

Attachment to CP 254: Draft regulatory guide



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 000

Providing digital financial product advice to retail clients

March 2016

About this guide

Digital advice (also known as robo-advice or automated advice) is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser.

This regulatory guide brings together some of the issues that persons providing digital advice to retail clients need to consider when operating in Australia—from the licensing stage (i.e. obtaining an Australian financial services (AFS) licence) through to the actual provision of advice.

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 draft guide was issued in March 2016 and is based on legislation and regulations as at the date of issue.

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

The provision of digital advice has grown rapidly in Australia since 2014, with a number of start-up Australian financial services (AFS) licensees and existing AFS licensees developing digital advice models.

ASIC supports the development of a healthy and robust digital advice market in Australia.

This regulatory guide brings together some of the issues that persons providing digital advice to retail clients need to consider when operating in Australia—from the licensing stage (i.e. obtaining an AFS licence) through to the actual provision of advice.

Digital advice in Australia

- RG 000.1 Digital advice (also known as ‘robo-advice’ or ‘automated advice’) is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser. It can comprise general or personal advice, and range from advice that is narrow in scope (e.g. advice about portfolio construction) to comprehensive financial product advice.
- RG 000.2 The provision of digital advice has grown rapidly in Australia since 2014, with a number of start-up Australian financial services (AFS) licensees and existing AFS licensees developing digital advice models. We expect this growth to continue.
- RG 000.3 ASIC supports the development of a healthy and robust digital advice market in Australia. In an environment where only around 20% of adult Australians seek personal advice, we think that digital advice has the potential to offer an attractive, convenient and low-cost advice service to retail clients who may not otherwise seek advice.

Note 1: ‘Personal advice’ is defined in s766B(3) of the *Corporations Act 2001* (Corporations Act) as: ‘financial product advice given or directed to a person (including by electronic means) in circumstances where the provider of the advice has considered one or more of the client’s objectives, financial situation and needs; or a reasonable person might expect the provider to have considered one or more of these matters’.

Note 2: In this guide, references to ‘client’ mean ‘retail client’, as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations 2001 (Corporations Regulations).

- RG 000.4 We have spoken with a number of AFS licensees and their authorised representatives that provide digital advice to retail clients. We have also

spoken with financial technology (fintech) start-up businesses that are considering whether to become an AFS licensee or an authorised representative of an AFS licensee. From these discussions, it has become clear that industry would benefit from additional guidance that deals specifically with digital advice.

Note: In this guide, we use the term ‘digital advice’ to mean digital advice provided to retail clients.

RG 000.5 To assist those providing, or intending to provide, digital advice—and to ensure a level playing field in the industry—ASIC has developed this regulatory guide.

Scope of this regulatory guide

RG 000.6 This regulatory guide generally builds on existing ASIC guidance and does not introduce new regulatory concepts. This is because the law is technology neutral, and the obligations applying to the provision of traditional (i.e. non-digital) financial product advice and digital advice are the same.

RG 000.7 This guide brings together some of the issues that you will need to consider if you want to provide digital advice when operating in Australia—from the licensing stage (i.e. obtaining an AFS licence) through to the actual provision of advice. We see this guide as a convenient starting point for those seeking to understand their regulatory obligations in relation to providing digital advice.

RG 000.8 We also provide guidance on some of the issues that are unique to providing digital advice compared with traditional financial product advice. These include:

- (a) how the organisational competence obligation in s912A(1)(e) of the Corporations Act applies to digital advice licensees (see RG 000.44–RG 000.51);

Note: In this guide, we use the term ‘digital advice licensee’ to refer to an AFS licensee offering digital advice to retail clients. It may be the licensee itself or its authorised representatives that provide the advice service.

- (b) the ways in which digital advice licensees should monitor and test their algorithms (see RG 000.68–RG 000.70); and
- (c) the minimum steps that digital advice providers should take to comply with the best interests duty in s961B of the Corporations Act when providing ‘scaled advice’ (i.e. personal advice that is limited in scope) to retail clients (see Section D).

Note 1: In this guide, ‘digital advice provider’ refers to the person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply when personal advice is

provided through a computer program—that is, the legal person that provides the digital advice (e.g. a corporate licensee or authorised representative).

Note 2: References in this guide to sections (s), parts (Pts), and chapters (Chs) are to the Corporations Act, unless otherwise specified.

Regulatory framework and our guidance

- RG 000.9 Generally, Australia’s financial services regulatory regime is principles based and does not prescribe the steps that an AFS licensee needs to take to comply with the law.
- RG 000.10 Our regulatory experience leads us to conclude that, in some circumstances, AFS licensees need to take certain steps to comply with their obligations. From our engagement with industry—including digital advice providers and prospective providers—it is clear that industry would like, and would benefit from, guidance about how the regulatory obligations apply to digital advice providers and certainty about what providers need to do to comply. We have therefore provided this guide, which aims to assist industry to understand ASIC’s approach to regulating digital advice.
- RG 000.11 In this guide, we have deliberately used terms such as ‘must’, ‘required to’, ‘expect’ or ‘should’:
- (a) When we use the terms ‘must’ or ‘required to’, we are referring to obligations that you need to comply with as a matter of law. For example, as an AFS licensee, you *must* have adequate risk management systems: s912A(1)(h).
 - (b) When we use the terms ‘expect’ or ‘should’, we consider that these are the ways in which you should—and generally would—comply with your obligations under the law. For example, we *expect* AFS licensees to have a structured and systematic process for identifying, evaluating and managing risks.
- RG 000.12 In most cases—and unless there are exceptional circumstances—AFS licensees will be able to comply with the law by adhering to the ways we think that you can comply with the law. Failure to do the things we expect is more likely to result in further regulatory inquiry from ASIC. However, if you think you can comply with your obligations under the law in another way, we suggest that you contact us. We recognise that digital advice is a developing area, and we are happy to hear about new or alternative ways in which AFS licensees and their authorised representatives consider they are able to comply with the law.

Communication in a digital context

- RG 000.13 Communicating with clients is an important element of providing digital advice. Because there is no ‘natural person’ (i.e. human adviser) directly involved in providing the advice, it is especially important for digital advice

providers to carefully consider their website design and digital communications and disclosure. Providers should take a user-focused approach and put the client's needs first when designing their communications and disclosure.

- RG 000.14 We recognise that the digital advice environment is still evolving, and that what constitutes effective communication will vary across the different electronic devices used (i.e. it is highly context specific). For these reasons, we encourage a culture of ongoing testing and enhancement.

Other relevant guidance

- RG 000.15 This regulatory guide should be read in conjunction with other ASIC regulatory guides that may be relevant to providing digital advice. A summary of the other relevant guidance issued by ASIC is contained in Table 1 in the appendix.

B Digital advice and the AFS licensing regime

Key points

The provision of digital advice has grown rapidly in Australia since 2014, with a number of start-up businesses and existing AFS licensees developing digital advice models.

