



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 183

# Approval of financial services sector codes of conduct

March 2013

### About this guide

This guide is for:

- applicants seeking ASIC approval of a financial services sector code (code) under s1101A of the *Corporations Act 2001* (Corporations Act);
- persons who are responsible for preparing, maintaining and ensuring compliance with these codes (code owners); and
- financial advisers who enter into ongoing fee arrangements with retail clients and seek an alternative to complying with s962K of the Corporations Act by subscribing to a code approved by ASIC under s962CA for this purpose.

It gives guidance on our approach to approving codes, including how to obtain and retain approval.

### 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 in March 2013 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 183, issued 23 February 2005, amended 4 March 2005.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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## A Overview

### Key points

Under s1101A of the Corporations Act, ASIC has broad discretion to approve, on application, codes of conduct that relate to the activities of Australian financial services (AFS) licensees, their representatives or issuers of financial products.

This guide gives guidance on:

- our general approach to approving codes, including the types of codes we can approve and what we consider to be a code (see Section B);
- how we interpret and apply the statutory criteria for code approval (see Section C);
- other matters we will consider (see Section D);
- our approach to approving codes under s962CA (see Section E); and
- how to obtain and retain approval (see Section F).

### The role of codes

- RG 183.1 Industry codes of conduct play an important part in how financial products and services are regulated in Australia. Where they enjoy the support and commitment of the sponsoring industries, codes can deliver real benefits to both consumers and those who are bound by and must comply with the provisions of the code to which they subscribe (subscribers).
- RG 183.2 We believe that codes sit at the apex of industry self-regulatory initiatives. To us, a code is essentially a set of enforceable rules that sets out a progressive model of conduct and disclosure for industry members that are signed up. Codes should therefore improve consumer confidence in a particular industry or industries.
- RG 183.3 It is not mandatory for any industry in the financial services sector to develop a code. Where a code exists, that code does not have to be approved by ASIC. However, where approval by ASIC is sought and obtained, it is a signal to consumers that this is a code they can have confidence in. An approved code responds to identified and emerging consumer issues and delivers substantial benefits to consumers.
- RG 183.4 We believe that the primary role of a financial services sector code is to raise standards and to complement the legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers.

- RG 183.5 We expect an effective code to do at least one of the following:
- (a) address specific industry issues and consumer problems not covered by legislation;
  - (b) elaborate on legislation to deliver additional benefits to consumers; and/or
  - (c) clarify what needs to be done from the perspective of a particular industry, practice or product to comply with legislation.

## Our approach to approving codes

- RG 183.6 To be considered for approval by ASIC, a code must meet:
- (a) the threshold criteria for what we consider to be a code (see Section B);
  - (b) the general statutory criteria for code approval (see Section C); and
  - (c) other relevant criteria (see Section D).
- RG 183.7 Additional requirements apply if approval of a code is sought under s962CA of the Corporations Act: see Section E. This means the code can be offered as an alternative to compliance with the requirement in s962K for financial advisers who enter into ongoing fee arrangements with retail clients to renew their clients' agreement to pay ongoing advice fees at least every two years (opt-in requirement). The opt-in requirement applies to all financial advisers giving personal advice to retail clients after 1 July 2013.
- RG 183.8 ASIC approval of any code is not guaranteed. It is up to the code applicant to show how the code meets the criteria for approval: see Section F. Approval is also ongoing. For approval to remain in place, a code (including any amendments) must continue to comply with the criteria set out in this guide. An approved code is a living document that is responsive to emerging industry and consumer issues.

## Consulting other regulators about your code

- RG 183.9 Codes that apply to activities regulated by ASIC may also come within the jurisdiction of other regulators.
- RG 183.10 For example, if a code contains any anti-competitive measures, it may need to be authorised by the Australian Competition and Consumer Commission (ACCC). If a code contains privacy requirements, you should consult the Office of the Federal Privacy Commissioner.
- RG 183.11 The requirements in this guide are not intended to affect the application of other regulatory regimes.

## Summary of key criteria

RG 183.12 Table 1 summarises the key criteria that must be met for a code to be considered for approval by ASIC.

Note: Some codes may need to meet additional requirements if approval is sought under s962CA: see Section E.

**Table 1: Key criteria for code approval**

Criteria	Reference
Freestanding and written in plain language	RG 183.55 & RG 183.129
Body of rules (not single issue, unless Section E of this guide applies)	RG 183.19 & RG 183.24
Consultative process for code development	RG 183.49–RG 183.54
Meets general statutory criteria for code approval	RG 183.28–RG 183.41
Code content addresses stakeholder issues	RG 183.55–RG 183.62
Effective and independent code administration	RG 183.76–RG 183.81
Enforceable against subscribers	RG 183.25–RG 183.27
Compliance is monitored and enforced	RG 183.79–RG 183.81
Appropriate remedies and sanctions	RG 183.68–RG 183.73
Code is adequately promoted	RG 183.78–RG 183.80
Mandatory three-year review of code	RG 183.82–RG 183.84

## B Our approach to approving codes

### Key points

This section gives guidance on:

- the types of codes ASIC can approve; and
- what we consider to be a code and the threshold criteria a code must satisfy before we will consider an application for approval.

### What codes can ASIC approve?

- RG 183.13 ASIC can approve industry codes of conduct that relate to any aspect of the activities of persons for which it has a regulatory responsibility: s1101A. This includes activities of:
- (a) AFS licensees;
  - (b) authorised representatives of AFS licensees; or
  - (c) issuers of financial products.
- RG 183.14 For the purposes of approving codes, ASIC's regulatory responsibility includes:
- (a) the licensing, conduct and disclosure obligations in Ch 7 of the Corporations Act, including the requirements for charging ongoing fees under Pt 7.7A;
  - (b) the consumer protection provisions in Pt 2, Div 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act); and
  - (c) the obligations set out in the *Insurance Contracts Act 1984*.
- RG 183.15 We take the view that we can approve a code that also deals with matters other than those described in RG 183.13. For example, a code may cover the activities of entities that are clearly within our jurisdiction (e.g. deposit taking), as well as other activities (e.g. compliance with privacy obligations). The fact that a particular code deals with both types of activities does not prevent us approving it.
- RG 183.16 We expect that the primary subscribers to an approved code will be AFS licensees, their representatives and/or product issuers.
- RG 183.17 However, we may still consider approving a code if it is open to subscription by others or if the code touches on issues that are not directly within our regulatory responsibility. For example, a code may only deliver substantial consumer benefits if its scope extends to third parties or intermediaries that are not directly regulated by us, but that do business with these entities.

