



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 104

Internet discussion sites

2 March 2009

About this paper

We are reviewing Regulatory Guide 162 *Internet discussion sites* (RG 162), which is our policy on internet discussion sites that are used to display information, recommendations and opinions about financial products.

This consultation paper:

- sets out our position on the legal issues surrounding internet discussion sites and how we propose to review our policy, and
- seeks the views of internet discussion site operators and users, advisers, licensees and consumers.

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 paper was issued on 2 March 2009 is based on the Corporations Act as at 2 March 2009.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs
- the likely effect on competition, and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on regulating internet discussion sites. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Business Cost Calculator report and/or a Regulation Impact Statement: see Section D, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 27 April 2009 to:

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What will happen next?

Stage 1	2 March 2009	ASIC consultation paper released
Stage 2	27 April 2009	Comments due on the consultation paper
Stage 3	ASIC publishes its final position	

A Regulatory context

Key points

Internet discussion sites (IDSs) are internet websites that provide a forum for people who are *not* financial services professionals to share information, recommendations and opinions about financial products.

We have not revised our policy on IDSs since 2000, when a different regulatory regime was in place.

Under the current law, the activities of IDS operators and users may constitute the provision of financial services, for which an AFS licence is required.

What we mean by ‘internet discussion sites’

- 1 By the term ‘internet discussion sites’ (IDSs), we mean internet websites, such as web-based bulletin boards, ‘blogs’, or chat rooms, that provide a forum for people who are *not* financial services professionals to display information, recommendations and opinions about financial products. People generally register their details with an IDS, which allows them to then ‘post’ material on the IDS that can be viewed by other people.
- 2 IDSs operate under a variety of models, with different levels of involvement by the operator of the IDS. Some IDS operators have little involvement in the postings; on the other hand, there may be operators who are able to monitor, edit, control or modify postings, or even make postings themselves.

The origins of our policy on internet discussion sites

- 3 We released our policy on the regulation of IDSs, Interim Policy Statement 162 *Internet discussion sites* (IPS 162)—now referred to as Regulatory Guide 162 (RG 162)—in August 2000. It followed consultation on the proposed policy in Consultation Paper 8 *Guidelines for internet discussion sites* (CP 8), released in June 2000.
- 4 The policy in RG 162 is based on the law that was in place in 2000—that is, the Corporations Law. Under the Corporations Law, a person who conducted an ‘investment advice business’ was required to hold an ‘investment advisers’ licence: s781, Corporations Law. We considered that IDS operators could be carrying on an investment advice business through the dissemination of information, opinions and advice (collectively referred to as ‘postings’) about securities to people who view postings on IDSs. Whether

the activities of IDS operators were caught by the Corporations Law depended on the type of IDS involved and the services being provided.

- 5 The Corporations Law has since been replaced by the *Corporations Act 2001* (Corporations Act), which was amended by the *Financial Services Reform Act 2001* (FSR Act) to introduce the current financial services licensing regime. The FSR Act replaced the concept of carrying on an ‘investment advice business’ with the concept of carrying on a business of ‘providing financial product advice’ and the investment advisers licence with the Australian financial services (AFS) licence.

Note: The FSR Act commenced on 11 March 2002 with a two-year transition period.

Our policy prior to the FSR Act

- 6 Under RG 162, certain IDSs that provided a forum for people who were *not* financial services professionals to display information about financial products (i.e. securities) did not need to operate under an investment advisers licence, provided that the operator complied with certain conditions. This position applied regardless of whether the use of the IDS was restricted (e.g. to subscribers or members) or was open to all who used the internet.
- 7 On the other hand, IDSs that had as their main purpose the provision of advice about securities had to operate under an investment advisers licence.
- 8 Unlicensed IDS operators relying on RG 162 had to conform to certain guidelines relating to:
- (a) requirements for disclosure and warnings to people who view postings on the IDS (RG 162.41);
 - (b) requirements for disclosure and warnings to people who make or alter postings (RG 162.42); and
 - (c) obligations placed on the IDS operator to regulate the IDS, such as by keeping information about the identity of people making postings as well as records of actual postings people have made (RG 162.43).