Under the Corporations Act, you are required to hold an AFS licence, or to be an authorised representative of an AFS licensee, if you are carrying on a financial services business, unless an exemption applies.

Existing AFS licensees intending to provide digital advice will need to consider whether their current licensing arrangements enable them to offer digital advice.

Fintech start-up businesses wanting to provide digital advice will need to apply for their own AFS licence or become an authorised representative of an AFS licensee.

To assist those intending to provide digital advice, we have provided some practical guidance on when an AFS licence may be required and the AFS licensing process. For those opting to become an authorised representative, we have set out some questions you may want to ask your prospective licensee before deciding to seek authorisation.

The guidance and information in this section mostly builds on existing ASIC guidance. We will also require that a digital advice licensee has at least one responsible manager who meets the minimum training and competence standards for advisers (i.e. natural persons who provide financial product advice to retail clients). A transition period of six months will apply.

Is an AFS licence required?

- RG 000.16 If you are carrying on a business of providing a financial service, such as financial product advice, unless an exemption applies, you must hold an AFS licence or act as a representative of an AFS licensee: see Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) at RG 36.13. You must also comply with your obligations as an AFS licensee or authorised representative: see Section E of RG 36 and Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104).
- RG 000.17 If you provide financial product advice to retail clients, you must also comply with certain conduct and disclosure obligations under Pt 7.7, and Div 2 of Pt 7.7A: see Sections D and E of Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175).

Providing factual information

- RG 000.18 You do not need to hold an AFS licence, or act as a representative of an AFS licensee, to give factual information to clients.
- RG 000.19 Factual information is objectively ascertainable information, the truth or accuracy of which cannot reasonably be questioned: see RG 36.21. Good quality factual information can often be useful for clients wishing to better understand the financial products or strategies available to them: see Regulatory Guide 244 *Giving information, general advice and scaled advice* (RG 244) at RG 244.24.

Digital advice: Example of providing factual information

Scenario

Liam and Joe are operating a website named 'Find a product' that helps to inform clients about the features of various financial products. Liam and Joe do not provide any recommendations, opinions or ratings in relation to the products on their website.

Commentary

Liam and Joe do not require an AFS licence as they are not providing financial product advice. Liam and Joe have not provided any recommendation or statement of opinion that may cause a person to make a decision in relation to a particular financial product or class of products. The website does not provide a recommendation or opinion about which product is preferable.

Note: It is good practice to take reasonable steps to ensure that a client understands upfront that only factual information is being provided, and not general or personal advice. This will avoid confusion and help the client to understand what service they are getting: see RG 244.31.

Providing financial product advice

- RG 000.20 You are required to hold an AFS licence, or be a representative of an AFS licensee, if you carry on a business in Australia of providing financial product advice that is a financial service under the Corporations Act, unless an exemption applies: s911A.
- RG 000.21 If a communication is a recommendation or a statement of opinion, or a report of either of these things, that is intended to, or can reasonably be regarded as being intended to, influence a client in making a decision about a particular financial product or class of financial products (or an interest in either of these), it is financial product advice: s766B (see RG 244.27).
- RG 000.22 Under the Corporations Act, all financial product advice is either 'personal advice' or 'general advice'.
- RG 000.23 Personal advice is financial product advice given or directed to a person (including by electronic means) in circumstances where:

- (a) the person giving or directing the advice has considered one or more of the client's objectives, financial situation and needs (other than for complying with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, or regulations or rules under that Act); or
- (b) a reasonable person might expect the person giving or directing the advice to have considered one or more of these matters: s766B(3).

RG 000.24 All other financial product advice is general advice: s766B(4).

Digital advice: Example of providing general advice

Scenario

TechCorp is a smartphone application (or app) that recommends clients invest in one of four different types of model portfolios. The portfolios have been created based on factors such as asset class, allocation of growth assets, the rates of risk and return and the investment horizon. TechCorp also provides qualitative commentary on various stocks within the portfolios, including the stock's performance, dividend yield and suggestions of stocks that are suitable for a first-time investor.

TechCorp does not ask clients for any personal information. Clients are presented with the four portfolio options and are able to choose which portfolio best suits their needs.

Commentary

TechCorp is providing general financial product advice and not factual information because the app includes recommendations and statements of opinion that are intended to influence a client in relation to making a decision about a particular financial product or class of products.

TechCorp is not, however, providing personal advice because the app does not take into account the client's relevant circumstances (i.e. their objectives, financial situation or needs).

Digital advice: Example of providing personal advice

Scenario

Digital X is a fintech start-up company that provides digital advice. The advice is limited to portfolio construction investment advice on exchange-traded funds (ETFs). Digital X determines the client's investment profile by asking the client a number of questions relating to their financial situation and goals. Clients who are not filtered out of the model are aligned with one of seven ETF portfolios based on their investment profile.

Digital X's algorithm then automatically recommends to the client an investment strategy based on their personal profile and a Statement of Advice is generated and provided.

Commentary

Digital X is providing personal advice. Through its algorithm, Digital X has considered one or more of the client's relevant circumstances (e.g. their objectives, financial situation and needs) when recommending a financial product.

- RG 000.25 For more guidance on the differences between giving factual information, general advice and personal advice, see Section B of RG 175 and RG 244.

Exemptions and relief from holding an AFS licence

- RG 000.26 Depending on your circumstances, you may be exempt or have relief from the requirement to hold an AFS licence: see 911A(2) and RG 36.34. For example:

- (a) ASIC has given relief to providers of generic financial calculators from the requirement to hold an AFS licence with an advice authorisation: see Section F of Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) and Class Order [CO 05/1122] *Relief for providers of generic calculators*. A generic financial calculator is a facility, device or table that:
- (i) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
 - (ii) does not advertise or promote one or more specific financial products: see RG 167.51.

Note: See RG 167.63–RG 167.69 for a more detailed explanation of a generic financial calculator. On 22 December 2015, ASIC published Consultation Paper 249 *Remaking ASIC class order on generic financial calculators: [CO 05/1122]* (CP 249). CP 249 proposes to remake [CO 05/1122], which sunsets on 1 April 2016. The proposals in CP 249 preserve the current effect of the class order relief while making some minor amendments to the class order.

- (b) You are not considered to be providing financial product advice if your conduct consists only of providing a recommendation or statement of opinion about the allocation of the funds among the general asset types listed in reg 7.1.33A. This exemption does not apply if the recommendation or statement of opinion relates to specific financial products or specific classes of financial product: see RG 36.34(k).

AFS licensing arrangements

- RG 000.27 If you intend to carry on a business of providing digital advice, you will need to have an AFS licence, or be an authorised representative of an AFS licensee, from the day you start your business: see the [AFS licensees page](#) on ASIC's website.
- RG 000.28 Many digital advice providers will be existing AFS licensees who already hold a licence with the 'financial product advice' authorisation.
- RG 000.29 Fintech start-up businesses wanting to provide digital advice to retail clients will need to become an authorised representative of an AFS licensee or obtain their own licence.