RG 183.18 We will determine whether a code is appropriate for ASIC approval on a case-by-case basis and, if necessary, in discussion with other key stakeholders, including industry and consumer representatives and other government agencies and regulators.

Note: For information on consulting with other regulators about an application for approval of a code, see RG 183.9–RG 183.11.

## What do we consider to be a code?

RG 183.19 We consider a code to be a body of rules that sets enforceable standards across an industry (or part of an industry), and delivers measurable consumer benefits.

RG 183.20 As such, a code should satisfy the following criteria:

- (a) the rules contained in the code must be binding on (and enforceable against) subscribers through contractual arrangements;
- (b) the code must be developed and reviewed in a transparent manner, which involves consulting with relevant stakeholders including consumer representatives; and
- (c) the code must have effective administration and compliance mechanisms.

RG 183.21 These are the ‘threshold criteria’ that an applicant must satisfy before we will formally consider an application for approval of a code. We will not consider self-regulatory arrangements that do not have these characteristics to be ‘codes’ for the purposes of our approval power.

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

- (a) they are enforceable;
- (b) they are developed in a consultative fashion to address a broad range of issues of real concern to consumers;
- (c) they set standards that elaborate on, exceed or clarify the law, or in the case of codes approved under s962CA, obviate the need for compliance with a legal requirement (see Section E);
- (d) compliance with these standards is monitored; and
- (e) remedies and sanctions are available for breaches of the code.

RG 183.23 While it is open to industry to develop any range of self-regulatory initiatives, our approach to what we consider a ‘code’ is designed to ensure that the term is reserved for self-regulatory tools with these key features.



RG 183.24 The criteria for a code in this guide are designed to exclude single-issue industry guidelines or other self-regulatory arrangements that lack adequate compliance, administration and review features. The only exception to our approach is that we will consider approving a limited code for the purposes of s962CA: see Section E.

### **Enforcing codes**

RG 183.25 Enforceability of a code is one of the key threshold criteria for approval. It is essential that code breaches can be dealt with effectively and independently. This requires that:

- (a) subscribers must agree to be contractually bound by the code (including by any amendments to the code over time);
- (b) there is an independent person or body that is empowered to administer and enforce the code, including imposing any appropriate sanctions (code administrator);
- (c) the code provisions provide that consumers have access to internal dispute resolution (IDR) processes and an appropriate external dispute resolution (EDR) scheme for any code breaches resulting in direct financial loss (see RG 183.63–RG 183.69); and
- (d) there is broad standing to complain about any other code breach to the independent body.

Note: For more information about the role and responsibilities of the code administrator, see RG 183.76–RG 183.78.

RG 183.26 Experience has shown that community confidence in the effectiveness of industry codes is largely reliant on consumers being able to seek redress under the code and, further, that the code is seen to be enforced against non-compliant subscribers. For this to happen, subscribers must first agree to be bound by the terms of the code.

RG 183.27 In most cases, subscribers will incorporate their agreement to abide by a code by contracting directly with the independent person or body that has the power to administer and enforce that code. In some cases, subscribers will also incorporate their agreement in individual contracts with consumers (e.g. written directly into the terms and conditions of a particular product). We strongly encourage code owners to consider this approach.

## C What are the statutory criteria?

### Key points

To be approved by ASIC, a code must meet the general statutory criteria for code approval in s1101A(3) of the Corporations Act.

This section gives guidance on the issues we will consider when determining whether a code meets these criteria.

### How we apply the statutory criteria

- RG 183.28 If we are satisfied that an applicant's code meets the threshold criteria for a code (see RG 183.20), we will consider whether it meets the general statutory criteria for code approval in s1101A(3) of the Corporations Act.
- RG 183.29 Under these criteria, ASIC may only approve a code of conduct if:
- (a) the code (or the code as proposed to be varied, in the case of amendments) is not inconsistent with the Corporations Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities (see RG 183.30–RG 183.34); and
  - (b) we consider that it is appropriate to approve the code given:
    - (i) the ability of the applicant to ensure that persons who claim to comply with the code will comply with the code (see RG 183.35–RG 183.37); and
    - (ii) the desirability of codes of conduct being harmonised to the greatest extent possible (see RG 183.38–RG 183.41).

### Not inconsistent with the Corporations Act

- RG 183.30 While a code must do more than restate the law (and indeed should offer consumers benefits that exist beyond the protection afforded by law), it must not be inconsistent with the Corporations Act or other relevant Commonwealth law for which ASIC is responsible. For example, if compliance with a code provision would make it impossible to comply with the law, we will generally take the view that the code provision is inconsistent with the law.
- RG 183.31 The 'not inconsistent' test does not prevent a code from:
- (a) containing higher standards than those contained in legislation; or
  - (b) dealing with an issue that is not covered by legislation.

- RG 183.32 In fact, this would defeat the role of codes to improve industry standards as recognised in the Explanatory Memorandum to the Financial Services Reform Bill 2001, which states at paragraphs 17.16–17.17 that:
- Codes may also be developed that establish best practice in areas not covered by the [Corporations] Act, but where industry and consumers consider the adoption by industry participants of consistent procedures and standards will facilitate business and enhance services offered to consumers.
- The Government considers that existing industry codes ... will continue to play an important role in fleshing out best practice standards for compliance with the proposed new regime.
- RG 183.33 In some cases, a code may provide for a higher standard of conduct or practice than that required by legislation. For example, a code provision may specify a longer cooling-off period, a shorter response time, or more prescriptive pre-contractual disclosure than is otherwise provided for in the legislation. As long as compliance with the code provision would not make it impossible to comply with the law, we will generally take the view that there is no inconsistency.
- RG 183.34 In determining whether a code meets the ‘not inconsistent’ test, we will specifically consider whether the provisions of the code are consistent with any relevant ASIC regulatory guides, instruments and other guidance that expands on the obligations that subscribers are subject to.

