ensure you maintain your organisational competence at all times: see condition 4 of the standard licence conditions in Pro Forma 209 *Australian financial services licence conditions* [PF 209].

Measures for maintaining organisational competence

- RG 105.7 We expect your measures for complying with the organisational competence obligation will ensure that you:
- (a) review your organisational competence on a regular basis and whenever your responsible managers or business activities change;
 - (b) maintain and update the knowledge and skills of your responsible managers; and
 - (c) keep records showing that you have reviewed your organisational competence and the steps you have taken to maintain your organisational competence.

Note: For more information on compliance measures, see Sections B and C of Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104).

- RG 105.8 We expect you to document your measures in some form. In our view, it is more difficult to show compliance where documentation is not in place. Documentation helps you demonstrate whether or not you are complying with the organisational competence obligation.

When do you need to comply?

Applying for an AFS licence

- RG 105.9 If you are applying for an AFS licence, you must be able to show that you can comply with the organisational competence obligation from the time you are granted a licence, and on an ongoing basis. We cannot grant you a

licence if we have any reason to believe you will not be able to comply with this obligation: s913B(1)(b).

Note: If you are applying for an AFS licence, you should read the *AFS Licensing Kit* (RG 1–RG 3). The *AFS Licensing Kit* explains the licence application process and the ‘proof’ documents you may need to provide to support your application.

Ongoing compliance

RG 105.10 Once you have an AFS licence, you must maintain your organisational competence at all times. If we have reason to believe that you are not complying, we may take administrative action, which could include suspending or cancelling your licence, or imposing additional licence conditions: s915C(1)(a) and 914A(1).

Note: For guidance on our administrative powers, see Regulatory Guide 98 *Licensing: Administrative action against financial services providers* (RG 98).

RG 105.11 If we conduct a surveillance visit on your business, we may check your ongoing compliance with the organisational competence obligation, including the measures you have for ensuring compliance.

RG 105.12 If you breach or are likely to breach the organisational competence obligation, you may need to notify us of that breach: s912D.

Note: For guidance on breach reporting, see Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78).

Making changes to your business

RG 105.13 We expect you to review your organisational competence and ensure you will maintain it before you make any changes to your business, such as expanding your range of financial services or products or replacing a responsible manager.

When do you need to tell us about your responsible managers?

RG 105.14 You must nominate your responsible managers when you apply for an AFS licence or apply to vary your licence authorisations. You must also notify us if you change any of your responsible managers. This is explained in Section D.

RG 105.15 We may ask you about your responsible managers if we conduct a surveillance visit on your business.

Underlying principles

- RG 105.16 In setting out minimum expectations for demonstrating organisational competence, we aim to strike a balance between certainty and flexibility for licensees while promoting consumer protection and market integrity.
- RG 105.17 This guide focuses on the people in your business who are responsible for the quality of your financial services. In setting minimum expectations, we aim to ensure you have enough of these people with appropriate knowledge and skills so that you have the competence to provide all of your financial services efficiently, honestly and fairly.
- RG 105.18 What we consider to be appropriate knowledge is strongly influenced by the Australian Qualifications Framework and recognises that short industry courses, industry standards and APRA also have a role to play in setting benchmarks for organisational competence.

Our regulatory approach

Who does this guide apply to?

- RG 105.19 This guide applies to all licensees and covers all kinds of financial services and products. It consolidates and harmonises our guidance on organisational competence, which was previously spread across a number of ASIC publications.

Does this guide cover the training and competence of representatives?

- RG 105.20 This guide does not cover the obligation to ensure that your representatives are trained and competent to provide the financial services covered by your licence: s912A(1)(f). To find out about that obligation, see Section E of Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104). If your representatives provide financial product advice to retail clients, see also Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

Transitional issues

- RG 105.21 This guide, RG 105, replaces:
- (a) Section E of Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164);
 - (b) parts of Regulatory Guide 130 *Managed investments: Licensing* (RG 130); and

- (c) *Responsible officers: Demonstrating compliance with organisational competency obligations—An ASIC guide* (issued July 2003, withdrawn June 2007).