Existing AFS licensees

RG 000.30 If you already hold an AFS licence and you are authorised to provide financial product advice, your AFS licensing arrangements may not need to change to provide financial product advice digitally.

Note: You may want to check you have the correct licence authorisations to provide the financial products and services of your proposed business.

RG 000.31 You will still need to review your business arrangements, however, to ensure you are maintaining compliance with your general obligations: see RG 104 and Section C.

RG 000.32 You also need to be aware that we require digital advice licensees to have at least one responsible manager who meets the minimum training and competence standards that apply to advisers (i.e. natural persons who provide financial product advice to retail clients): see RG 000.44–RG 000.51.

Becoming an authorised representative

RG 000.33 For new or start-up fintech businesses, you may consider becoming an authorised representative of an AFS licensee or applying for your own AFS licence.

RG 000.34 An AFS licensee may authorise a person to provide financial services on its behalf. Any person who acts on behalf of an AFS licensee is called a ‘representative’: see s910A of the Corporations Act.

RG 000.35 If you would like to provide a financial service, such as digital advice, as an authorised representative on behalf of an AFS licensee, you will need to hold a written authorisation from that licensee: see RG 36.16.

RG 000.36 If you are considering becoming an authorised representative of an AFS licensee, there are some things you should consider before approaching a licensee. These include:

- (a) the type of financial services you are proposing to offer;
- (b) the type of licence authorisations the AFS licensee would need for you to operate your business as a representative of the AFS licensee; and

Note: The AFS licensee would need to have a licence authorisation to provide financial product advice to clients (see Section B of RG 36 and RG 2.59). Depending on the business you intend to operate, the licensee may also need licence authorisations to:

- deal on behalf of clients, which includes arranging (see Sections C and D of RG 36 and Regulatory Guide 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence application or variation application* (RG 2) at RG 2.65–2.66); or
 - operate managed discretionary account (MDA) services (see RG 000.42, RG 2.80–RG 2.81 and Regulatory Guide 179 *Managed discretionary account services* (RG 179)).
- (c) what compliance assistance you require (e.g. if you are new to financial services and will need additional assistance to understand the compliance obligations).

RG 000.37 We have set out below some questions you may want to ask your prospective AFS licensee if you are considering offering digital advice as an authorised representative of a licensee.

Sample questions to ask prospective AFS licensees

- What is your main financial services business?
- Do you operate your own financial services business or do you only obtain your revenue by appointing representatives?
- Does your AFS licence cover the authorisations that my business needs to provide digital advice and any related services?
- What experience do you have with innovation and digital advice?
- What monitoring and testing will you carry out in relation to my advice algorithms?

Note: Testing should be carried out before any advice is provided to clients, and on an ongoing basis after that. Testing should look at the output of the algorithms and consider whether the advice provided to clients is legally compliant.

- How many other representatives do you have?
- What compliance assistance will you provide?
- Will you provide my business with any training?
- Will you provide enough monitoring and supervision to ensure that my business is operating within the law?
- Do you have compliance procedures for record keeping?
- How many breach reports have you lodged with ASIC in the past two years?
- Have you been the subject of any ASIC or other regulatory agency's surveillance, investigation, enforceable undertaking or enforcement action?

New AFS licensees

RG 000.38 As a new or start-up business, you may prefer to obtain your own AFS licence or apply for a limited AFS licence.

RG 000.39 Our guidance on applying for an AFS licence is set out in our AFS licensing kit (Regulatory Guides 1–3). The AFS licensing kit explains the licence application process and the ‘proof’ documents you may need to support your application.

RG 000.40 Depending on your business, you may decide to apply for a limited AFS licence. As a limited AFS licensee, you may be authorised to give financial product advice about:

- (a) self-managed superannuation funds;
- (b) a client’s existing superannuation holdings in certain circumstances; and

- (c) ‘class of product’ advice about a range of products (i.e. superannuation, securities, general insurance, life risk insurance, basic deposit products, and simple managed investment schemes).

Note: See Information Sheet 179 *Applying for a limited AFS licence* (INFO 179).

Additional information we may request

RG 000.41 RG 2 explains what information you need to provide to ASIC as part of your AFS licence application. Depending on the nature, scale and complexity of your business, we may ask you for additional information about:

- (a) the human resources you will have with the technological knowledge and skills to:
 - (i) generally understand the technology and algorithms used to provide the digital advice; and
 - (ii) review the digital advice generated by algorithms (see RG 000.57–RG 000.61);
- (b) if you are providing personal advice, the level of human review that will be undertaken on the advice generated (see RG 000.101–RG 000.104);
- (c) if you outsource any functions, the measures you will put in place to ensure that:
 - (i) due skill and care are taken in choosing suitable service providers; and
 - (ii) you can and will monitor the ongoing performance of service providers (see RG 000.62–RG 000.63);
- (d) the procedures you have in place to monitor and test algorithms (see RG 000.68–RG 000.70);
- (e) the arrangements you will put in place to comply with your record-keeping obligations;
- (f) the risk management and security arrangements you will have in place to ensure that client information is stored and transmitted securely (see RG 000.66–RG 000.75); and
- (g) how you have determined that your professional indemnity (PI) insurance cover is adequate (see RG 000.76–RG 000.81).

RG 000.42 Some digital advice providers may require an authorisation to provide MDA services if they are managing a portfolio of assets for retail clients on an individual basis.

RG 000.43 If you intend to provide MDA services to clients, you may also need to provide ASIC with a statement called an ‘MDA Operator Capacity Statement C9 Proof’: see Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3) at RG 3.62. This proof should explain

whether clients will hold interests in their own name (e.g. with their own holder identification number (HIN)) or, if not, what custodial arrangements will be set up to hold assets on behalf of clients: see RG 3.62(e).

Note: RG 179 sets out how ASIC regulates MDA services provided to retail clients.

Meeting the organisational competence obligation

RG 000.44 AFS licensees are required under the Corporations Act to:

- (a) maintain competence to provide the financial services covered by their licence (s912A(1)(e)); and
- (b) ensure that their representatives are adequately trained and competent to provide those financial services (s912A(1)(f)).

RG 000.45 Regulatory Guide 105 *Licensing: Organisational competence* (RG 105) describes what we look for when we assess compliance with the organisational competence obligation in s912A(1)(e).

RG 000.46 RG 105 requires an AFS licensee to demonstrate that:

- (a) each responsible manager meets one of the five options for demonstrating appropriate knowledge and skills; and
- (b) together, the responsible managers have appropriate knowledge and skills to cover all the financial services and products offered by the licensee.

