



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 109

Margin lending: Financial requirements

July 2009

About this paper

This consultation paper sets out ASIC's proposals on the financial resource requirements we will impose on the holder of an Australian financial services (AFS) licence who provides a financial service in relation to a margin lending facility.

The purpose of this paper is to seek the views of margin lenders, investors, their legal advisors, and other interested parties, on the proposals we have developed.

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 13 July 2009 and is based on the Corporations Act as at 13 July 2009 and the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 as introduced into the Australian Parliament on 25 June 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 the financial resource requirements for AFS licensees that deal in, or advise on, margin lending facilities. 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 C, '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 10 August 2009 to:

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Strategic Policy
Australian Securities and Investments Commission
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Melbourne VIC 3001
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What will happen next?

Stage 1	13 July 2009	ASIC consultation paper released
Stage 2	10 August 2009	Comments due on the consultation paper
Stage 3	August – September 2009	Drafting of amendments to RG 166
Stage 4	October 2009	Re-release of RG 166

A Regulation of margin lending

Key points

Margin lending will be regulated as a financial product under the Corporations Act and therefore anyone who provides a financial service in relation to a margin lending facility will need to hold an AFS licence covering this service.

AFS licensees are subject to conduct obligations including the obligation to have adequate financial resources and risk management systems.

This paper sets out ASIC's proposals on the financial requirements that should be imposed on AFS licensees that deal in, or advise on, a margin lending facility.

Margin lending facilities to be a 'financial product' under Ch 7

- 1 The Council of Australian Governments agreed on 3 July 2008 that the Australian Government would assume responsibility for regulating consumer credit, including margin lending.
- 2 The Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 (the Bill) was introduced into Parliament on 25 June 2009. The Bill regulates margin lending facilities as financial products under Ch 7 of the *Corporations Act 2001* (Corporations Act).
- 3 Under the Bill, a 'margin lending facility' is specifically included as a financial product under s764A. This ensures that a provider of financial services in relation to a margin lending facility will be required to obtain an Australian financial services (AFS) licence and will be subject to the conduct obligations in Ch 7 of the Corporations Act, including the obligation to have adequate financial resources.

Note: The definition of a 'margin lending facility' in cl 761EA(1) of the Bill includes a standard margin lending facility and a non-standard margin lending facility. The definition of a 'non-standard margin lending facility' has been framed in a manner to include alternative legal structures, for example, those used by entities such as Opes Prime and Tricom. For an example of a non-standard margin lending facility refer to Paras 1.51–1.57 and Example 1.4 in the Explanatory Memorandum to the Bill. For a definition of a 'standard margin lending facility' and a 'non-standard margin lending facility', see 'Key terms'.

Financial requirements for margin lending facilities

4 After the commencement of the new legislation, AFS licensees that deal in, or advise on, a margin lending facility (margin lending financial service), among other obligations, must:

- (a) have available adequate financial resources to provide the financial services covered by the AFS licence and to carry out supervisory arrangements (s912A(1)(d)); and
- (b) have adequate risk management systems (s912A(1)(h)).

Note: The financial resource requirements do not apply to a body regulated by the Australian Prudential Regulation Authority (APRA).

5 As part of ASIC's role as regulator of the financial services industry, we are responsible for setting the financial requirements that an AFS licensee must meet. These requirements are set out in Regulatory Guide 166: *Licensing: Financial requirements* (RG 166).

6 ASIC will apply these financial requirements to an AFS licensee that provides a margin lending financial service by licence conditions.

Note: See s766B for a definition of 'financial product advice'. 'Dealing' includes issuing or varying a financial product: see s766C for a definition of 'dealing'.

7 Margin lending facilities have not previously been regulated as a financial product under the Corporations Act. Accordingly, a number of amendments are necessary to ensure that RG 166 imposes appropriate financial requirements on AFS licensees who provide a margin lending financial service.

8 We have set out proposed financial requirements for the holder of an AFS licensee who provides a margin lending financial service in Section B of this consultation paper.