RG 105.22 While RG 105 comes into effect immediately, we accept that you might not immediately update your internal policies and procedures to refer to RG 105 and the guidance it contains. However, we expect that you will update your references to our guidance the next time you amend your internal policies and procedures.

RG 105.23 If, at October 2007, you have already started or lodged an AFS licence application or a variation application, we will not refuse your application simply because it refers to RG 164 or RG 130. However, if you are only beginning to prepare your application, we expect that your application and supporting ‘proof’ documents will take into account the guidance in RG 105, not that in RG 164 or RG 130.

B Nominating your responsible managers

Key points

You can nominate someone as a responsible manager if they:

- are directly responsible for significant day-to-day decisions about the ongoing provision of your financial services (see RG 105.24–RG 105.28);
- meet one of the five options for demonstrating knowledge and skills in Section C (see RG 105.31); and
- are of good fame and character (see RG 105.33).

You also need to ensure that you nominate responsible managers whose combined knowledge and skills cover all of your financial services and products: see RG 105.34–RG 105.37.

Who can you nominate as a responsible manager?

Direct responsibility for significant day-to-day decisions

- RG 105.24 The people you nominate as responsible managers need to have direct responsibility for significant day-to-day decisions about your financial services. A compliance manager or financial controller, for example, might not have this direct responsibility. If you are a body corporate, the people you nominate do not need to be ‘officers’ of the body corporate or ‘responsible officers’ as defined in s9 of the Corporations Act.
- RG 105.25 Who you nominate as your responsible managers will depend on the nature, scale and complexity of your business: see RG 105.42. In most cases, the people who have direct responsibility for significant day-to-day decisions about your financial services will be people who decide how your financial services are provided and supervise the provision of those services. They do not need to actually provide financial services on your behalf, although they might do so.
- RG 105.26 The job description and title of responsible managers will vary from business to business. For example, in a small advisory business the directors are likely to be the main people who have direct responsibility for significant day-to-day business decisions, but in a larger financial services group anyone ranging from the chief executive officer down to middle management might have the required direct responsibility. For licensees that are regulated by APRA, the people with direct responsibility would usually include those who are ‘responsible persons’ for the purposes of APRA’s fit and proper standards.

Availability on a day-to-day basis

- RG 105.27 Having direct responsibility for significant day-to-day decisions about your financial services includes having enough time available to do so. Before you nominate a person as a responsible manager, you need to consider whether they are already acting as a responsible manager for one or more other licensees. If they are, you need to consider whether they have enough time available to act as a responsible manager for you.
- RG 105.28 In general, the more licensees a responsible manager acts for, the less likely they will be to have enough time available to undertake that role for you. Factors that may affect how much time they have available include:
- (a) whether they are a key person for another licensee;
 - (b) whether the other licensee(s) share common systems or processes with you (e.g. they are in the same corporate group as you);
 - (c) how many staff they need to supervise and whether those staff are in different locations; and
 - (d) the nature, scale and complexity of the business of the other licensee(s) (e.g. the size of their business, how many registered schemes they operate etc.).

'Responsible managers' and 'responsible officers'

- RG 105.29 We previously used the term 'responsible officer' to identify the category of people we look at when assessing organisational competence. We are now using the term 'responsible manager' to clarify that the people we look at for organisational competence purposes do not need to be 'officers' of the body corporate or 'responsible officers' as defined in s9 of the Corporations Act.

Note: We used the term 'responsible officer' in RG 164 and RG 130. Any person who was nominated as a responsible officer for the purposes of RG 164 or RG 130 is now taken to be a 'responsible manager'.

- RG 105.30 Our policy on who we look at when assessing organisational competence otherwise remains unchanged—i.e. we still focus on the people you nominate who:
- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of your financial services; and
 - (b) have appropriate knowledge and skills for their role in your business.

Knowledge and skills

- RG 105.31 The people you nominate as responsible managers also need appropriate knowledge and skills for the financial services and products their role relates to. You need to be able to demonstrate that:

- (a) each responsible manager you nominate meets one of the five options for demonstrating appropriate knowledge and skills—the five options are explained in Section C; and
- (b) together, the responsible managers you nominate have appropriate knowledge and skills to cover all of your financial services and products—this is explained in RG 105.34–RG 105.37.