Note: Each responsible manager needs to be able to demonstrate one of five options in Table 1 of RG 105. 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 000.47 Natural persons who provide financial product advice to retail clients are required to meet the minimum training and competence standards for advisers. These are currently set out in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

Note: If Parliament passes the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015, natural persons who provide personal advice on financial products—other than basic banking products, general insurance, consumer credit insurance or a combination of any of these products—will be required to meet new higher training and competence standards and new ethical standards. In general, they will be required to hold a bachelor’s degree or equivalent qualification, pass an exam, complete a professional year and meet continuing professional development requirements. They will also be required to comply with a code of ethics and be covered by an approved compliance scheme that will monitor and enforce compliance with the code of ethics.

RG 000.48 In a digital advice context, the financial product advice is generated by algorithms, so there is no natural person directly involved in providing the advice. As such, the training and competence standards do not apply.

Note: In this guide, we use the term ‘training and competence standards’ to mean the minimum standards that currently apply to the training and competence of advisers.

- RG 000.49 For digital advice licensees to meet the organisational competence obligation in RG 105, we require that a licensee has at least one responsible manager who meets the training and competence standards. This will ensure that at least one responsible person within a digital advice licensee holds this level of competence.
- RG 000.50 In most cases, at least one responsible manager of an existing AFS licensee will meet the training and competence standards. In a small number of instances, however, a licensee may not have a responsible manager who meets these standards. This is because the responsible manager was previously able to demonstrate their competence under RG 105 by showing they had relevant experience over the previous 10 years.
- RG 000.51 We are giving existing AFS licensees a transition period of six months, from the date of issue of this regulatory guide, to comply with the requirement to have at least one responsible manager who meets the training and competence standards.

C General obligations applying to digital advice licensees

Key points

All AFS licensees have a number of general obligations under s912A(1) of the Corporations Act.

In RG 104, we describe what ASIC looks for when assessing compliance with these general obligations, including the licensee's 'broad compliance obligations'.

What you need to do to comply with your obligations as an AFS licensee will vary according to the nature, scale and complexity of your business.

To assist digital advice licensees, whose business models are different to AFS licensees offering traditional financial product advice, we have provided additional guidance on the obligations to:

- have adequate financial, technological and human resources to provide the financial services and to carry out supervisory arrangements (s912A(1)(d)); and
- establish and maintain adequate risk management systems (s912A(1)(h)).

We have also provided some additional guidance on the obligation to have adequate compensation arrangements where financial services are provided to retail clients: s912B.

General obligations as an AFS licensee

RG 000.52 If you are an AFS licensee, you have general obligations under s912A(1) of the Corporations Act to:

- (a) do all things necessary to ensure that the financial services covered by your licence are provided efficiently, honestly and fairly (s912A(1)(a));
- (b) have adequate arrangements in place for managing conflicts of interest (s912A(1)(aa));
- (c) comply with the conditions on your licence (s912A(1)(b));
- (d) comply with the financial services laws (s912A(1)(c));
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws (s912A(1)(ca));
- (f) have adequate financial, technological and human resources to provide the financial services covered by your licence and to carry out supervisory arrangements (s912A(1)(d)). This obligation does not apply if you are regulated by the Australian Prudential Regulation Authority

(APRA), unless you hold a registrable superannuation entity (RSE) licence from APRA and are also authorised to operate registered managed investment schemes;

- (g) maintain the competence to provide the financial services covered by your licence (s912A(1)(e));
- (h) ensure that your representatives are adequately trained and competent to provide those financial services (s912A(1)(f));
- (i) if you provide financial services to retail clients, have a dispute resolution system (s912A(1)(g)); and
- (j) establish and maintain adequate risk management systems (s912A(1)(h)). This obligation does not apply if you are regulated by APRA, unless you are an RSE licensee authorised to operate registered managed investment schemes and the risk does not relate solely to your operation of a regulated superannuation fund.

RG 000.53 What you need to do to comply with your obligations will vary according to the nature, scale and complexity of your business: see RG 104.18–RG 104.19.

RG 000.54 In RG 104, we describe what ASIC looks for when assessing compliance with these general obligations—including the ‘broad compliance obligations’ (such as those listed at RG 000.52(a), RG 000.52(c) and RG 000.52(d)). There are also other regulatory guides that are relevant to the general obligations: see Table 1 in the appendix.

RG 000.55 In this section, we focus on guidance about compliance with some of the general obligations that are most relevant for digital advice licensees.

Adequate resources

RG 000.56 Having adequate resources is crucial to an AFS licensee’s ability to demonstrate that it has the capacity to carry on its financial services business. Failure to have adequate resources creates an unacceptable risk that the licensee may not comply with some, or all, of its obligations: see RG 104.85.

Human resources

RG 000.57 As a digital advice licensee, you should ensure that there are people within your business who:

- (a) have an understanding of the technology and algorithms used to provide digital advice; and
- (b) are able to review the digital advice generated by algorithms.

Note 1: Depending on the nature, scale and complexity of your digital advice business, you may wish to outsource functions of your business. If you choose to outsource functions relating to digital advice algorithms and the review of advice generated by

algorithms, we expect you to have people within the business who have an understanding of these functions in order to meet your general obligations: see RG 000.62–RG 000.63

Note 2: The people listed in RG 000.57(a) and RG 000.57(b) do not need to be the same people.

- RG 000.58 Digital advice businesses are unique in that they are entirely technology driven. As such, we expect digital advice licensees to have at least one person who has an understanding of the technology and algorithms used to provide digital advice. We do not expect all digital advice licensees to understand the specific computer coding of an algorithm—however, we expect your understanding to include having people within the business who understand the rationale, risks and rules behind the algorithms underpinning the digital advice.
- RG 000.59 Failure to have at least one person with the skills and experience needed to understand the technology and algorithms underpinning the digital advice increases the risk that clients are exposed to poor quality advice or that there are issues with your systems.
- RG 000.60 As a digital advice licensee, you should also conduct regular reviews of the digital advice generated by algorithms to ensure that it is legally compliant: see RG 000.101–RG 000.104. It is therefore essential that you have at least one person who has the appropriate skills and experience to thoroughly review the quality of digital advice provided.
- RG 000.61 The size and complexity of your business will affect the extent of the human resources needed to satisfy RG 000.57.

Outsourcing functions that relate to your AFS licence

- RG 000.62 We understand that many digital advice licensees may wish to outsource functions that relate to their digital advice business. Where functions are outsourced, we expect that:
- (a) you will have measures in place to ensure that due skill and care are taken in choosing suitable outsourced service providers; and
 - (b) you can and will monitor the ongoing performance of outsourced service providers.
- RG 000.63 Digital advice licensees who outsource functions remain responsible for the financial service provided to clients: s769B.

Note: See RG 104.30–RG 104.33 for more information on outsourcing.

Example of outsourcing the development of algorithms

Scenario

An existing AFS licensee is looking to offer digital advice. It decides to outsource the development of its digital advice offering to Company A.

Company A builds the digital advice platform, including the algorithm underpinning the digital advice.

Commentary

AFS licensees who outsource functions remain responsible for the financial services provided to clients: s769B.