B Proposals to ensure an AFS licensee has adequate financial resources

Key points

We propose that:

- An AFS licensee who provides a margin lending financial service will be required to comply with the base level financial requirements set out in Section B of RG 166: see proposal B1 and paragraphs 12–15.
- An AFS licensee who issues a margin lending facility must hold at least \$5 million in net tangible assets (NTA) at all times that the licensee holds secured property under a margin lending facility, or must use a custodian with at least \$5 million NTA: see proposal B2 and paragraphs 16–18.
- An AFS licensee who holds secured property on trust for the client, or has the power to dispose of the client's property under a margin lending facility, will be required to comply with the SLF requirements in Section E of RG 166: see proposal B3 and paragraphs 19–23.
- An AFS licensee, who has a liability to transfer marketable securities to the client under a non-standard margin lending facility, will be required to comply with the ASLF requirements in Section F of RG 166: see proposal B4 and paragraphs 24–26.
- An AFS licensee will not have to comply with the ASLF requirements in Section F of RG 166 if the licensee provides credit under a margin lending facility and that credit remains undrawn: see proposal B5 and paragraphs 27–29.

Overview of the financial requirements for margin lending facilities

- 9 After the commencement of the new legislation, AFS licensees, except those regulated by APRA, who provide a margin lending financial service will be required to meet the financial requirements in RG 166.
- 10 The requirements in RG 166 vary in their application depending on the nature, scale and complexity of the financial services business (RG 166.5). Therefore, the financial requirements will vary according to whether the licensee deals in, or advises on, a margin lending facility and whether that facility is a standard margin lending facility or a non-standard margin lending facility.
- 11 Table 1 summarises our views on the financial requirements we believe should be imposed on licensees that provide a margin lending financial service.

Note: This summary merely shows how the parts of the proposals relate to each other. For details of our policy proposals, see the relevant sections of this paper.

Table 1: Summary of our proposals

Who is affected	Summary of our proposals	What attracts financial requirements	Relevant guidance
Section A: Our general policy on financial requirements			
All licensees not regulated by APRA that deal in, or advise on, standard and non-standard margin lending facilities	Risk management systems must address risk to financial resources	Holding an AFS licence	See paragraph 166.7 of RG 166 and surrounding material
Section B: Base level financial requirements			
All licensees not regulated by APRA that deal in, or advise on, standard and non-standard margin lending facilities	Positive net assets and solvent Sufficient cash resources to cover next 3 months' expenses with adequate cover for contingencies Audit compliance annually and when we ask	Holding an AFS licence	See paragraph 166.25 of RG 166 and surrounding material
Section C: Managed investments and custody services			
All licensees not regulated by APRA that issue a margin lending facility	Net tangible assets (NTA) requirement of a minimum of \$5 million	Issuing a margin lending facility This requirement is in addition to the requirements in Section B and, if applicable, Sections E and F	See paragraph 166.54 of RG 166 and surrounding material
Section E: Licensees holding client money or property			
All licensees that hold client assets in connection with a margin lending facility	Surplus liquid funds (SLF) of \$50,000	Holding client assets over \$100,000 in a separate account, or assets on trust for clients in certain situations This requirement is in addition to the requirements in Section B and, if applicable, Sections C and F	See paragraph 166.95 of RG 166 and surrounding material

Who is affected	Summary of our proposals	What attracts financial requirements	Relevant guidance
Section F: Licensees with financial obligations from transacting with clients as principal			
Licensees that have a liability under a non-standard margin lending facility to transfer marketable securities to a client	<p>Tiered adjusted surplus liquid funds (ASLF) requirement from \$50,000 to \$100 million</p> <p>ASLF calculation contains adjustments for assets and contingent liabilities</p> <p>Requirement for board consideration when trigger points are reached</p>	<p>Having such liabilities or contingent liabilities beyond \$100,000</p> <p>This requirement is in addition to the requirements in Section B and, if applicable, Sections C and E of RG 166</p>	See paragraph 166.104 of RG 166 and surrounding material

Application of the base level requirements

- 12 The base level requirements in Section B of RG 166 require that an AFS licensee must at all times:
- be solvent;
 - have assets that exceed liabilities as shown in the most recent annual balance sheet lodged with ASIC and have no reason to suspect that assets no longer exceed liabilities on a current balance sheet;
 - meet the cash flow requirements by complying with one of Options 1 to 5; and
 - meet the audit requirements.