## Compliance

- RG 183.35 The success of any code in protecting consumers and raising standards depends on ensuring that subscribers comply with the provisions of the code, and that there are appropriate remedies and sanctions for non-compliance. We consider that the code administrator is responsible for monitoring and reporting on compliance with the code: see RG 183.76–RG 183.80.
- RG 183.36 Without formal independent monitoring mechanisms and appropriate access to remedies, breaches of a code may go undetected or uncompensated, and there may be little incentive for subscribers to continue to comply.
- RG 183.37 It is also important that people and organisations other than affected consumers can make complaints about code breaches. Bodies such as consumer organisations and financial services regulators may be better placed than individual consumers to monitor compliance with codes, and thus be better able to promote consumer confidence in them.

## Harmonisation

- RG 183.38 We interpret the requirement for harmonisation in s1101A(3) as meaning that all approved codes should:
- (a) have certain characteristics (i.e. the threshold criteria in Section B); and
  - (b) meet certain standards in terms of development, content, enforcement, administration and review (see Section D).

RG 183.39 More broadly, we believe that it is normally undesirable to have a number of different codes covering substantially the same subject area. We therefore encourage industry representatives that are responsible for codes to allow all relevant industry participants and service providers to subscribe to the code. We also expect code applicants to be able to show that their subscribers cover a majority of participants in the relevant sector.

- RG 183.40 Harmonisation of codes is certainly enhanced if all approved codes meet certain minimum standards. However, the greater the number of codes covering the same issues or functions:
- (a) the more difficult it will be to achieve harmonisation;
  - (b) the more confusing it will be for consumers; and
  - (c) the more costly it will be for industry to support a range of administration and compliance systems.

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

RG 183.41 If there is more than one code covering the same area, any approval process will focus on ensuring that the codes are harmonised to the greatest extent possible. We will, however, consider approving a code that covers substantially the same subject area as an existing code if it sets higher standards. While this may result in a potential competitive advantage for subscribers to the existing code, we do not interpret s1101A(3)(b)(ii) as preventing a code with higher standards from being approved.

## D What are the other relevant criteria?

### Key points

In addition to the general statutory criteria for code approval in Section C, we may consider any other matters we deem relevant to our decision on whether or not to approve a code: s1101A(3)(b).

This section gives guidance on what we consider are other relevant criteria, including:

- how the code was developed;
- the content of the code;
- whether the code is adequately enforceable;
- whether the code has effective administration arrangements; and
- whether the code provides for independent review at maximum intervals of three years.

### Other matters we consider

RG 183.42 In deciding whether or not to approve a code, ASIC may consider any other matters that we think are relevant in addition to the general statutory criteria for code approval in Section C: s1101A(3)(b).

RG 183.43 Other matters we will consider when exercising our approval power include:

- (a) *development*—whether there has been an appropriate process for developing the code (see RG 183.49–RG 183.54);
- (b) *content*—whether the code contains plain language provisions that deal with the code’s scope, objectives and core rules (see RG 183.55–RG 183.62);
- (c) *enforceability*—whether the code provides for adequate dispute resolution procedures, remedies and sanctions (see RG 183.63–RG 183.73);
- (d) *administration*—whether the code has effective arrangements for monitoring and reporting on compliance (see RG 183.76–RG 183.81); and
- (e) *review*—whether the code provides for regular, independent reviews at intervals of no more than three years (see RG 183.82–RG 183.85).

RG 183.44 We also reserve the right to consider any other issues that may be relevant to a particular application.

RG 183.45 Codes come in many forms, and our guidance in this section is intended to apply to codes for both large and small sectors. It has been designed to allow

code designers a degree of flexibility, while ensuring that the key high-level features of effective codes are met.

RG 183.46 In determining other relevant criteria for approval, we have taken into account the regulatory objectives in s1 of the ASIC Act. These require ASIC to:

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

RG 183.47 We have also considered the primary objectives of Ch 7 of the Corporations Act, which seeks, among other things, to promote:

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

RG 183.48 In addition, we have been guided by the growing body of work about effective self-regulation and, in particular, what makes for a high-quality code of conduct.

## Development

RG 183.49 We believe that there are certain processes that should be followed in developing a code. These increase the likelihood that the code will enjoy broad stakeholder support, and also help identify the core rules the code should cover.

RG 183.50 These processes are:

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

- RG 183.51 This last objective can be demonstrated by giving due consideration to different stakeholder views. It may be necessary, for example, to conduct stakeholder roundtables to find mutually acceptable solutions on how the code might respond to identified consumer and industry issues.
- RG 183.52 The processes industry follows in developing a new code (and also for reviewing an existing code) are extremely important in determining the effectiveness of the final code and the degree of confidence in it.
- RG 183.53 If these processes are not followed, there is a risk that the code will not be as effective as it could be and that it will not enjoy the confidence of those it is designed to benefit. This is recognised in paragraph 17.17 of the Revised Explanatory Memorandum to the Financial Services Reform Bill 2001, which states that:
- It is expected that new and revised codes will be developed by industry in conjunction with ASIC and with consumer organisations.
- RG 183.54 Early involvement by ASIC in any development or review process is important. This allows us to deal with resulting applications for approval more effectively, because we will be familiar with the content and stakeholder issues and the circumstances in which the code has been developed.

## Content

- RG 183.55 As a starting point, an approved code must contain plain language provisions that clearly describe what the code is about.
- RG 183.56 In evaluating the content of a code, we will consider whether the following three key elements are addressed:
- (a) the objectives of the code;
  - (b) the scope of the code; and
  - (c) its core rules.

### Objectives

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

### Scope

- RG 183.58 The scope of the code must be clearly set out, including:
- (a) which industry sectors the code applies to;
  - (b) which products and services it applies to; and
  - (c) which consumers are covered.

RG 183.59 We encourage applicants developing codes to extend the scope of the code's obligations beyond retail clients if this is appropriate.