IDS operators also had to notify us in advance if they proposed to rely on RG 162: see RG 162.43(a).

- 9 Where a licensed person operated an IDS, RG 162 specified that that person *must* operate the IDS as part of their licensed business, with the obligations that attach to being a licensee. The rationale for this distinction set out in RG 162 was that, if a licensee operates an IDS, people who view postings on the IDS may tend to regard it as being part of the licensee’s business, and give postings more weight than they otherwise would. For this reason, RG 162 specified that an IDS operated by a licensee should comply with the licensing regime then in place.

Our policy since FSR commencement

- 10 Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) sets out how pre-FSR regulatory guides, such as RG 162, apply under the financial services licensing regime introduced by the FSR Act. RG 167.85 provides that RG 162 continues to apply under the current regime, with any necessary adaptations. Therefore, we have continued to permit IDS operators to operate without an AFS licence if they comply with our IDS guidelines.

Reviewing RG 162

- 11 We have initiated this review of RG 162 as our policy on IDSs has not been reviewed for some time. Since the release of RG 162 in 2000, there have been a number of developments that have led us to re-evaluate our current policy on IDSs.

How the current law applies to IDSs and IDS operators

- 12 Under the financial services licensing regime introduced by the FSR Act, a person who carries on a business of providing financial services requires an AFS licence: s911A(1). A person providing financial product advice will be providing a financial service: s766A. A recommendation or a statement of opinion, or a report of either of those things, constitutes financial product advice under s766B if:
- (a) it is intended to influence a person or persons in making a decision on a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products, or could reasonably be regarded as being intended to have such an influence; and
 - (b) it is not exempted from the definition of 'financial product advice'.

Could statements made by IDS authors constitute financial product advice?

- 13 We consider that statements made on IDSs by authors (i.e. by people making postings on the IDS) *may* constitute financial product advice (i.e. a recommendation or a statement of opinion that is intended to influence people who view the postings in the process of making decisions in relation to financial products, particularly in relation to the buying and selling of shares). However, whether this is the case is likely to depend on the particular circumstances in question.
- 14 The issue of whether statements posted on an IDS could constitute investment advice under the Corporations Law was considered in *ASIC v Matthews* [2000] NSWSC 201 (*Matthews*). The proceedings involved postings about securities on an internet site with a chatroom facility, and

turned on whether postings on the site constituted ‘reports about securities’ (and thereby fell within the definition of ‘investment advice’) within the meaning of the Corporations Law. The postings in question were made by a variety of authors; however, the operator also posted information on the IDS, moderated, and had the ability to modify, postings. In *Matthews*, Windeyer J found that some of the postings he reviewed, while informal in nature, fell within the description of ‘reports about securities’ (at [27]).

15 We consider that the result in *Matthews* is likely to be indicative of the position under the current law. That is, informal commentary about financial products posted to an IDS may amount to financial product advice.

16 Authors of postings on IDSs may need to be licensed themselves if their conduct amounts to carrying on a business of providing a financial service: s911A.

Note: See Pt 1.2, Div 3 for guidance on when a person is carrying on a business.

When will an IDS operator need an AFS licence?

17 Whether the operator of an IDS is providing financial product advice will depend on their involvement in the postings. For example, an operator who is very much involved in the content of the IDS by making postings may be providing financial product advice. If this is the case, we consider that the operator’s conduct in operating the IDS and providing financial product advice may constitute the carrying on of a financial services business.

18 Operators who do not post comments containing financial product advice themselves, but who authorise or arrange for others to post such comments, may also require a licence. This is because authorising or arranging for a thing to be done is generally treated in the same way as actually doing the thing under the Corporations Act.

Note: Section 52 provides that a reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done. This includes causing or authorising the provision of financial product advice.