The digital advice licensee will be the person providing the advice and will be responsible for monitoring the performance of the algorithm and ensuring that the best interests duty and related obligations are satisfied.

Although digital advice licensees who outsource functions may not understand the specific computer coding of an algorithm, we expect licensees to understand the rationale, risks and rules behind the algorithm.

Company A is not required to hold an AFS licence because it is not providing financial product advice to clients.

Technology resources

- RG 000.64 As a digital advice licensee, you should have sufficient technological resources to:
- (a) maintain client records and data integrity;
 - (b) protect confidential and other information;
 - (c) meet current and anticipated future operational needs, including in relation to system capacity; and
 - (d) comply with all obligations under the law.
- RG 000.65 You should also have adequate business continuity, backup and disaster recovery plans for any systems that support the delivery of digital advice to clients.

Adequate risk management systems

- RG 000.66 You have a general obligation to establish and maintain adequate risk management systems: see s912A(1)(h). This obligation is the same whether you are providing traditional financial product advice or digital advice.
- RG 000.67 We expect you to have a structured and systematic process for identifying, evaluating and managing risks: see RG 104.58–RG 104.63.

Monitoring and testing algorithms

- RG 000.68 As part of your risk management systems, you should monitor and test the algorithms that underpin the advice. The extent of your arrangements will depend on the nature, scale and complexity of your digital advice business.
- RG 000.69 We have set out our expectations for digital advice licensees in relation to monitoring and testing their algorithms.

Ways in which digital advice licensees should monitor and test their algorithms

We expect you to:

- have appropriate system design documentation that clearly sets out the purpose, scope and design of the algorithms. Decision trees or decision rules should form part of this documentation, where relevant;

Note: A 'decision tree' uses a tree-like graph or model to display decisions and their possible consequences.
- have a documented test strategy that explains the scope of your testing of algorithms. This should include test plans, test cases, test results, defect resolution (if relevant), and final test results. We expect robust testing of algorithms to occur before advice is first provided to a client, and on a regular basis after that;
- have appropriate processes for managing any changes to an algorithm. This includes having security arrangements in place to monitor and prevent unauthorised access to the algorithm;
- be able to control, monitor and reconstruct any changes to algorithms over a seven-year timeframe;

Note: Where personal advice is provided to retail clients, a digital advice licensee must ensure that records are retained for seven years that show how the licensee has complied with the best interests duty and related obligations in Div 2 of Pt 7.7A: see s912G. This requirement was implemented by Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*. We are currently consulting on our proposed amendments to [CO 14/923] to clarify that AFS licensees must have access to these records during the period in which they are required to be retained—even if the records are retained by another person and that person is no longer authorised by, or related to, the licensee: see Section H in Consultation Paper 247 *Client review and remediation programs and update to record-keeping requirements* (CP 247), issued on 16 December 2015.

- review and update algorithms whenever there are factors that may affect their currency (e.g. market changes and changes in the law);
- have in place controls and processes to suspend the provision of advice if an error within an algorithm is detected; and
- have in place adequate resources, including human and technological resources, to monitor and supervise the performance of algorithms through an adequate and timely review of the advice provided.

- RG 000.70 We also expect you to have in place robust compliance arrangements to monitor and test the quality of advice provided to clients. This means that a sample of the digital advice provided should be reviewed by a human

adviser for compliance with the law: see RG 000.101–RG 000.107 for more information on reviewing digital advice.

Note: ASIC has spoken with a number of AFS licensees and their authorised representatives that have been providing, or are intending to provide, digital advice. Many of these digital advice providers have indicated that initially they are—or will be (on commencing operation)—having all of their digital advice reviewed by a human adviser for compliance with the law.

Cyber risks and information security

- RG 000.71 As a digital advice licensee, you should be mindful of additional risks such as cyber attack.
- RG 000.72 While cyber attack is not an issue that is unique to digital advice services, digital advice providers may be more likely to be targeted by hackers.
- RG 000.73 We expect digital advice licensees to assess their cyber security using recognised frameworks, such as the National Institute of Standards and Technology Cybersecurity Framework (NIST CSF) or the Australian Signals Directorate (ASD) *Strategies to mitigate targeted cyber intrusions*, or equivalent.
- RG 000.74 We also expect you to assess your information security arrangements against recognised security standards, such as:
- (a) Australian Standard AS ISO/IEC 27001:2015 *Information technology—Security techniques—Information security management systems—Requirements*; or
 - (b) International Standard ISO/IEC 27001:2013 *Information technology—Security techniques—Information security management systems—Requirements*, or equivalent.
- RG 000.75 With more businesses moving to ‘cloud’ technology (i.e. internet-based computing), the threat of cyber attack is real. We expect all AFS licensees—particularly those who rely heavily on digital storage and the electronic transmission of data—to have in place adequate security compliance measures, such as *Cloud computing security for tenants*, published by the Australian Cyber Security Centre, or equivalent.

Note: In March 2015, ASIC published Report 429 *Cyber resilience: Health check* (REP 429), which highlights the importance of cyber resilience to ASIC’s regulated population.

Adequate compensation arrangements

- RG 000.76 Under s912B, AFS licensees that provide financial services to retail clients must have arrangements for compensating those clients for losses they suffer as a result of a breach by the licensee or its representatives of their obligations in Ch 7 of the Corporations Act.
- RG 000.77 Unless an exemption applies, these arrangements must:
- (a) satisfy the requirements in the Corporations Regulations—which are that AFS licensees must obtain professional indemnity (PI) insurance cover that is adequate, considering the nature of the licensee’s business and its potential liability for compensation claims (reg 7.6.02AAA); or
 - (b) be approved by ASIC as alternative arrangements.
- RG 000.78 The Corporations Regulations provide exemptions from the requirements for some AFS licensees that are regulated by APRA or are related to an entity regulated by APRA: reg 7.06.02AAA(3).
- RG 000.79 Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (RG 126) sets out what ASIC considers to be the minimum requirements for adequate PI insurance. RG 126 also provides information about when we will approve alternative arrangements.
- RG 000.80 Unless an exemption applies, we expect that all AFS licensees, including those who provide digital advice, will assess the adequacy of their compensation arrangements by considering RG 126 and applying the policy considerations to their individual circumstances.
- RG 000.81 To assist you in assessing the adequacy of your compensation arrangements, we have set out some issues to consider and some practical tips.

Issues and practical tips for digital advice licensees to consider when assessing the adequacy of their compensation arrangements

When considering whether your compensation arrangements are adequate, you should consider:

- the likely growth in client numbers—you can do this by looking at growth figures on a monthly basis;
- the potential for widespread loss if an algorithm is flawed (e.g. the underlying assumptions are incorrect or the algorithm is not updated to reflect changes in legislation);
- the effect of any aggregation of claims clauses in the PI insurance policy, which may mean that losses arising for different clients as a result of one flawed algorithm may be treated as a single claim by an insurer;
- the effect of any lower sub-limits on the amount that can be claimed as a result of an external dispute resolution (EDR) scheme award; and
- where appropriate, whether your PI insurance arrangements exclude MDA services.