### Core rules

RG 183.60 Our approval process focuses primarily on the adequacy of a code's core rules. Core rules are the substance of any code, and the main vehicle for improving industry practices. It is essential that core rules address existing and/or emerging problems in the marketplace, rather than merely restating the law.

RG 183.61 Generally, we will be satisfied that all key problems and solutions are identified if an applicant has followed the processes for developing a code in RG 183.50. Applicants should then explain how these issues are addressed in the code.

RG 183.62 If identified consumer concerns or undesirable practices are not addressed in the code, we will need a detailed explanation for why this is so. Possible explanations may include that:

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

## Enforceability

### Dispute resolution

RG 183.63 From a consumer's perspective, the ability to pursue a complaint about a breach of a code is an important test of how effective that code is.

RG 183.64 Under the Corporations Act, AFS licensees, unlicensed product issuers, and unlicensed secondary sellers that deal with retail clients must:

- (a) have IDR processes that comply with standards and requirements made or approved by ASIC (s912A(2)(a)); and
- (b) join an ASIC-approved EDR scheme (or schemes) to deal with complaints by retail clients (s912A(2)(b)).

RG 183.65 A subscriber's IDR process should be able to consider all alleged breaches of the code. Approved EDR schemes are explicitly required to take into account the operation of any relevant industry code in determining a consumer complaint.

RG 183.66 A code must reflect the existence and operation of these dispute resolution procedures. If a code covers firms or products that are not covered by the



legislative dispute resolution provisions, it will need to provide adequate dispute resolution for these subscribers. A code may also extend the IDR process and EDR scheme beyond retail clients and/or set benchmarks or performance measures that exceed a subscriber's legislative obligations.

RG 183.67 We will also check that any person or organisation can raise concerns about non-compliance with the code administrator.

### Remedies

RG 183.68 At a minimum, available remedies for code breaches should include:

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

RG 183.69 Remedies are important for ensuring that consumers are appropriately compensated if breaches occur and that the problem is fixed. A subscriber's IDR process should be able to consider all alleged breaches of the code.

### Sanctions

RG 183.70 It is important that subscribers are also subject to a range of sanctions for code breaches that go beyond providing compensation or rectification to individual consumers. These sanctions might include:

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

Note: Suspension or expulsion may raise competition issues and many need to be authorised by the ACCC.

RG 183.71 It is up to the code administrator to apply sanctions to subscribers, taking into account the principles of procedural fairness.

RG 183.72 Sanctions have a different function to remedies and are important to:

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

RG 183.73 Sanctions beyond any necessary remedial action do not need to be applied for every breach, but they do need to be available, particularly to deal with wilful or repeated breaches.

## Reporting breaches to ASIC

- RG 183.74 A breach of a code does not of itself constitute a breach of the financial services law referred to in s912D(1)(a)(ii) of the Corporations Act, which an AFS licensee must report to ASIC under s912D(1B). The conduct that gave rise to the code breach might *also* give rise to a breach of financial services law (because it is prohibited both under the law and under the code).
- RG 183.75 However, any obligation on the licensee to report the breach under s912D depends on whether the licensee has determined that the conduct constitutes a significant breach or likely breach to which s912D(1B) applies, and not whether the conduct has resulted in a breach of an approved code. Code administrators remain responsible for reporting systemic code breaches and serious misconduct to ASIC (see RG 183.78).

## Administration

- RG 183.76 A code applicant must establish that the code is effectively administered. For a code to work effectively, there needs to be a person or body charged with overseeing the operation of the code that:
- (a) is independent of the industry or the industries that subscribe to the code and provide the funding (e.g. with a balance of industry representative and consumer representatives and an independent chair); and
  - (b) has adequate resources to fulfil the relevant functions and to ensure that code objectives are not compromised.
- RG 183.77 Without such an administrator, there is a risk that oversight of industry compliance with the code will be reduced, systemic problems will not be identified, and industry and consumer awareness of the code will be low.
- RG 183.78 The code administrator should also be responsible for:
- (a) establishing appropriate data reporting and collection procedures;
  - (b) monitoring compliance with the code;
  - (c) publicly reporting annually on code compliance;
  - (d) hearing complaints about breaches of the code and imposing sanctions and remedial measures as appropriate;
  - (e) reporting systemic code breaches and serious misconduct to ASIC;
  - (f) recommending amendments to the code in response to emerging industry or consumer issues, or other issues identified in the monitoring process;
  - (g) ensuring that the code is adequately promoted;

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

- (h) ensuring that staff are appropriately trained in the code and that subscribers make provision for this training; and
  - (i) ensuring that there is a regular, independent review of the content and effectiveness of the code and its procedures (see RG 183.82–RG 183.85).
- RG 183.79 The monitoring process overseen by the code administrator should also provide for some form of external or independent monitoring or auditing from time to time. If the monitoring process relies on self-reporting by subscribers, the code administrator should consider selected shadow shopping exercises to verify code compliance.
- RG 183.80 If a code does not apply to a specific industry or sector, alternative types of arrangements may need to be made to effectively oversee the code. In this case, we consider that there should still be mechanisms to ensure that:
- (a) the code is appropriately monitored, reported on, reviewed and promoted;
  - (b) systemic issues are identified;
  - (c) staff are appropriately trained about the code; and
  - (d) breaches are appropriately followed up.
- RG 183.81 In rare instances, there may be a role for ASIC in administering and/or monitoring the code (e.g. if the code is a functional code that covers a range of industries and providers). We will consider this need on a case-by-case basis.

## Independent review

- RG 183.82 As a condition of approval, a code must be independently reviewed at intervals of no more than three years. Independent code reviews are essential to ensuring that a code remains current and continues to deliver real benefits to consumers and subscribers. Reviews provide an opportunity for stakeholders to give feedback on how a code has operated in the past and how it might operate in the future.
- RG 183.83 The role of the independent reviewer is to consider, without bias, the broad range of stakeholder views. The independent reviewer should base its review on the processes described in RG 183.50, as the principles applying to code development also apply to ongoing code review.
- RG 183.84 The review and implementation of any recommendations must be completed within a reasonable timeframe to maintain confidence in the process and for the code to retain ASIC's approval. We will discuss this timeline with each applicant at the start of the review process, which commences three years after the code was approved.
- RG 183.85 We will retain the three-year review cycle until both ASIC and industry have sufficient experience with the effective operation of approved codes. Subject to this experience, we may revisit the timetable for independent code reviews.