RG 105.32 If you nominate someone as a responsible manager but they do not meet one of the five options for demonstrating appropriate knowledge and skills, you cannot rely on this person to demonstrate that you meet the organisational competence obligation. If the person later acquires the knowledge and skills to meet one of the five options (e.g. by gaining enough relevant experience), you may then rely on them for organisational competence purposes.

Good fame and character

RG 105.33 When nominating your responsible managers, you also need to ensure they are of ‘good fame and character’. Responsible managers are the people whose good fame and character we consider when we assess an application for an AFS licence.

Note: For more on our requirements in relation to good fame and character, see the *AFS Licensing Kit* (RG 1–RG 3).

Covering all of your financial services and products

What are appropriate knowledge and skills?

RG 105.34 Together, your responsible managers need to have knowledge and skills that demonstrate you:

- (a) can provide all of the financial services and products covered by your licence and understand the legal and compliance obligations relating to those services and products; and
- (b) if you operate a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service—understand the investment and operational issues of all the kinds of assets under management or, if relevant, the business operated by the scheme.

How do you ‘cover’ all of your financial services and products?

RG 105.35 If you have a responsible manager with appropriate knowledge and skills for some, but not all, of your financial services or products, you need to ensure

that your other responsible managers have appropriate knowledge and skills for the remaining services and products.

- RG 105.36 For example, if you deal in life and general insurance products, you could have one responsible manager with knowledge and skills in relation to advising and dealing in life insurance products and another with knowledge and skills in advising and dealing in general insurance products. Alternatively, one responsible manager could have knowledge and skills in relation to advising on both types of insurance products while the other responsible manager has knowledge and skills in relation to dealing in both types of insurance products. In both examples, each responsible manager would need to meet one of the five options in Section C for the services and products their role relates to.

Operating a managed investment scheme or custodial service

- RG 105.37 If you operate a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service, you also need to have at least one responsible manager with knowledge and skills in relation to the kinds of assets under management or, if relevant, the business operated by the scheme: see RG 105.34(b). For example, if you operate a registered scheme that invests in financial assets (such as cash or shares), you could have:
- (a) a responsible manager with knowledge and skills in relation to the operation of a registered scheme (i.e. the financial service you provide); and
 - (b) a responsible manager with knowledge and skills in relation to investment in financial assets (i.e. the asset under management).

Each responsible manager would need to meet one of the five options in Section C for the services and products their role relates to.

How many responsible managers do you need?

- RG 105.38 The number of people you need to nominate as responsible managers will depend on the nature, scale and complexity of your business: see RG 105.42. However, we expect that you will nominate two or more responsible managers.
- RG 105.39 If you operate a large business, you will usually only need to nominate a subset of the people who can be responsible managers. If you are a smaller business, you may need to nominate everyone who can be a responsible manager. If you are an individual who holds or is applying for an AFS licence in your own name, you will need to nominate yourself as the responsible manager.

Note: The maximum number of responsible managers you can have nominated at any given time is 20.

RG 105.40 In some cases we may accept you having only one responsible manager, e.g. where you operate a one-person advisory business or where your main business is not the provision of financial services.

'Key person' licence conditions

RG 105.41 If you are heavily dependent on the competence of one or two responsible managers (e.g. in a small organisation with one or two principals), we will generally impose a 'key person' condition on your licence: see RG 105.83.

Nature, scale and complexity of your business

RG 105.42 Factors that can affect who you nominate as your responsible managers and how many you need include:

- (a) the financial services and products you provide;
- (b) the number of representatives who provide financial services on your behalf;
- (c) the size, structure and diversity of your operations;
- (d) the number of clients you have; and
- (e) whether your main business is the provision of financial services.

C The five options for demonstrating knowledge and skills

Key points

You need to be able to demonstrate that each responsible manager meets one of the five options in Table 1: see RG 105.43–RG 105.44.

The five options are different combinations of training, qualifications and experience for demonstrating that responsible managers have knowledge and skills appropriate to their role: see RG 105.45–RG 105.75.