You should also:

- regularly review the nature of your business, and the potential for loss, to assess the adequacy of your PI insurance arrangements;
- notify your PI insurers of any material changes to your business;
- at least annually, review the features of your PI insurance policy and identify any gaps in your cover; and
- either renegotiate the PI insurance policy to address any gaps, or ensure that you have adequate financial resources to cover the gaps.

D Providing scaled advice in the best interests of the client

Key points

The obligations that apply to the provision of traditional financial product advice and digital advice are the same.

The law makes it clear that all personal advice can be ‘scaled up’ or ‘scaled down’.

Most advisers offering traditional financial product advice limit the scope of their advice, and communicate the limited nature of this advice, through conversations with their clients. In a digital advice context, however, such conversations are not possible because no human adviser is involved in providing the advice.

We have set out our minimum expectations for digital advice providers to assist them in providing scaled advice that is in the best interests of their clients.

Our minimum expectations are consistent with, and build on, our existing guidance in RG 175 and RG 244.

Scaled advice and the best interests duty

RG 000.82 The Corporations Act is technology neutral. The obligations that apply to the provision of traditional financial product advice and digital advice are the same.

Best interests duty and related obligations

RG 000.83 When providing personal advice to a retail client, advice providers must act in the best interests of the client in relation to that advice: s961B(1). We refer to this obligation as the ‘best interests duty’.

RG 000.84 Section 961B(2) sets out a ‘safe harbour’ for complying with the best interests duty in s961B(1). The elements of the safe harbour are discussed at RG 175.247–RG 175.339. Showing that all of the elements in s961B(2) have been met is one way for an advice provider to satisfy the duty in s961B(1).

RG 000.85 Section 961(6) of the Corporations Act makes it clear that personal advice can be offered through a computer program. If there is no individual that provides the advice, which is the case for digital advice, the obligations in Div 2 of Pt 7.7A apply to the legal person that provides the advice (e.g. a corporate licensee or authorised representative): s961(6). In this guide, we refer to this person as the ‘digital advice provider’.

- RG 000.86 A digital advice provider giving personal advice to a client also has related obligations in Div 2 of Pt 7.7A of the Corporations Act to provide appropriate advice, to warn the client if the advice is based on incomplete or inaccurate information, and to prioritise the client's interests over its own interests or that of the advice provider's associates.
- RG 000.87 The best interests duty and related obligations apply to all personal advice, but not to general advice. For a discussion of the difference between personal advice and general advice, see Section B of RG 175 and RG 244.

ASIC's guidance

- RG 000.88 We have already published extensive guidance in RG 175 and RG 244 on how to meet the obligations in Pt 7.7 and Div 2 of Pt 7.7A of the Corporations Act, including how to meet the best interests duty and related obligations when giving 'scaled advice' (i.e. personal advice that is limited in scope).
- RG 000.89 In RG 244, in particular, we seek to:
- (a) provide guidance about how to give scaled advice that complies with the personal advice obligations in Div 2 of Pt 7.7A, including the best interests duty and related obligations (see Section D of RG 244);
 - (b) explain the importance of communicating to a client the service that is being provided to them (see Section E of RG 244); and
 - (c) explain that the Corporations Act is generally neutral about how advice is delivered—that is, the law is generally the same regardless of whether advice is provided by telephone, email, internet, video conferencing, face-to-face, or in any combination of these or in any other way (see Section F of RG 244).

Our minimum expectations when providing scaled advice

- RG 000.90 All personal advice is scaled, or limited in scope, to some extent. Clients who seek scaled advice expect that the advice will leave them in a better position.
- RG 000.91 Most advisers offering traditional financial product advice limit the scope of their advice, and communicate the limited nature of this advice, through conversations with their clients. In a digital advice context, however, such conversations are not possible because there is no natural person directly involved in providing the advice.
- RG 000.92 If you are a digital advice provider offering scaled advice, you should think very carefully about the way you communicate with clients. Your communications should be user focused, clear and timely. This means you should put the client's needs first when designing your communications and

disclosure, and ensure that key information relevant to the client is provided at the right time in the decision-making process.

RG 000.93 We suggest that you consider how information is likely to be interpreted by clients on the different electronic devices they may use to access the advice. We encourage you to regularly test the effectiveness of your communication approach in each context.

RG 000.94 We have set out our minimum expectations to assist you when providing scaled advice that is in the best interests of your clients.

Our minimum expectations for digital advice providers offering scaled advice

As a minimum, you should:

- explain to the client from the outset what advice is being offered and what is not being offered (i.e. the scope of the advice);
- require the client to actively demonstrate that they understand that the advice they are seeking is within the scope of what is being offered by the digital advice model;

Note: You could do this in a number of ways. One way might be to require that clients acknowledge the scope of the advice being offered and what is not being offered. Alternatively, you might require clients to answer questions to actively communicate that the advice they are seeking is within the scope of what is being offered by the digital advice model. We encourage you to consider other alternatives, and to conduct testing to ensure that your chosen methods are effective and take into account specific client needs.

- at key points in the advice process, inform the client about the limitations and potential consequences of the scope of advice;

Note: We use the term 'inform' because we do not think that wordy disclaimers or fine print are sufficient.
- throughout the advice process, inform the client about key concepts and the risks and benefits associated with the advice being provided;
- filter out clients for whom the advice being offered is not suitable, or who want advice on a topic outside the scope of advice being offered;
- inform the client about the upfront and ongoing costs of the advice before the advice is given (i.e. in a Financial Services Guide) and also before the advice is implemented (i.e. in a Statement of Advice);
- inform the client about how they can withdraw from the advice being provided, and any associated costs, before the advice is implemented;
- explain what dispute resolution processes are available to the client if they wish to make a complaint; and
- explain why the client is likely to be in a better position if they follow the advice.

‘Triage’ or filtering process

- RG 000.95 Digital advice providers offering scaled advice should ensure that they have a robust ‘triage’ or filtering process in place to filter out clients for whom the digital advice is not suitable.
- RG 000.96 A robust filtering process will test, at key points in the digital advice process, whether the advice being offered is suitable and in the best interests of the client. If a client seeks advice on an area outside the scope of the advice being offered, the client should be filtered out of the digital advice model.
- RG 000.97 For example, if a digital advice provider is providing scaled investment advice and does not consider whether a client has a mortgage, we would expect a question or prompt along the following lines: ‘We have not considered whether you have a mortgage. Would you like advice about repaying your mortgage?’ If a client answers ‘yes’, we expect the client to be filtered out of the model as the digital advice provider is unable to provide the advice being sought by the client.
- RG 000.98 We expect that digital advice providers will take the necessary steps to inform their clients about the limitations and key concepts of the digital advice being provided, especially where the potential consequences of their decisions are significant.
- RG 000.99 We also expect that, if a client provides inconsistent answers in relation to their relevant circumstances, a digital advice provider will:
- (a) identify the inconsistencies and provide the client with additional educational information and an opportunity to change their input;
 - (b) contact the client to discuss their inconsistent responses; or
 - (c) filter the client out of the model.
- RG 000.100 Scaled advice provided under a digital advice arrangement may not be suitable for everyone. A digital advice model that results in all clients receiving advice would raise serious concerns and would prompt close scrutiny from ASIC.