The ‘passing on’ exemption

19 On the other hand, an operator who only distributes the postings made by others, with no involvement in the making of postings, is probably not giving financial product advice. Regulation 7.1.31 of the Corporations Regulations 2001 (Corporations Regulations) provides that a person is taken not to be providing a financial service where that person disseminates a document that contains financial product advice, as long as that person:

- (a) is *not* an AFS licensee; and
- (b) does not select, modify, or otherwise exert control over the content of the document.

Regulation 7.1.31 also includes a requirement that a reasonable person would not consider that the person disseminating the document had assumed responsibility for the financial product advice it contains: reg 7.1.31(g). (The reg 7.1.31 exemption is referred to in this consultation paper as the ‘passing on’ exemption).

20 We consider that some IDS operators may be able to rely on the passing on exemption where:

- (a) they merely distribute postings made by others, with no involvement in the making of postings; and
- (b) their limited role is clear to those viewing the site.

21 Obviously, whether the IDS operator requires an AFS licence depends on whether postings to the IDS themselves fall within the definition of financial product advice (see paragraphs 13–16).

The media exemptions

22 Section 911A provides for exemptions from the need to hold an AFS licence for persons providing general advice in:

- (a) newspapers or periodicals (s911A(2)(ea));
- (b) news and information broadcasts (s911A(2)(eb)); and
- (c) sound, video and data recordings (s911A(2)(ec)),

where the sole or principal purpose is not to provide financial product advice.

23 These exemptions were included in the FSR Act at the recommendation of the Parliamentary Joint Committee on Corporations and Financial Services (PJC). In its *Report on the Financial Services Reform Bill 2001* (August 2001), the PJC indicated that the underlying policy behind the exemptions was to protect the freedom of the media to fully inform the public about financial products and services, by providing ‘a range of viewpoints supplemented by factual analysis’: paragraph 5.15.

24 We consider that these exemptions should be read consistently with their intended purpose of facilitating news and information broadcasts about financial services by the media. While it will depend on the particular circumstances in question, IDSs generally differ from news services provided on the internet in that they:

- (a) involve some interaction among participants, rather than the one-way transmission that generally characterises news services; and
- (b) often contain a higher degree of opinion and recommendation than purely factual analysis.

An IDS operator should therefore be careful about relying on the media exemptions.

Proposals to change our policy on IDSs

- 25 As outlined in the following sections of this paper, we are proposing to change our policy on IDSs to require all IDS operators who are carrying on a business of providing financial services to hold an AFS licence and provide the necessary disclosure documents: see Section B. We are also proposing to provide guidance on our expectations in relation to IDS operators' conduct: see Section C.

B Our proposed approach to licensing for IDS operators

Key points

This section of the consultation paper seeks feedback on our proposed approach to the licensing of IDS operators.

We propose *not* to grant IDS operators relief from the financial services licensing and disclosure regimes. Therefore, they must hold an AFS licence and provide the necessary disclosure documents if they are carrying on a business of providing financial services.

We propose to issue an amended RG 162, which would give guidance on when an IDS operator requires an AFS licence.

No relief for IDS operators

Proposal

B1 We propose not to grant relief (by class order or any other means) to operators of IDSs from the financial services licensing and disclosure regimes. This means that operators who are providing a financial service must hold an AFS licence (unless an existing exemption applies to them).

Your feedback

B1Q1 Do you agree with this proposal? If not, why not?

B1Q2 What costs might be associated with this proposal? If so, can you quantify such costs?

Rationale

26 Our current policy on IDSs was developed in 2000, at a time when the provision of financial product advice via IDSs was a fairly novel and untested situation. In allowing certain IDS operators to operate without a licence, we took into account the fact that the Corporations Law had a very broad application and would potentially require a large number of IDS operators to be licensed. At the time, there was no passing on exemption similar to the current reg 7.1.31.

27 Since RG 162 was released in August 2000, the law has been updated and modernised with the introduction of the current licensing regime for financial services. While Parliament has included a number of exemptions in the Corporations Act for activities it does not believe, on balance, merit licensing (e.g. s911A(2) sets out a number of exemptions from the

requirement to hold an AFS licence), it has not passed any specific exemption for financial product advice given through an IDS.