- RG 105.43 You need to be able to demonstrate that each of your responsible managers has appropriate knowledge and skills for their role in your business. There are five options for demonstrating this: see Table 1.
- RG 105.44 Each option has a knowledge component (generally requiring completion of relevant qualifications or training) and a skills component (generally requiring minimum years of relevant experience). Your responsible managers need to meet both components of an option.

Table 1: The five options

Option	Knowledge component (qualifications, training etc)	Skills component (experience)
Option 1 (see RG 105.50–RG 105.52)	Meet widely adopted and relevant industry standard or relevant standard set by APRA	3 years relevant experience over past 5 years
Option 2 (see RG 105.53–RG 105.55)	Be individually assessed by an authorised assessor as having relevant knowledge equivalent to a diploma	5 years relevant experience over past 8 years
Option 3 (see RG 105.56–RG 105.60)	Hold a university degree in a relevant discipline and complete a relevant short industry course	3 years relevant experience over past 5 years
Option 4 (see RG 105.61–RG 105.65)	Hold a relevant industry- or product-specific qualification equivalent to a diploma or higher	3 years relevant experience over past 5 years
Option 5 (see RG 105.66)	If not relying on Options 1–4, you need to provide a written submission that satisfies us that your responsible manager has appropriate knowledge and skills for their role. Your submission must cover all of the information in RG 105.66	

What are ‘relevant’ qualifications/training and experience?

- RG 105.45 Your responsible managers need to have experience and qualifications or training that are relevant to their role in your business. This means that their experience and qualifications or training need to be relevant to one or both of the following:
- (a) the financial services and products that their role relates to;
 - (b) if you operate a registered scheme, unregistered scheme (including an IDPS or MDA service) or custodial service—the assets under management or business that their role relates to: see RG 105.37 for an example.

What kind of qualifications/training and experience do we accept?

- RG 105.46 Paragraphs RG 105.50–RG 105.65 give guidance on the qualifications and training we will accept under Options 1 to 4.
- RG 105.47 Options 1 to 4 also require minimum periods of relevant experience. We expect this to be practical experience that enables a responsible manager to understand the responsibilities and requirements of their role in your business. This generally includes experience in:
- (a) deciding how the financial services or products their role relates to are provided; and
 - (b) either actually providing those financial services or products or supervising others who do.
- RG 105.48 Option 5 is a flexible option that does not set minimum qualifications, training or periods of relevant experience: see RG 105.66.
- RG 105.49 We will accept relevant overseas qualifications if they are comparable to Australian qualifications that meet one of the five options: see RG 105.72–RG 105.75.

Option 1: Relevant industry or APRA standard

- RG 105.50 We will accept a wide range of relevant standards for the knowledge component of Option 1. The onus is on you to demonstrate the relevance of a standard to your responsible manager’s role. Your responsible manager must also have three years relevant experience over the past five years.

Industry standards

- RG 105.51 As well as being relevant, industry standards must also be widely adopted. To be widely adopted, industry standards generally need to:
- (a) be endorsed by the appropriate industry body or bodies;
 - (b) have been developed with industry;
 - (c) address the competencies required for that sector, financial service or product; and
 - (d) represent the views of a significant number of industry participants.

APRA standards

- RG 105.52 We will accept a standard set by APRA if you are a body regulated by APRA and the standard is relevant to your responsible manager's role. For example, if you are a general insurer regulated by APRA, we will accept that a person who is a 'responsible person' for the purposes of APRA's Prudential Standard GPS 520 *Fit and Proper* has appropriate knowledge about dealing in general insurance products.

Option 2: Individual assessment

- RG 105.53 Individual assessment means an assessment of a person's capability to undertake their current duties, taking into account their previous work experience. This type of assessment does not necessarily include a formal written examination. It may take the form of an oral or practical test, on-the-job assessment or some other form.
- RG 105.54 Individual assessment must be carried out by an authorised assessor. The assessor must verify that your responsible manager has knowledge relevant to their role and equivalent to a diploma.

Note: You can find authorised assessors that carry out individual assessment by looking at the ASIC Training Register: see RG 105.69.