Reviewing digital advice

- RG 000.101 We expect digital advice licensees to have robust compliance arrangements in place to monitor and test the quality of digital advice provided to clients. This means that a sample of the digital advice provided should be reviewed by a human adviser for compliance with the law. This is consistent with our expectations for AFS licensees providing traditional financial product advice.
- RG 000.102 The advice review process should not be a ‘tick-a-box’ exercise. We expect file reviewers to assess all the information and use their judgement in forming a view on the quality of advice provided. This may involve file

reviewers considering any additional information, as appropriate, to form a view on the quality of digital advice provided.

- RG 000.103 Frequent reviews of digital advice should be conducted initially, and with heightened scrutiny when any change to an algorithm is made. When changes are made, it would be prudent to run a number of test scenarios to test the quality of advice provided. Algorithms should be regularly monitored and tested through periodic and random advice reviews.
- RG 000.104 The nature and extent of the monitoring and testing arrangements will depend on the nature, scale and complexity of the digital advice being provided to clients.
- RG 000.105 Where problems with an algorithm are detected, digital advice licensees should take immediate steps to rectify the problems. Advice should not be provided to clients while the defect is being rectified.
- RG 000.106 Digital advice licensees are responsible for defective advice and should have procedures in place to identify and contact clients who have been provided with defective advice. Suspension of an algorithm alone is unlikely to be sufficient to rectify the problems. You may also need to lodge a breach report with ASIC. Section 912D provides that you must tell ASIC in writing within 10 business days about any significant breach (or likely breach) of your licence obligations.
- RG 000.107 You should also take additional steps to review the advice provided to clients where this advice may have been defective. We expect you to remediate clients who have suffered loss as a result of defective advice being provided.

Note: We are currently consulting on specific guidance in relation to advice review programs and remediation of clients: see CP 247.

Appendix

This regulatory guide should be read in conjunction with the other ASIC regulatory guides in Table 1 that may be relevant to providing digital advice.

Table 1: Summary of ASIC guidance that may be relevant to providing digital advice

| ASIC regulatory guide | What it covers |
|---|--|
| RG 1 <i>AFS Licensing Kit: Part 1—Applying for and varying an AFS licence</i> | RG 1 is a guide for applicants applying for an AFS licence or to vary their AFS licence. |
| RG 2 <i>AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application</i> | RG 2 outlines how to complete an AFS licence application form or licence variation form, and how to prepare 'core' supporting proof documents. |
| RG 3 <i>AFS Licensing Kit: Part 3—Preparing your additional proofs</i> | RG 3 outlines how to complete 'additional' proofs that applicants may be asked to send to us |
| RG 36 <i>Licensing: Financial product advice and dealing</i> | <p>This is a guide for persons who may provide financial product advice or deal in a financial product, as defined in the Corporations Act, and their professional advisers (e.g. lawyers).</p> <p>It gives guidance on the meaning of 'provide financial product advice' and the meaning of 'deal in a financial product.' It also gives guidance on the obligations that apply to providers of financial services.</p> |
| RG 104 <i>Licensing: Meeting the general obligations</i> | <p>This is a guide for AFS licensees and licence applicants.</p> <p>The guide describes what we look for when we assess compliance with most of the general obligations in s912A(1) of the Corporations Act.</p> <p>The general obligations not covered in this guide are covered in separate guides.</p> |
| RG 105 <i>Licensing: Organisational competence</i> | <p>This is a guide for AFS licensees and licence applicants.</p> <p>The guide describes what we look for when we assess compliance with the 'organisational competence obligation', which is one of the general obligations in s912A(1) of the Corporations Act.</p> |
| RG 126 <i>Compensation and insurance arrangements for AFS licensees</i> | <p>This guide is for AFS licensees and their representatives, advisers and insurers.</p> <p>It sets out how ASIC administers the compensation requirements under s912B of the Corporations Act.</p> |
| RG 146 <i>Licensing: Training of financial product advisers</i> | <p>This guide is for:</p> <ul style="list-style-type: none"> advisers (AFS licensees and representatives who provide financial product advice to retail clients); and providers of training and education for advisers. <p>This guide sets out minimum training and competence standards that apply to advisers and how advisers can meet these standards.</p> |
| RG 167 <i>Licensing: Discretionary powers</i> | <p>This guide explains:</p> <ul style="list-style-type: none"> how we will approach applications for relief from compliance with Pts 7.6–7.8 of the Corporations Act (other than Div 4 and Div 8 of Pt 7.6 and Div 8 of Pt 7.8); and how you can apply for relief. |

| ASIC regulatory guide | What it covers |
|---|--|
| <p>RG 175 <i>Licensing: Financial product advisers—Conduct and disclosure</i></p> | <p>This is a guide for persons who provide financial product advice to retail clients, and their professional advisers (e.g. lawyers).</p> <p>This guide considers how certain conduct and disclosure obligations in Pt 7.7 and Div 2 of Pt 7.7A of the Corporations Act apply to the provision of financial product advice.</p> |
| <p>RG 179 <i>Managed discretionary account services</i></p> | <p>This guide sets out how we regulate managed discretionary account (MDA) services provided to retail clients under the Corporations Act.</p> <p>This guide sets out:</p> <ul style="list-style-type: none"> • an overview of the MDA policy; • how we define MDA services; • our main policy in regulating MDA services; • how our policy applies to MDA services with different arrangements; and • transitional arrangements. |
| <p>RG 221 <i>Facilitating online financial services disclosures</i></p> | <p>This is a guide for financial services providers that use (or plan to use) technology, including email and the internet, to deliver financial product and financial services disclosures to clients.</p> <p>This guide:</p> <ul style="list-style-type: none"> • explains how, under Pts 7.6–7.9 of the Corporations Act, most disclosures can be delivered digitally; • outlines our view that, in most cases, it will be clear from the context that a client has provided or nominated their electronic address for the purpose of receiving disclosure under the Corporations Act, and no higher standard of consent is required to send to an electronic address compared to non-electronic methods; • describes the relief available under ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 to remove potential barriers to more innovative disclosure; and • sets out our ‘good practice guidance’ on digital disclosure. |
| <p>RG 244 <i>Giving information, general advice and scaled advice</i></p> | <p>This is a guide for AFS licensees, authorised representatives and advice providers who give information and advice to retail clients, and explains:</p> <ul style="list-style-type: none"> • the differences between giving factual information, general advice and personal advice; and • how to meet the advice obligations in Ch 7 of the Corporations Act, including the best interests duty and related obligations, when giving ‘scaled’ advice (i.e. personal advice that is limited in scope). <p>This guide aims to facilitate access for retail clients to good quality information and advice about all financial products.</p> |
| <p>RG 245 <i>Fee disclosure statements</i></p> | <p>This is a guide for persons who provide personal advice to retail clients, and their professional advisers (e.g. lawyers).</p> <p>This guide explains the fee disclosure statement obligations in Div 3 of Pt 7.7A of the Corporations Act and the obligations they create for persons who provide personal advice to retail clients under an ongoing fee arrangement.</p> |