28 On the other hand, reg 7.1.31 now operates to give an exemption for persons who are merely passing on documents containing advice. We think that many IDS operators are not involved in making postings on the IDS, but merely provide a forum for investors to share their experiences. These operators may be able to rely on the exemption in reg 7.1.31: see paragraphs 19–20.

29 We think that the current law sets an appropriate line between those who need a licence, and those who don't, and that there are no policy grounds for ASIC to alter this by granting special relief to IDS operators. Therefore, we consider that if:

- (a) a person is providing financial product advice through an IDS (whether as the IDS operator or otherwise); and
- (b) the advice forms part of a financial services business,

that person should, like any other provider of financial product advice, hold an AFS licence and comply with the relevant disclosure and conduct requirements of the Corporations Act, unless an exemption applies. That is, whether IDS operators require an AFS licence should be determined by the general licensing provisions and not by ASIC relief.

Note: See paragraphs 12–24 for a discussion of when we think an IDS operator will require an AFS licence.

30 This position is similar to that established in RG 162 in many respects, as under RG 162, IDS activities that *clearly* attracted the licensing requirements of the law in place at the time were *not* permitted to be carried out unlicensed: see RG 162.30.

31 Treating IDSs like other financial services (i.e. under our general financial services policies) is also an important means of ensuring that we are technology-neutral in our approach, particularly in light of the growing importance of web-based advice.

Guidance on when an IDS operator requires an AFS licence

Proposal

B2 We propose to amend RG 162 to include information on when an IDS operator requires an AFS licence.

Your feedback

B2Q1 What particular aspects of our proposed approach to the licensing of IDSs do you feel require guidance?

B2Q2 What (if any) further guidance should we give on the application of reg 7.1.31, including the requirement that the IDS operator make it clear that they are not responsible for the content of the IDS (reg 7.1.31(g))? Please give details of any guidance you suggest should be given.

Rationale

32 To assist IDS operators, we propose to amend RG 162 to include guidance about factors to take into account when assessing whether an operator is providing financial product advice and requires an AFS licence. This guidance would incorporate some of the information in paragraphs 12–24. While our general financial services policies (e.g. Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175)) will be useful for IDS operators, we think there is also value in having specific guidance for IDS operators.

C Our proposals on conduct requirements for IDS operators

Key points

We propose to update RG 162 to give guidance on conduct requirements for licensed and unlicensed IDS operators. This section of the consultation paper seeks feedback on our proposals on conduct requirements for IDS operators.

IDS operators who require an AFS licence will need to comply with the obligations of the licensing regime. We think that, to satisfy these obligations, licensed IDS operators will particularly need to:

- maintain the IDS in a fair and efficient manner
- have good record-keeping practices, and
- give a general advice warning.

While not all IDS operators will require an AFS licence, we think that, under the Corporations Act and the general law, all IDS operators have the responsibility to ensure that their IDS is well run and managed. We also propose to encourage IDS operators who do not require an AFS licence to:

- maintain the IDS in a fair and efficient manner, and
- have good record-keeping practices.

In addition, unlicensed IDS operators who wish to rely on the passing on exemption will need to display certain warnings and disclosures to users.

Conduct of IDS operators who require an AFS licence

Key obligations

Proposal

- c1 We propose to highlight the following as key obligations for IDS operators who require an AFS licence:
- (a) maintaining the IDS in a fair and efficient manner;
 - (b) having good record-keeping practices; and
 - (c) giving a general advice warning.

We also propose to give an indication of how we think that IDS operators can comply with these key obligations through the minimum standards for compliance set out in Table 1 (at the end of this section), and to include guidance on this in an amended RG 162.

Your feedback

- C1Q1 Do you think these are appropriate obligations to highlight? Why/why not?
- C1Q2 Are there any other obligations that we should highlight?
- C1Q3 Do you think it will be useful for us to give an indication as to how we think IDS operators can comply with these key obligations? Are there any other ways IDS operators can comply with these obligations apart from those set out in Table 1?
- C1Q4 Are there any aspects of this proposal that you feel require particular guidance?
- C1Q5 What costs might be associated with this proposal? Can you quantify such costs?