- RG 105.55 Individual assessment is generally more suited to experienced responsible managers who do not have formal qualifications. This is why Option 2 requires a longer period of relevant experience (i.e. five years relevant experience over the immediate past eight years).

Option 3: University degree and short industry course

- RG 105.56 Under Option 3, we will accept a responsible manager with a university degree that is only broadly relevant to their role if they have also completed a short industry course covering the specific knowledge not covered by their

degree. Your responsible manager must also have three years relevant experience over the past five years.

University degree

- RG 105.57 To rely on Option 3, your responsible manager's degree must be in a relevant discipline. We generally prefer this to be a financial discipline (e.g. economics, commerce, business, accounting or equivalent). In some cases, we may accept a degree in some other technical discipline (e.g. a degree in geology if your responsible manager's role relates to giving financial product advice about resource equities).
- RG 105.58 If your responsible manager has a university degree that is specifically relevant to the industry or product their role relates to, you will generally be able to rely on Option 4 instead.

Short industry course

- RG 105.59 To rely on Option 3, your responsible manager's short industry course must be specifically relevant to the industry or product their role relates to.
- RG 105.60 We will accept relevant short industry courses that are:
- (a) listed on the ASIC Training Register (see RG 105.69); or
 - (b) approved under the Australian Qualifications Framework or self-accredited by universities or other institutions of higher education (see RG 105.67–RG 105.68).

Option 4: Industry- or product-specific diploma (or higher)

- RG 105.61 To rely on Option 4, your responsible manager must have a diploma (or higher) that is specifically relevant to the industry or product their role relates to. They must also have three years relevant experience over the past five years.
- RG 105.62 We will accept relevant qualifications that are:
- (a) listed on the ASIC Training Register (see RG 105.69); or
 - (b) approved under the Australian Qualifications Framework or self-accredited by a university or other institution of higher education (see RG 105.67–RG 105.68).
- RG 105.63 Examples of qualifications that we will accept include the Diploma or Advanced Diploma of Financial Services (various providers) and the Diploma of Financial Markets (Finsia), provided they are relevant to your responsible manager's role.

RG 105.64 We will not accept an individual assessment by an authorised assessor for the purposes of Option 2 as an industry- or product-specific diploma.

Asset specialist qualifications for operating a registered scheme

RG 105.65 If you operate a registered scheme, Table 2 below sets out some of the qualifications we accept under Option 4 as demonstrating that your responsible managers have appropriate knowledge for the asset under management or the business operated by a registered scheme. However, you can rely on any of the five options to demonstrate that your responsible managers have appropriate knowledge and skills—you do not have to rely on Option 4.

Note: If you operate a registered scheme, you also need to have at least one responsible manager with knowledge and skills in relation to the financial service (i.e. the operation of the scheme): see RG 105.37.

Table 2: Relevant asset specialist qualifications for operating a registered scheme

Type of asset or business	Qualification
Financial assets Derivatives Mortgages IDPS-like schemes	Tertiary qualification (at least diploma) in business, accounting or actuarial studies
Primary production	Tertiary qualification (at least diploma) relevant to the underlying product (e.g. horticulture, viticulture, forestry)
Direct real property Time-sharing schemes	Tertiary qualification (at least diploma) in real estate or property, or a real estate agent's licence

Option 5: Other demonstration of knowledge and skills

RG 105.66 If you do not rely on Options 1 to 4, you need to be able to satisfy us that your responsible manager has appropriate knowledge and skills for their role by providing us with a written submission. Your submission must explain:

- (a) the nature of your responsible manager's role;
- (b) any relevant qualifications or courses they have completed;
- (c) their relevant experience over the past 10 years (this does not necessarily mean they need 10 years relevant experience);

- (d) any relevant credentials they have, including association membership or affiliation, or skills or knowledge recognised by an industry association, a regulatory body such as APRA, or some relevant overseas body; and
- (e) why you think they have appropriate knowledge and skills for the financial services and products their role relates to.

Explanations

What is the Australian Qualifications Framework?