Note: For guidance on calculating the financial requirements under Section B, see RG 166.25–RG 166.28.

Proposal

- B1** We propose that an AFS licensee who deals in, or advises on, any margin lending facility will be required to comply with the base level financial requirements set out in Section B of RG 166.

Your feedback

- B1Q1 Do you agree with this approach? If not, why not?
- B1Q2 Are there any aspects of a margin lending facility that make compliance with this proposal unnecessary or unreasonably onerous?
- B1Q3 Please give details of any additional costs associated with the implementation of this proposal.

Rationale

- 13 The base level financial requirements in Section B of RG 166 apply to all AFS licensees except licensees regulated by APRA and market and clearing participants. We believe that it is appropriate to apply these requirements to licensees that deal in, or advise on, margin lending facilities.
- 14 A licensee who deals in or advises on a margin lending facility will not be able to comply with their licence obligations unless they have sufficient financial resources to do so and are solvent. Requiring an audit of a licensee's compliance with these requirements is intended to enhance compliance by the licensee. We therefore think that imposing the base level financial requirements in Section B of RG 166 is necessary to help ensure compliance with key licensee obligations.
- 15 Further, we see no basis to treat licensees who provide a margin lending financial service differently from other licensees in Section B of RG 166.

Application of the net tangible asset requirement

- 16 Under Section C of RG 166, an AFS licensee is required to hold at all times minimum net tangible assets (NTA) of up to \$5 million if the licensee is:
- (a) a responsible entity;
 - (b) an IDPS operator; or
 - (c) licensed to provide a custodial or depository service (other than incidentally to another financial services business).

Note: For guidance on the definitions used in calculating the financial requirements under Section C, see RG 166.128 and surrounding material

Proposal

- B2** We propose to amend Section C of RG 166 so that a licensee who issues any margin lending facility must hold:
- (a) NTA of 0.5% of the value of the secured property subject to a minimum requirement of \$50,000 and a maximum requirement of \$5 million; and
 - (b) at least \$5 million NTA at all times that:
 - (i) the licensee holds secured property under a margin lending facility; or
 - (ii) any other person holds the secured property under the margin lending facility and that person does not have at least \$5 million NTA unless they are an eligible custodian.

Note 1: For a definition of 'margin lending facility', see 'Key terms'

Note 2: For a definition of 'eligible custodian', see RG 166.62

Your feedback

- B2Q1 Do you agree with this proposal? If not, why not?
- B2Q2 Do you think there are any circumstances where this proposal should not apply?
- B2Q3 Do you agree with the proposal to apply the NTA requirements in proposal B2(a) to all AFS licensees who issue a margin lending facility? If not, why not?
- B2Q4 Should the NTA requirement in proposal B2(a) and (b) apply in addition to the liquidity requirements that we propose to impose on licensees who deal in a margin lending facility: see proposals B3 and B4?
- B2Q5 Please give details of any costs created by our proposal for both licensees who issue a margin lending facility and consumers. For example, what is the cost of imposing this requirement if it forces an issuer to have to change its existing arrangements for holding secured property under the facility?
- B2Q6 Are there any aspects of a margin lending facility that make this proposal impractical?

Rationale

- 17 We believe that a client under a margin lending facility is typically placing substantial trust in the AFS licensee who issues the margin lending facility (i.e. the lender) and the licensee should be required to demonstrate its financial substance. The licensee will have rights under the security arrangements to deal with secured assets without reference to the client which will often include transferring them to a nominated custodian. Therefore, unless the licensee has NTA of over \$5 million, the licensee must use a substantial custodian to hold the secured property under the facility. The NTA requirement provides for the facility to be structured in a number of ways as long as either the licensee, or the person holding the secured property, has the necessary NTA.
- 18 Even if an issuer does not hold the secured property, the licensee will still perform important functions such as providing funds to settle client transactions, monitoring portfolios and providing notice of margin calls. Therefore we think it is appropriate to impose the NTA requirement on a scale from \$50,000 to \$5 million to ensure that they have the necessary resources to operate their business.