Rationale

- 33 AFS licensees must do all things necessary to ensure that the financial services covered by their AFS licence are provided efficiently, honestly and fairly: s912A(1)(a). The Corporations Act imposes other general obligations on licensees (e.g. the other general licence obligations set out in s912A and the general advice warning requirement in s949A). Licensees must also comply with the conditions on their licences.
- 34 We think that the key obligations for IDS operators are to:
- (a) maintain the IDS in a fair and efficient manner;
 - (b) have good record-keeping practices; and
 - (c) give the general advice warning.
- This means IDS operators must be aware of and control what is occurring on the IDS, including through having systems and processes in place to review and keep records of postings and be aware and keep records of the identity of authors of postings. They must also give appropriate warnings and disclosures to users.
- 35 In Table 1 (at the end of this section) we have summarised the key obligations and the minimum standards of conduct licensed IDS operators should meet.
- 36 As we are proposing to regulate IDS operators who provide financial product advice through an IDS like any other financial services provider, our existing guidance on financial services (e.g. Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175)) will also provide a great deal of the information that licensed IDS operators will require in order to comply with their legal obligations. However, as we propose to highlight the key obligations above that we think licensed IDS operators must meet, we propose to include the information set out in Table 1 in an amended RG 162.

Conduct of IDS operators who do not require an AFS licence

Warnings and disclosures

Proposal

- c2 We propose to give guidance that IDS operators who are able to operate the IDS without a licence should display warnings and disclosures to people viewing postings to the effect that:
- (a) the operator does not endorse or vouch for the accuracy or authenticity of postings; and
 - (b) people viewing postings should not rely on advice contained in the postings alone (see also Table 1).

Your feedback

- C2Q1 Do you think IDS operators who are able to operate the IDS without a licence should be required to display warnings and disclosures as set out in proposal C2? Why/why not?
- C2Q2 To what extent do IDS operators' current practices reflect this proposal?
- C2Q3 Do you think that this proposal will assist those who view postings on the IDS?
- C2Q4 What costs might be associated with this proposal? If so, can you quantify such costs?
- C2Q5 Are there any aspects of proposal C2 that you feel require particular guidance?

Rationale

- 37 We think that many IDS operators may be able to rely on the passing on exemption and will therefore not require an AFS licence: see paragraph 28.
- 38 As discussed in paragraph 20, a condition of the exemption is that viewers of postings on the website are aware that the operator has not assumed responsibility for the financial product advice they are disseminating: reg 7.1.31(g). We think that one way to ensure this is for IDS operators to display prominent warnings near postings on the IDS, including:
- (a) that the operator does not endorse or vouch for the accuracy or authenticity of postings; and
 - (b) that people viewing postings should not rely on advice contained in the postings alone.

As a similar requirement is currently set out in RG 162 (see RG 162.41), we think that the giving of these kinds of warnings and disclosures will be current practice. For IDS operators who operate under an AFS licence,

similar warnings will need to be given as part of the general advice warning requirements: s949A.

- 39 We propose to include specific guidance in an amended RG 162 on the application of the passing on exemption, and the warnings and disclosures we think IDS operators operating without a licence should display.

Compliance arrangements

Proposal

- c3 We propose to give guidance that even unlicensed IDS operators have a responsibility to ensure that their IDS is well run and managed and, as a matter of good practice, all IDS operators who are able to operate the IDS without an AFS licence should take into account the same obligations and minimum standards for compliance we have highlighted for licensed IDS operators. We propose to amend RG 162 to provide guidance on this (including the information set out in Table 1).

Your feedback

- C3Q1 Do you think IDS operators who are able to operate the IDS without a licence should aim to comply with the obligations summarised in Table 1? Why/why not?
- C3Q2 To what extent do IDS operators' current practices reflect this proposal?
- C3Q3 Do you think that this proposal will help in the prevention and detection of misconduct occurring on the IDS?
- C3Q4 What costs might be associated with this proposal? If so, can you quantify such costs?
- C3Q5 Are there any aspects of this proposal that you feel require particular guidance?