- RG 105.67 The Australian Qualifications Framework is a government initiative that provides a nationally consistent framework for all qualifications in post-compulsory education. For a qualification to be accepted under the Australian Qualifications Framework, it must be assessed as meeting certain standards.
- RG 105.68 You can find qualifications that are accepted under the Australian Qualifications Framework by visiting www.aqf.edu.au. You can also go to www.aqf.edu.au to check which universities and other higher education institutions can self-accredit their own qualifications.

What is the ASIC Training Register?

- RG 105.69 The ASIC Training Register is a register of training courses and authorised assessment services set up for our requirements for financial product advisers under Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146). The ASIC Training Register is available on our website at www.asic.gov.au.
- RG 105.70 You can also use the ASIC Training Register to find:
- (a) an authorised assessor to conduct a self-assessment;
 - (b) a relevant short industry course; or
 - (c) a relevant industry- or product-specific qualification.

However, you are not limited to the short courses and industry- or product-specific qualifications listed on the ASIC Training Register.

- RG 105.71 The courses listed on the ASIC Training Register are more suited to responsible managers whose role relates to the provision of financial product advice. You can rely on these courses for responsible managers whose role relates to the provision of other financial services. However, you need to be able to demonstrate the relevance of the course to your responsible manager's role.

What if your responsible manager has overseas qualifications?

RG 105.72 If your responsible manager has a relevant overseas qualification, you need to be able to show that the qualification is comparable to an Australian qualification that meets one of the five options.

RG 105.73 If your responsible manager has a relevant overseas qualification from a university or other higher education institution, you need to either:

- (a) have the qualification assessed as comparable by Australian Education International's National Office for Overseas Skills Recognition (AEI-NOOSR); or
- (b) compare the qualification against AEI-NOOSR's relevant Country Education Profile and be able to satisfy us that it is comparable.

Note: You can find out about AEI-NOOSR's assessment of qualifications and their Country Education Profiles by visiting www.dest.gov.au/noosr.

RG 105.74 If your responsible manager has some other kind of relevant overseas qualification, you need to be able to show that the qualification is recognised by a relevant overseas regulator. Relevant overseas regulators include the Financial Services Authority (UK), Financial Markets Authority (NZ), National Association of Securities Dealers (US), Canadian Dealers Association, Securities and Futures Commission (Hong Kong), and the Monetary Authority of Singapore.

Overseas qualifications and financial product advice

RG 105.75 If your responsible manager's role relates to the provision of financial product advice, we expect your responsible manager to also complete a relevant short industry course listed on the ASIC Training Register. This is so that they can become familiar with Australian regulatory requirements (e.g. obligations under the Corporations Act) and relevant features of the financial services industry peculiar to Australia (e.g. taxation and superannuation requirements).

D Telling us about your responsible managers

Key points

You must tell us about your responsible managers when you:

- apply for an AFS licence or apply to vary your licence authorisations (see RG 105.76–RG 105.84); or
- change any of your responsible managers (see RG 105.85–RG 105.87).

You may also need to tell us about your responsible managers if we conduct a surveillance visit on your business.

Applying for an AFS licence or varying your licence authorisations

RG 105.76 You must demonstrate your organisational competence when you apply for an AFS licence. You may also need to demonstrate your organisational competence if you later apply to vary your licence authorisations.

RG 105.77 When you apply for an AFS licence or to vary your licence authorisations, you must nominate your responsible managers in your application and answer questions about their role, training and experience, and which of the five options in Section C they meet. You must also support your application with a ‘core proof’ demonstrating that your responsible managers:

- (a) individually meet one of the five options in Section C for demonstrating appropriate knowledge and skills; and
- (b) together have appropriate knowledge and skills to cover all of your financial services and products: see Section B.

Note: See the *AFS Licensing Kit* (RG 1–RG 3) for guidance on the licence application and licence variation processes and the core proof for demonstrating organisational competence.

RG 105.78 If you apply to vary your licence authorisations, you may need to add responsible managers to cover your new financial services or products. If so, you must also notify us: see RG 105.85.

What if you cannot demonstrate organisational competence?

RG 105.79 If you cannot demonstrate your organisational competence, we may refuse your licence application (under s913B(1)(b)) or decide to grant you more limited authorisations than those you are applying for.