## E Approving codes under s962CA

### Key points

Under s962K of the Corporations Act, financial advisers who enter into ongoing fee arrangements with retail clients must renew their clients' agreement to pay ongoing advice fees every two years. This is known as the 'opt-in requirement'.

As an alternative, ASIC may grant relief from this requirement if we are satisfied that a financial adviser is bound by an approved code of conduct that 'obviates the need' for complying with the opt-in requirement: s962CA.

This section gives guidance on our approach to approving codes under s962CA, including:

- what codes we will consider approving for this purpose;
- the statutory criteria for approval;
- an additional requirement for a register of subscribers;
- the exception for pre-approval review; and
- our expectations for monitoring compliance.

### The opt-in requirement in s962K

- RG 183.86 Under s962K of the Corporations Act, an AFS licensee or representative who receives fees under an ongoing fee arrangement for the provision of personal financial product advice must give their retail client a written renewal notice every two years, which requires the retail client to opt-in to renew that fee arrangement. This is known as the 'opt-in requirement'.
- RG 183.87 ASIC has the power to exempt a person or class of persons from complying with the opt-in requirement if we are satisfied that the person is, or persons of that class are, 'bound by a code of conduct approved by ASIC': s962CA.
- RG 183.88 For the purposes of s962CA, a code of conduct is approved by ASIC if:
- (a) the code is approved by us under s1101A;
  - (b) we are satisfied that the code obviates the need for persons bound by the code to be bound by the opt-in requirement; and
  - (c) we are satisfied of any other matters prescribed by the regulations.
- RG 183.89 In his second reading speech to the Corporations Amendment (Future of Financial Advice) Bill 2012, the Minister for Financial Services and Superannuation stated that the amendment:
- ... offers financial advisers an alternative to the opt-in requirement. This amendment will allow ASIC to provide class order relief from the opt-in

requirement to licensees and representatives who are signatories to an ASIC approved professional code of conduct by 1 July 2015. Importantly such an approved code would need to include practices and conduct requirements that obviate the need for the opt-in requirement.

## What will we consider?

- RG 183.90 A code may be submitted to ASIC for approval under s962CA for the purpose of obtaining an exemption from the requirement in s962K.
- RG 183.91 We will consider approving the following codes under s962CA:
- (a) codes that deal with a broad range of issues that are relevant to the provision of financial product advice to retail clients (this is consistent with our general approach to approving codes in RG 183.19 and RG 183.24), *including* covering conduct that obviates the need for subscribers to be bound by the opt-in requirement; and
  - (b) codes that are limited in subject matter to specific provisions that together obviate the need for compliance with the opt-in requirement. We refer to these codes as ‘limited codes’ (this is a specific exception to our general approach to approving codes in RG 183.24).
- RG 183.92 All codes that we may consider approving under s962CA, whether or not limited in content, must comply with:
- (a) the threshold criteria in RG 183.20 (see Section B);
  - (b) the general statutory criteria for code approval (see Section C);
  - (c) other relevant criteria (see Section D); and
  - (d) additional requirements, including:
    - (i) the statutory criteria for approval in s962CA (see RG 183.96–RG 183.108); and
    - (ii) a requirement for a register of subscribers (see RG 183.109–RG 183.112).
- RG 183.93 This means that, while the content of a limited code may be narrower, the code must still meet the broader criteria in this guide, including for development, enforcement, sanctions, remedies, administration and review.
- RG 183.94 In particular, our requirements on code review, monitoring and enforcement apply to all codes we may consider approving for the purposes of s962CA: see RG 183.25–RG 183.27 and RG 183.63–RG 183.85.
- RG 183.95 We will not consider an application for approval of a code that is sponsored by a single AFS licensee or dealer group. We consider that such an application is inconsistent with the statutory requirements for compliance and harmonisation (see RG 183.35–RG 183.41), as well as the administration requirements described in Section D (see RG 183.76–RG 183.78).

## The statutory criteria for approval in s962CA

- RG 183.96 For a code to be approved by ASIC under s962CA, in addition to satisfying the general statutory criteria for approval under s1101A and other relevant criteria, it must also satisfy the statutory criteria in s962CA.
- RG 183.97 Under these criteria, ASIC can only exempt a person from the opt-in requirement if we are satisfied that:
- (a) the person, or class of persons, who will gain the benefit of the exemption are bound by an approved code of conduct; and
  - (b) the code of conduct obviates the need for persons bound by the code to be bound by the opt-in requirement.

### Bound by the code

- RG 183.98 One of the general statutory criteria for code approval under s1101A is the ability of the applicant to ensure that persons who claim to comply with the code will comply with the code: s1101A(3)(b).
- RG 183.99 Under s962CA, ASIC must be satisfied that persons seeking exemption from the opt-in requirement through an approved code will be bound by the code: s962CA(1).
- RG 183.100 Accordingly, code applicants must demonstrate to our satisfaction how a person who subscribes to the code will be effectively bound by the code.
- RG 183.101 We consider that a person is bound by a code under s962CA if they have entered into a direct contractual arrangement with the code owner or the code administrator. We expect that an application for approval of a code under s962CA will include all documents which evidence this contractual arrangement, and that these documents will make it clear when a subscriber is no longer bound by the code.

### 'Obviates the need'

- RG 183.102 Our approval power to exempt a person or class of persons under s962CA is intended to give financial advisers an alternative to the opt-in requirement in s962K.
- RG 183.103 We cannot approve a code under s962CA unless we are satisfied that the code 'obviates the need' for persons bound by the code to be bound by the opt-in requirement.
- RG 183.104 We consider that a code will obviate the need for the opt-in requirement if it achieves substantially the same policy outcomes that s962K is intended to achieve—that is, to 'protect disengaged clients from paying ongoing financial advice fees where they are receiving little or no service'.