Rationale

- 40 While not all IDS operators will require an AFS licence, we think that *all* IDS operators bear certain responsibilities in relation to the IDS and the conduct of IDS authors.
- 41 Part 7.10 of the Corporations Act prohibits certain types of conduct in relation to financial services and products, including market manipulation, insider trading, and misleading and deceptive conduct relating to financial services and products. Where IDS users engage in misconduct prohibited under Pt 7.10, IDS operators might themselves have some legal responsibility for such misconduct under s1041H, which prohibits misleading or deceptive conduct in relation to financial services, including through publishing a notice in relation to a financial product.

- 42 IDS operators may also bear some legal responsibility where the activities of IDS users amount to misconduct under the general law. This may occur, for example, where postings contain defamatory statements, infringe copyright or reveal confidential information.
- 43 While an IDS may receive many thousands of postings a week, and it may be difficult for an IDS operator to review each one, we think that operators are less likely to be found responsible for any misconduct occurring on the IDS where they can demonstrate that they have systems and controls in place to supervise the IDS adequately, including through taking reasonable measures to detect and prevent misconduct.
- 44 We think that the obligations and minimum standards for compliance that we have highlighted for licensed IDS operators will also assist unlicensed IDS operators in establishing good practice to operate their IDS responsibly.
- 45 Therefore, we propose that IDS operators who do not require an AFS licence should nevertheless take the minimum standards for compliance set out in Table 1 into account in designing their internal compliance arrangements. Having such systems and controls in place is part of a sensible risk-management strategy for operators; on the other hand, non-compliance may expose an IDS operator to ASIC's particular scrutiny, as well as the risk of legal liability.
- 46 We propose to include some guidance in an amended RG 162 on:
- (a) the responsibilities we think all IDS operators, including those who do not require an AFS licence, hold in relation to the IDS and the conduct of IDS authors; and
 - (b) how we think IDS operators who do not require an AFS licence can meet these obligations, as set out in Table 1.

Table 1: Obligations and minimum standards for compliance to assist IDS operators

Obligation	Source	Minimum standards for compliance
Maintain the IDS in a fair and efficient manner	<p>For IDS operators who require an AFS licence</p> <ul style="list-style-type: none"> • Obligation to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (s912A(1)(a)) • Obligation to have available adequate resources to provide the financial services covered by the licence (s912A(1)(d)) • Obligation to maintain the competence to provide those financial services (s912A(1)(e)) • Obligation to have adequate risk management systems (s912A(1)(h)) <p>For IDS operators who do not require a licence</p> <ul style="list-style-type: none"> • Various obligations under the Corporation Act, as well as under the general law: see paragraphs 40–46 	<p>All IDS operators should maintain good controls over the activities occurring on the IDS, including by:</p> <ul style="list-style-type: none"> • identifying people making or altering postings (e.g. by ensuring that people cannot register as an IDS user with generic email addresses, or an obviously false name), and withdrawing posting rights if necessary • reviewing content in postings on a regular basis, and in a timely manner, and removing any postings likely to be misleading or deceptive or that amount to illegal conduct, and • displaying warnings on the IDS that: <ul style="list-style-type: none"> – postings will be archived for a period of at least two years (see discussion of obligation to have good record-keeping practices, below); – copies of postings may be provided to ASIC, and – serious penalties apply for posting material that is misleading or deceptive, or that amounts to market manipulation or insider trading. <p>To maintain such controls over the activities occurring on the IDS, operators will need to ensure that they have sufficient resources and adequate systems in place. IDS operators may also wish to consider using automated software to monitor postings.</p>
	<p>Have good record-keeping practices</p> <p>For IDS operators who require an AFS licence</p> <ul style="list-style-type: none"> • Obligation to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honesty and fairly (s912A(1)(a)) • Obligation to have available adequate resources to provide the financial services covered by the licence (s912A(1)(d)) • Obligation to have an adequate dispute resolution system (s912A(1)(g)) • Obligation to have adequate risk management systems (s912A(1)(h)) • Obligation to notify ASIC of breaches and assist ASIC with compliance inquiries (s912D and 912E) 	<p>All IDS operators should have good record-keeping practices in relation to:</p> <ul style="list-style-type: none"> • information about the identity of people making or altering postings, both while they are members and for some time after they cease to be members (i.e. for at least two years), and • postings, so that actual postings and session information is archived for a period of at least two years. <p>IDS operators should be in a position to be able to provide details of postings and session information to ASIC on request.</p>