Licence authorisations for registered schemes and IDPSs

- RG 105.80 If you want to operate a registered managed investment scheme or an investor-directed portfolio service (IDPS), you can either apply for a narrow authorisation—i.e. a ‘named scheme’ or ‘named IDPS’—or apply for the broad ‘schemes of a particular kind’ authorisation or IDPS authorisation.
- RG 105.81 The narrow authorisation will only permit you to operate the particular registered scheme or IDPS named on your licence. The broad authorisation will allow you to operate more registered schemes of the same asset kind, or more IDPSs, without varying your licence. However, you must ensure that you have the organisational competence for the extra schemes or IDPSs before you start operating them.
- RG 105.82 Before we can grant you a broad authorisation, you must first be able to demonstrate that you have the organisational competence and capacity (e.g. systems and resources) to operate multiple schemes of the same asset kind, or more IDPSs. You can generally demonstrate this if you have been operating two or more registered schemes or IDPSs for at least the past two years. If you are a first-time applicant, we will consider granting you a broad authorisation if you can show that you have the same level of competence and capacity as an experienced licensee.

Key person licence conditions

- RG 105.83 If we are satisfied with your organisational competence but we think you are heavily dependent on the knowledge and skills of one or two responsible managers, we will generally impose a ‘key person condition’ on your licence. For example, we may impose a key person condition if you are a small organisation with one or two principals, or if only one responsible manager has knowledge and skills relevant to a particular financial service or product. The key person condition will name those responsible managers whose competence we think you heavily depend on.
- RG 105.84 If a responsible manager who is a key person leaves your business, the licence condition will require you to:
- (a) nominate another responsible manager to replace them, or if you have not appointed someone to replace them, give us reasons why not; and
 - (b) demonstrate that you continue to have the organisational competence for all of your financial services and products.

Note: The standard key person condition is condition 3 of [PF 209].

Changing your responsible managers

RG 105.85 Once you have an AFS licence, you have an ongoing obligation to formally notify us when you change any of your responsible managers. This means you must tell us when you add or remove any of your responsible managers.

Note: We maintain details of your responsible managers as part of our register of licensees under s922A and reg 7.6.05. You must notify us if information in the register changes: see reg 7.6.04(1)(b). To do this, use ASIC form FS20.

RG 105.86 If the responsible manager you are changing is named on your licence as a key person, you must also apply to vary the key person condition on your licence.

Note: To vary a key person condition, use ASIC form FS03.

When do you need to add or remove a responsible manager?

RG 105.87 You may need to add or remove a responsible manager if:

- (a) your business changes (e.g. it expands to cover new services or products, or the roles of people within your business change); or
- (b) a responsible manager leaves your business or is no longer involved in significant day-to-day decisions about your business.

Key terms

Term	Meaning in this document
AFS licence	Australian financial services licence granted under s913B of the Corporations Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of this Act
custodial service	Custodial or depository service as defined under s766E of the Corporations Act
general obligations	The obligations of a licensee under s912A of the Corporations Act
IDPS	Investor directed portfolio service
licensee	A person who holds an AFS licence
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
RG 146 (for example)	An ASIC regulatory guide (in this example numbered 146)
s912A (for example)	A provision of the Corporations Act (in this example numbered 912A), unless a contrary intention appears
you	Licensee or applicant for an AFS licence

Related information

Headnotes

general obligations; organisational competence; responsible manager; knowledge and skills; nature, scale and complexity; compliance measures

Class orders and pro formas

Pro Forma 209 Australian financial services licence conditions [PF 209]

Regulatory guides

RG 1–RG 3 *AFS Licensing Kit*

RG 104 *Licensing: Meeting the general obligations*

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 181 *Licensing: Managing conflicts of interest*

Legislation

Corporations Act 2001 Chapter 7, s9, 912A, 912D, 913B, 914A, 915C,
Corporations Regulations 2001 reg 7.6.04, 7.6.05

Consultation papers

CP 75 *Updating [PS 164]: Organisational competence*

CP 76 *Updating [PS 164]: Meeting the general obligations*

ASIC forms

FS01 *Australian Financial Services licence application*

FS03 *Licence authorisation variation application*

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