- RG 183.105 It is up to the code applicant to establish that the code contains provisions that obviate the need for complying with the opt-in requirement, taking into account the underlying policy intent of s962K.
- RG 183.106 We consider that there are a number of ways in which a code might obviate the need for complying with the opt-in requirement. To meet the policy intent of s962K, the code should include content that deals with:
- (a) entering into an ongoing fee arrangement;
  - (b) delivering services under the arrangement; and
  - (c) renewing the arrangement.
- RG 183.107 We have included an ‘if not, why not’ checklist in the appendix to this guide that is based on these three aspects of the ongoing fee arrangement. An applicant should either:
- (a) state that the code includes the measures set out in the checklist; or
  - (b) if the code does not include the measures, explain why this is so and its alternative approach.
- RG 183.108 The checklist is intended to give code applicants both guidance about appropriate content and flexibility to tailor a code for their prospective subscribers for the purposes of s962CA.

## Register of subscribers

- RG 183.109 The opt-in requirement in s962K applies to the fee recipient under an ongoing fee arrangement. This could be an AFS licensee, but in many cases, it will be an authorised representative or employee representative of an AFS licensee: s962C. Therefore, an approved code under s962CA may attract a large number of individual advisers seeking to subscribe to the code to gain the benefit of the exemption and avoid the obligation to comply with s962K.
- RG 183.110 To monitor whether such potentially large numbers of advisers are complying with the code, the code administrator must maintain a public, up-to-date register identifying all persons bound by the code.
- RG 183.111 This register must be available online and should include details such as:
- (a) the full legal name of the person;
  - (b) whether the person is an AFS licensee, an authorised representative or an employee representative of an AFS licensee;
  - (c) the business address at which the person provides financial advice to retail clients;
  - (d) the legal and business names of the person’s AFS licensee (for authorised or employee representatives);
  - (e) the AFS licensee number of the person, or the number of the person’s AFS licensee (if the person is an authorised or employee representative);

- (f) the person's authorised representative number (as relevant);
- (g) the date the person became bound by the code; and
- (h) the date the person ceased to become bound by the code

RG 183.112 The register will facilitate transparency and may help AFS licensees, who may have representatives that are bound by more than one code, to monitor their compliance with the law (i.e. that they are complying with the opt-in requirement or that they subscribe to a code approved by ASIC under s962CA). It will also assist in satisfying ASIC that the code administrator is able to ensure that persons who subscribe to the code will comply with the code.

## Pre-approval review

- RG 183.113 If an existing industry code has been operating for more than three years without an independent review and is subsequently submitted to ASIC for approval under s962CA, it will not need to be independently reviewed before we will consider the application for approval.
- RG 183.114 However, we expect that, before submitting the code for approval, the code applicant will have followed the processes for appropriate stakeholder consultation in RG 183.50.
- RG 183.115 Once approved, a code must undertake an independent review at intervals of no more than every three years, as set out in RG 183.82. We may require the code owner to undertake an independent review before the three-year deadline falls due if we determine that the code is not meeting its objectives (as set out in the code and as required by law under s962CA).

## ASIC relief and monitoring compliance

- RG 183.116 Under s962CA, ASIC may exempt a person, or class of persons, from the opt-in requirement if we are satisfied that the person is, or persons of that class are, bound by an approved code under s962CA.
- RG 183.117 In granting relief to subscribers of a code approved under s962CA, we are providing a means by which a fee recipient may avoid complying with the opt-in requirement in s962K and not be subject to statutory remedies and penalties.
- RG 183.118 Therefore, we expect that any code we consider approving under s962CA will set out appropriate remedies and sanctions for non-compliance, and in particular, will state when subscription to the code will be terminated: see RG 183.68–RG 183.73.
- RG 183.119 We also expect termination of any subscriptions to the code to be reported immediately to us and (where relevant) to the AFS licensee, and that the register of subscribers will be updated promptly.



## F How to obtain and retain approval

### Key points

This section gives guidance on obtaining and retaining approval for a code, including:

- preparing and submitting an application;
- our assessment of other code-related documents;
- how long approval lasts;
- amendments to an approved code;
- monitoring of codes;
- when we will consider revoking approval; and
- what we consider to be misrepresentations about codes.

### Getting a code approved

- RG 183.120 It is not mandatory for any industry in the financial services sector to develop a code. If a code exists, that code does not have to be approved by ASIC. However, where approval by ASIC is sought and obtained, it is a signal to consumers that this is a code they can have confidence in.
- RG 183.121 ASIC approval of any code is not guaranteed. It is up to the code applicant to establish how the code meets the criteria for approval.
- RG 183.122 ASIC approval is ongoing. For approval to remain in place, a code (including any amendments) must continue to comply with the criteria set out in this guide. An approved code is a living document that is responsive to emerging industry and consumer issues and delivers substantial benefits to consumers.

### Preparing and submitting an application

- RG 183.123 Before you apply for approval of a code, you should ensure that you can demonstrate that the code satisfies:
- (a) the threshold criteria for a code that ASIC can approve (see Section B);
  - (b) the general statutory criteria for code approval (see Section C);
  - (c) other relevant criteria (see Section D); and
  - (d) additional requirements if seeking approval under s962CA (see Section E).

- RG 183.124 Your application for approval should also include (as appropriate):
- (a) details (and the outcomes) of any pre-approval review, including evidence of broad consultation with stakeholders;
  - (b) details of what changes were made to the code as a result of that review;
  - (c) details of the history of the operation of the code;
  - (d) details of subscribers to the code, including samples of agreements that they must sign to affirm that they will comply with the code; and
  - (e) all relevant code-related documents.
- RG 183.125 All applications for approval of new codes, existing codes or amendments to codes must follow the procedures set out in this section. Applications that do not meet the criteria in RG 183.123 or include all the required information in RG 183.124 will be rejected.
- RG 183.126 In particular, an application for approval of a code under s962CA must establish that the code contains provisions that obviate the need for complying with the opt-in requirement, taking into account the underlying policy intent of s962K (see RG 183.105) and should include a completed version of the checklist in the appendix to this guide.
- RG 183.127 We will apply the criteria for approval in this guide consistently to both new codes and to existing industry codes that have not yet been approved. However, if an existing code has been operating for more than three years without an independent review, we will require it to be independently reviewed before we will consider an application for approval, unless it is submitted for approval under s962CA: see RG 183.113.
- RG 183.128 In determining whether or not to approve a code, we may decide to make any approval conditional. When evaluating an existing code, we will consider how the code has operated (and been amended) over time, and the extent of its continuing relevance, given market and other developments.
- RG 183.129 We will reject a code submitted for approval that is not written in plain language. We will not redraft or rewrite a code. This is the job of the applicant.
- RG 183.130 An application for code approval must be in writing and should be made by the relevant sponsoring industry group or groups. However, in some cases, an existing code administrator may apply.
- RG 183.131 Written applications for approval of a code should be sent to:
- Senior Executive Leader  
Financial Advisers  
GPO Box 9827  
Sydney NSW 2001