Obligation	Source	Minimum standards for compliance
	<p>For IDS operators who do not require a licence</p> <ul style="list-style-type: none"> • Various obligations under the Corporations Act, as well as under the general law: see paragraphs 40–46 	
<p>Warnings and disclosures</p>	<p>For IDS operators who require an AFS licence</p> <ul style="list-style-type: none"> • Obligation to give a general advice warning (s949A) <p>For IDS operators who do not require a licence</p> <ul style="list-style-type: none"> • Under the passing on exemption, that a person to whom a document containing financial product advice is provided would not assume that the person passing on the document had assumed responsibility for the advice (reg 7.1.31(g)) 	<p>For IDS operators who require an AFS licence</p> <p>IDS operators should display prominent warnings to readers of IDS postings that any advice given is general advice only, and does not take into account their personal circumstances, including that:</p> <ul style="list-style-type: none"> • the operator does not endorse or vouch for the accuracy or authenticity of postings, and • people viewing postings should not rely on advice contained in the postings alone. <p>For IDS operators who do not require a licence</p> <p>IDS operators should display prominent warnings to readers of IDS postings that:</p> <ul style="list-style-type: none"> • the operator does not endorse or vouch for the accuracy or authenticity of postings, and • people viewing postings should not rely on advice contained in the postings alone.

D Regulatory and financial impact

47 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us, we think our proposals strike an appropriate balance between:

- (a) not unnecessarily impeding the operation of IDSs; and
- (b) ensuring that IDSs operate with transparency and with minimal risk to people viewing postings.

48 Before settling on a final policy, we will comply with the requirements of the Office of Best Practice Regulation (OBPR) by:

- (a) considering all feasible options;
- (b) if regulatory options are under consideration, undertaking a preliminary assessment of the impacts of the options on business and individuals or the economy;
- (c) if our proposed option has more than low impact on business and individuals or the economy, consulting with OBPR to determine the appropriate level of regulatory analysis; and
- (d) conducting the appropriate level of regulatory analysis—that is, by completing a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).

49 All BCC reports and RISs are submitted to OBPR for approval before we make any final decision. Without an approved BCC report and/or RIS, we are unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

50 To ensure that we are in a position to properly complete any required BCC report or RIS, we ask you to provide us with as much information as you can about:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits,

of our proposals or any alternative approaches: see ‘The consultation process’, p. 4.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> as amended by the FSR Act, including regulations made for the purposes of the Corporations Act
Corporations Law	The <i>Corporations Act 1989</i> (now repealed) and all corresponding state Acts
Corporations Regulations	Corporations Regulations 2001
Div 3 (for example)	A division of the Corporations Act (in this example, numbered 3)
financial product	Generally 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) Note: See Div 3 of Pt 7.1 for the exact definition.
financial product advice	A recommendation, a statement of opinion or an interpretation of information, or a report of any of those things, that: <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products, or • could reasonably be regarded as being intended to have such an influence Note: This is a definition contained in s766B.
financial service	Has the meaning given in Div 4 of Pt 7.1
Financial Services Guide (FSG)	A document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Pt 7.7
FSR	The current regime for the licensing and regulation of financial services providers established under the FSR Act, which amended the Corporations Act
FSR Act	The <i>Financial Services Reform Act 2001</i> , which amended the Corporations Act