Key terms

| Term | Meaning in this document |
|---|---|
| advice | Financial product advice |
| advice provider | <p>A person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply when providing personal advice to a client. This is generally the individual who provides the personal advice. However, if there is no individual that provides the advice, which may be the case if advice is provided through a computer program, the obligations in Div 2 of Pt 7.7A apply to the legal person that provides the advice (e.g. a corporate licensee or authorised representative)</p> <p>Note: These obligations applied from 1 July 2013, or a person may have elected to comply from 1 July 2012.</p> |
| adviser | <p>A natural person who provides financial product advice to retail clients and is:</p> <ul style="list-style-type: none"> • an AFS licensee; or • a representative of an AFS licensee |
| AFS licence | <p>An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services</p> <p>Note: This is a definition contained in s761A.</p> |
| AFS licensee | <p>A person who holds an AFS licence under s913B of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p> |
| APRA | Australian Prudential Regulation Authority |
| ASIC | Australian Securities and Investments Commission |
| authorised representative | <p>A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee</p> <p>Note: This is a definition contained in s761A.</p> |
| best interests duty | The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act |
| best interests duty and related obligations | The obligations in Div 2 of Pt 7.7A of the Corporations Act |
| Ch 7 (for example) | A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified |
| client | A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations |

| Term | Meaning in this document |
|---------------------------------|--|
| client's relevant circumstances | The objectives, financial situation and needs of a client that would reasonably be considered relevant to the subject matter of advice sought by the client |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act |
| Corporations Regulations | Corporations Regulations 2001 |
| digital advice | Also known as 'robo-advice' or 'automated advice'—the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser |
| digital advice licensee | An AFS licensee offering digital advice to retail clients. It may be the licensee itself or its authorised representatives that provide the advice |
| digital advice provider | A person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply when personal advice is provided through a computer program—that is, the legal person that provides the digital advice (e.g. a corporate licensee or authorised representative) |
| factual information | Objectively ascertainable information whose truth or accuracy cannot reasonably be questioned |
| financial product | A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p> |
| financial product advice | A recommendation or a statement of opinion, or a report of either of these things, that: <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document</p> <p>Note: This is the definition contained in s766B of the Corporations Act.</p> |
| financial service | Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act |
| fintech | Financial technology |
| general advice | Financial product advice that is not personal advice <p>Note: This is a definition contained in s766B(4) of the Corporations Act.</p> |

| Term | Meaning in this document |
|--|--|
| general obligations | The obligations of an AFS licensee under s912A(1) of the Corporations Act |
| licensee | An AFS licensee |
| MDA | Managed discretionary account |
| natural person | A human adviser that provides financial product advice |
| organisational competence obligation | The obligation in s912A(1)(e) of the Corporations Act |
| personal advice | Financial product advice given or directed to a person (including by electronic means) in circumstances where: <ul style="list-style-type: none"> the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the provider to have considered one or more of these matters <p>Note: This is the definition contained in s766B(3) of the Corporations Act.</p> |
| PI insurance | Professional indemnity insurance |
| Product Disclosure Statement | A document that must be given to a client in relation to the offer or issue of a financial product in accordance with Pt 7.9 of the Corporations Act |
| Pt 7.7 (for example) | A part of the Corporations Act (in this example numbered 7.7) |
| reg 7.1.33A (for example) | A regulation of the Corporations Regulations (in this example, numbered 7.1.33A) |
| RG 146 (for example) | An ASIC regulatory guide (in this example numbered 146) |
| s945A (for example) | A section of the Corporations Act (in this example numbered 945A), unless otherwise specified |
| safe harbour for the best interests duty | The steps set out in s961B(2) of the Corporations Act. If an advice provider proves they have taken these steps, they are considered to have met their obligation to act in the best interests of their client |
| scaled advice | Personal advice that is limited in scope |
| SOA (Statement of Advice) | A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act <p>Note: See s761A for the exact definition.</p> |
| traditional financial product advice | Financial product advice that is not digital advice |
| training and competence standards | The minimum standards that currently apply to the training and competence of advisers |

Related information

Headnotes

advisers, AFS licensees, algorithms, authorised representatives, automated advice, best interests duty, compensation arrangements, compliance, cyber security, digital advice, exchange-traded funds, factual information, financial product advice, fintech, general advice, licensing, managed discretionary account, monitoring and testing, organisational competence, outsourcing, personal advice, record-keeping obligations, responsible manager, retail client, robo-advice, scaled advice, start-up business, technology, training and competence standards, triage or filtering process

Instruments

ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647

[CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*

[CO 05/1122] *Relief for providers of generic calculators*

Regulatory guides

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

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

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

RG 36 *Licensing: Financial product advice and dealing*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 146 *Licensing: Training of financial product advisers*

RG 167 *Licensing: Discretionary powers*

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

RG 179 *Managed discretionary account services*

RG 221 *Facilitating online financial services disclosures*

RG 241 *Electronic trading*

RG 244 *Giving information, general advice and scaled advice*

RG 245 *Fee disclosure statements*

Legislation

Corporations Act, Ch 7, Pt 7.7, Pt 7.7A Div 2, 761G, 766B, 766B(3), 766B(4), 769B, 910A, 911A, 911A(2), 912A(1), 912A(1)(a), 912A(1)(aa), 912A(1)(b), 912A(1)(c), 912A(1)(ca), 912A(1)(d), 912A(1)(e), 912A(1)(f), 912A(1)(g), 912A(1)(h), 912B, 912D, 912G, 961B, 961B(1), 961B(2), 961(6)

Corporations Regulations, Ch 7, Pt 7.1 Div 2, regs 7.1.33A, 7.6.02AAA, 7.6.02AAA(3)

Consultation papers

CP 247 *Client review and remediation programs and update to record-keeping requirements*

CP 249 *Remaking ASIC class order on generic financial calculators: [CO 05/1122]*

Reports

REP 429 *Cyber resilience: Health check*

Information sheets

INFO 179 *Applying for a limited AFS licence*

Non-ASIC documents

Australian Cyber Security Centre, [Cloud computing security for tenants](#), April 2015

Australian Signals Directorate (ASD), [Strategies to mitigate targeted cyber intrusions](#), February 2014 (update)

National Institute of Standards and Technology (NIST), [Framework for improving critical infrastructure cybersecurity](#), February 2014 (PDF, 930 KB)