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

## Our assessment of other code-related documents

- RG 183.132 The consumer commitments embedded in a code must be set out in a freestanding, plain language document. There may, however, be other related documents which will be key to how the code is administered and operates in practice. These may include procedural documents setting out how the administrator handles issues of non-compliance, and the form of agreement by which firms agree to be bound by the code.
- RG 183.133 While we will not seek to specifically approve these code-related documents, we will examine whether the code, when read in conjunction with them, meets the approval criteria set out in this paper. We will also consider if any of these related documents need to be made publicly available.

## How long does approval last?

- RG 183.134 An ASIC-approved code will generally continue to enjoy its approved status unless:
- (a) amendments to an approved code (other than ‘purely technical’ amendments) have been implemented without ASIC agreement to a transition period or before we have approved the amendments (see RG 183.136–RG 183.139); or
  - (b) approval has been expressly revoked by ASIC (see RG 183.142–RG 183.147).
- RG 183.135 We will also consider investigative or enforcement action if misrepresentations are made about a code: see RG 183.148–RG 183.149.

## Amendments to an approved code

- RG 183.136 Generally, if a code is amended, we consider that it is no longer the same code as the one we approved. An approved code may need to be amended because of:
- (a) recommendations resulting from its regular, independent review;
  - (b) the emergence of new consumer or market problems;
  - (c) changes to the relevant laws that regulate the conduct of the industry participants who are subscribers to the code;
  - (d) an expanded subscriber base, which involves the code covering a new sector of the industry; and/or
  - (e) any other circumstance requiring procedural or technical change to the code.

RG 183.137 Because the amended code as a whole must continue to meet the criteria for approval, all amendments resulting from the above circumstances will need to be approved by us unless they are purely technical.

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

RG 183.138 If we do not approve these amendments, the code will cease to be approved when the amendments come into effect. This is subject to any period agreed with us to give us time to adequately assess the impact of the amendments.

RG 183.139 When considering amendments to an approved code, we will focus on promoting consumer protection and market integrity without unduly interrupting existing industry arrangements or imposing increased costs.

## Monitoring of codes

RG 183.140 One of the key ongoing obligations of code administrators and industry participants is to monitor the code to ensure that it continues to comply with the relevant criteria for approval and any conditions of approval: see Sections C, D and E. Codes that are not effectively reviewed and amended will not last.

RG 183.141 From time to time, we will also monitor approved codes, including through:

- (a) review of periodic reporting to us by the code administrator or compliance committee (e.g. annual reports and special reports dealing with systemic issues or serious breaches);
- (b) information derived from:
  - (i) liaison work with consumers and consumer bodies;
  - (ii) EDR schemes;
  - (iii) industry consultations; or
  - (iv) compliance monitoring and surveillance work and other intelligence sources; and
- (c) evidence of the results of the regular independent review of the code.

## When will we consider revoking approval?

RG 183.142 Codes are living documents. They must continue to be relevant in achieving their stated objectives to be considered effective. As market conditions change, codes can date. Similarly, as attention moves on and off specific industries, industry's level of commitment to a code can vary.

- RG 183.143 Because ASIC approval of a code is a signal to consumers about the worth of a code, approval should only apply to codes that are delivering significant benefits to consumers. Consumers need to be confident that a code that is promoted as being approved by ASIC meets the criteria in this guide.
- RG 183.144 It is therefore essential that we take appropriate action if we consider that a code no longer meets these criteria. We may revoke any code approval we have granted:
- (a) on application of the original code applicant, code owner or code administrator;
  - (b) if we consider that the code no longer meets (or substantially meets) any of the general statutory criteria for code approval (see Section C), other relevant criteria in Section D, or additional requirements for approval under s962CA in Section E of this guide;
  - (c) if a code no longer has any current subscribers or ceases to have a sufficient number of members to be viable; or
  - (d) if a three-year independent review has not been conducted or has not been completed in accordance with RG 183.82–RG 183.84.
- RG 183.145 We will publicise code revocations through media release on our website at [www.asic.gov.au](http://www.asic.gov.au).
- RG 183.146 For codes approved under s962CA, the revocation of the code will result in the exemption from the opt-in requirement in s962K ceasing to apply to subscribers of the code. The code owner must inform subscribers of the revocation as soon as possible.
- RG 183.147 When deciding whether to revoke approval of a code, we will balance the need to ensure consumer protection outcomes with the need to avoid unduly interrupting industry arrangements. We will apply the principles of procedural fairness in making our decision, including giving code owners an opportunity to state their case and, usually, an opportunity for corrective action.

## Misrepresentations about codes

- RG 183.148 In some circumstances, representations about codes may result in a contravention of the ASIC Act and/or the prohibited conduct provisions of Pt 7.10 of the Corporations Act (including the prohibitions against misleading or deceptive conduct, making false or misleading statements and engaging in dishonest conduct).
- RG 183.149 These representations may include:
- (a) representing a code as having ASIC approval when it does not;
  - (b) representing that an organisation complies with a code (whether ASIC-approved or not) when it does not;

- (c) misrepresenting the effect of a code, including what ASIC approval means (e.g. by representing that ASIC has also endorsed the subscribers and/or the products or services that the code covers); and
- (d) misrepresenting the scope of a code, in particular for a limited code approved under s962CA.