Term	Meaning in this document
IDS	Internet discussion site
IDS authors	People making postings on an IDS
IDS operator	The operator of an IDS
IDS users	Collectively, people making and viewing postings on an IDS
licensee	A person who holds an AFS licence
PJC	Parliamentary Joint Committee on Corporations and Financial Services
postings	Information, recommendations and opinions about financial products posted on an IDS website
Pt 7 (for example)	A part of the Corporations Act (in this example, numbered 7)
reg 7.7.10A	A regulation of the Corporations Regulations (in this example, numbered 7.7.10A)
RG 148 (for example)	An ASIC regulatory guide (in this example, numbered 148)
s766E (for example)	A section of the Corporations Act (in this example numbered 766E)

List of proposals and questions

Proposal		Your feedback	
B1	We propose not to grant relief (by class order or any other means) to operators of IDSs from the financial services licensing and disclosure regimes. This means that operators who are providing a financial service must hold an AFS licence (unless an existing exemption applies to them).	B1Q1	Do you agree with this proposal? If not, why not?
		B1Q2	What costs might be associated with this proposal? If so, can you quantify such costs?
B2	We propose to amend RG 162 to include information on when an IDS operator requires an AFS licence.	B2Q1	What particular aspects of our proposed approach to the licensing of IDSs do you feel require guidance?
		B2Q2	What (if any) further guidance should we give on the application of reg 7.1.31, including the requirement that the IDS operator make it clear that they are not responsible for the content of the IDS (reg 7.1.31(g))? Please give details of any guidance you suggest should be given.
C1	We propose to highlight the following as key obligations for IDS operators who require an AFS licence: (a) maintaining the IDS in a fair and efficient manner; (b) having good record-keeping practices; and (c) giving a general advice warning. We also propose to give an indication of how we think that IDS operators can comply with these key obligations through the minimum standards for compliance set out in Table 1, and to include guidance on this in an amended RG 162.	C1Q1	Do you think these are appropriate obligations to highlight? Why/why not?
		C1Q2	Are there any other obligations that we should highlight?
		C1Q3	Do you think it will be useful for us to give an indication as to how we think IDS operators can comply with these key obligations? Are there any other ways IDS operators can comply with these obligations apart from those set out in Table 1?
		C1Q4	Are there any aspects of this proposal that you feel require particular guidance?
		C1Q5	What costs might be associated with this proposal? Can you quantify such costs?
C2	We propose to give guidance that IDS operators who are able to operate the IDS without a licence should display warnings and disclosures to people viewing postings to the effect that: (a) the operator does not endorse or vouch for the accuracy or authenticity of postings; and (b) people viewing postings should not rely on advice contained in the postings alone (see also Table 1).	C2Q1	Do you think IDS operators who are able to operate the IDS without a licence should be required to display warnings and disclosures as set out in proposal C2? Why/why not?
		C2Q2	To what extent do IDS operators' current practices reflect this proposal?
		C2Q3	Do you think that this proposal will assist those who view postings on the IDS?
		C2Q4	What costs might be associated with this proposal? If so, can you quantify such costs?
		C2Q5	Are there any aspects of proposal C2 that you feel require particular guidance?

Proposal	Your feedback
<p>C3 We propose to give guidance that even unlicensed IDS operators have a responsibility to ensure that their IDS is well run and managed and, as a matter of good practice, all IDS operators who are able to operate the IDS without an AFS licence should take into account the obligations and minimum standards for compliance we have highlighted for licensed IDS operators. We propose to amend RG 162 to include guidance on this (including the information set out in Table 1).</p>	<p>C3Q1 Do you think IDS operators who are able to operate the IDS without a licence should aim to comply with the obligations summarised in Table 1? Why/why not?</p> <p>C3Q2 To what extent do IDS operators' current practices reflect this proposal?</p> <p>C3Q3 Do you think that this proposal will help in the prevention and detection of misconduct occurring on the IDS?</p> <p>C3Q4 What costs might be associated with this proposal? If so, can you quantify such costs?</p> <p>C3Q5 Are there any aspects of this proposal that you feel require particular guidance?</p>