## Appendix: ‘If not, why not’ code content checklist

This checklist is for applicants seeking approval of a code under s962CA. It gives guidance about content of a code that obviates the need for subscribers to comply with the opt-in requirement in s962K of the Corporations Act. Applicants can either confirm that their code includes the suggested content, or, if not, provide an explanation of their alternative approach to be considered by ASIC.

**Table 2: ‘If not, why not’ code content checklist**

Code content	Statement <sup>1</sup>	Explanation <sup>2</sup>	Reference <sup>3</sup>
<b>A Entering into an ongoing fee arrangement</b>			
A1	The code requires the subscriber to take certain steps when entering into an ongoing fee arrangement. These steps should include the following:	<ul style="list-style-type: none"> <li>• assessing whether it is suitable to provide ongoing services to the client; and</li> <li>• ensuring the proposed services are relevant to the advice given to the client and their financial circumstances.</li> </ul>	
A2	The code requires the subscriber to obtain the client's agreement to the ongoing fees and services. This agreement may be set out in a client engagement letter (or similar) and should cover:	<ul style="list-style-type: none"> <li>• the services to be delivered under the ongoing fee arrangement (see Requirement B in this table);</li> <li>• ongoing fees expressed as a dollar figure and payment arrangements;</li> <li>• that the client can switch off the ongoing fee arrangement at any time; and</li> <li>• the terms of the ongoing fee arrangement (see Requirement C in this table).</li> </ul>	
<b>B Delivering services under the arrangement</b>			
B1	The code requires the subscriber to actively engage with clients and provide services that are commensurate in value with the fees charged. Examples may include:	<ul style="list-style-type: none"> <li>• provision of regular review (see Requirement B2 in this table);</li> <li>• access to an adviser to ask questions and seek guidance;</li> <li>• provision of relevant information and education; and</li> <li>• administrative support (e.g. managing insurance claims).</li> </ul>	

Code content	Statement <sup>1</sup>	Explanation <sup>2</sup>	Reference <sup>3</sup>
<p>B2 The code requires the subscriber to conduct a regular or annual advice review for clients under an ongoing fee arrangement. This should include:</p> <ul style="list-style-type: none"> <li>• a review of the advice and strategy provided, and the client's circumstances, portfolio and risk profile;</li> <li>• a review of services agreed and delivered to the client to date; and</li> <li>• an assessment of the ongoing suitability and relative benefit of those services to the client.</li> </ul> <p>The code requires the subscriber to document and keep records confirming service delivery and client reviews under the ongoing fee arrangement.</p>			
<b>C Renewing the arrangement</b>			
<p>C1 The code requires that an ongoing fee arrangement must be renewed with the client at a mutually agreed interval, which is no less often than every three years.</p> <p>Renewal arrangements under an approved code do not have to match the opt-in requirements under the law. For example, there may be different requirements about how advisers communicate with their clients and a wider range of options about how they seek the client's consent to the ongoing arrangement.</p> <p>Subscribers must document and keep records confirming the client's consent to the terms, fees and scope of the renewed arrangement.</p>			

Note 1: State whether the criteria are met or not met.

Note 2: If the criteria are not met, explain why this is so and your alternative approach.

Note 3: Include a reference to the relevant section of the code application or code document.



## Key terms

Term	Meaning in this document
ACCC	Australian Competition and Consumer Commission
advice	Financial product advice
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
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i> , including regulations made for the purposes of that Act
authorised representative (of an AFS licensee)	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or financial services on behalf of the licensee  Note: This is a definition contained in s761A of the Corporations Act
code	For the purposes of this guide, a financial services sector code of conduct
code administrator	A person or body appointed by the code owner to undertake the activities set out in RG 183.76–RG 183.79
code applicant	The person or body who submits a code to ASIC for the purposes of requesting approval under s1101A or 962CA. This may be the code owner or a representative of the code owner
code of conduct	Has the same meaning as code of practice
code owner	The person or body who is ultimately responsible for preparing, maintaining and ensuring compliance with the code. The code owner may appoint a code administrator to undertake activities related to the functions and responsibilities of the code owner under the code
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
dispute resolution provisions	The provisions in s912A(1)(g), 912A(2) and 1017G of the Corporations Act
EDR scheme	An ASIC-approved external dispute resolution scheme
IDR process	An internal dispute resolution process that complies with standards and requirements made or approved by ASIC

Term	Meaning in this document
issuer (in relation to a financial product)	Has a meaning affected by s761E of the Corporations Act
limited code	A code submitted for approval or approved under s962CA that is limited in scope to content that obviates the need for complying with the opt-in requirement
ongoing fee arrangement	<p>Where an AFS licensee, or representative of a licensee, gives personal advice to a retail client and enters into an arrangement under which the client is to pay a fee (however described or structured) for a period of more than 12 months</p> <p>Note: This is a definition contained in s962A of the Corporations Act</p>
opt-in requirement	The requirement in s962K for financial advisers who enter into ongoing fee arrangements with retail clients to renew their clients' agreement to pay ongoing advice fees at least every two years
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> <li>• the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or</li> <li>• a reasonable person might expect the provider to have considered one or more of these matters</li> </ul> <p>Note: This is a definition contained in s766B(3) of the Corporations Act</p>
retail client	A client as given in s761G of the Corporations Act
subscriber	A person who is bound by and must comply with the provisions of the code to which they subscribe

## Related information

### Headnotes

AFS licensees, amendments, approval, code administration, compliance, content, core rules, development, EDR, enforceability, financial services, harmonisation, IDR, industry codes, internal and external dispute resolution, not inconsistent, misrepresentations about codes, monitoring, review, revoking code approval, statutory criteria

### Legislation

ASIC Act, Pt 2, Div 2, s1

Corporations Act, Ch 7, 7.7A, 7.9, 7.10, s912A, 912D, 962CA, 962K, 1101A

Corporations Amendment (Future of Financial Advice) Bill 2012

Financial Services Reform Bill 2001

*Insurance Contracts Act 1984*

### Consultation papers and reports

CP 21 *Approval of codes*

CP 191 *Future of Financial Advice: Approval of codes of conduct for exemption from opt-in requirement*

REP 329 *Response to submissions on CP 191 FOFA: Approval of codes of conduct for exemption from opt-in requirement*