Application of the surplus liquid funds requirement

- 19 Under Section E of RG 166, if an AFS licensee:
- (a) holds client money in a separate account under Div 2 of Part 7.8; or
 - (b) holds money or other property on trust for a client or is required to do so under reg 7.8.07(2) or otherwise; or
 - (c) has the power to dispose of a client's property under power of attorney or otherwise
- and the aggregate value of the money or property for all clients is greater than \$100,000, then in certain circumstances, the licensee will be required to hold at least \$50,000 in surplus liquid funds (SLF).

Note: For guidance on the definitions used in calculating the financial requirements under Section E, see RG 166.128 and surrounding material.

- 20 The requirements in Section E are in addition to the requirements in Section B and if applicable Sections C and F of RG 166.

Proposal

- B3** We propose that an AFS licensee who, under the terms of any margin lending facility, or under an arrangement in connection with the facility:
- (a) holds client money in a separate account under Div 2 of Part 7.8; or
 - (b) holds money or other property on trust for a client or is required to do so under reg 7.8.07(2) or otherwise; or
 - (c) has the power to dispose of a client's property;
- will be required to comply with the SLF requirements in Section E of RG 166.

Your feedback

- B3Q1 Do you agree with this proposal? If not, why not?
- B3Q2 For a licensee who deals in a margin lending facility, do you agree that it is necessary to impose a liquidity requirement in addition to the requirements under Section C of RG 166: see Proposal B2.
- B3Q3 Are there any aspects of a margin lending facility that make compliance with this proposal unnecessary or unreasonably onerous?
- B3Q4 Please give details of any additional costs associated with the implementation of this proposal.

Rationale

- 21 The requirements in Section E of RG 166 will generally apply to a licensee who issues a margin lending facility because the licensee will have the

power to dispose of a client's property under the terms of the loan and security arrangements associated with the facility.

- 22 The requirements in Section E of RG 166 may also apply to a licensee who provides advice in relation to a margin lending facility depending on their arrangements with clients.
- 23 The SLF requirement is concerned with ensuring that an AFS licensee has a buffer of liquid assets to safeguard against the risk that client property may be applied to meet the licensee's financial obligations, rather than being held in accordance with its duties to the client. We believe that it is appropriate to apply these requirements to other sub-classes of licensees such as licensees who provide a margin lending financial service.

Application of the adjusted surplus liquid funds requirement to a non-standard margin lending facility

- 24 Under Section F of RG 166, if an AFS licensee incurs liabilities or contingent liabilities by entering into transactions with clients and these liabilities exceed \$100,000, then the licensee must maintain at all times adjusted surplus liquid funds (ASLF) equal to the sum of:
- (a) \$50,000; plus
 - (b) 5% of adjusted liabilities between \$1 million and \$100 million; plus
 - (c) 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding \$100 million.

Note 1: For guidance on the definitions used in calculating the financial requirements under Section F, see RG 166.128 and surrounding material.

Proposal

- B4** We propose to amend the circumstances under RG 166.105 in which the ASLF requirement will apply. This amendment will ensure that if an AFS licensee incurs a liability under the terms of a non-standard margin lending facility to transfer marketable securities to a client, the licensee will be required to comply with the ASLF requirements.

Your feedback

B4Q1 Do you agree with this proposal? If not, why not?

B4Q2 Does the proposal to impose liquidity requirements adequately address the additional risks to consumers inherent in a non-standard margin lending facility? Are there other ways of mitigating this risk?

B4Q3 Are there any aspects of a non-standard margin lending facility that make compliance with this proposal impractical or unreasonably onerous?

B4Q4 Please give details of any additional costs associated with the implementation of this proposal to issuers of non-standard margin lending facilities.

Rationale

- 25 Under a non-standard margin lending facility the client transfers the title to the marketable securities provided for the loan to another person. The marketable securities are not held on trust for the benefit of the client and the client merely has the right, in the circumstances determined under the terms of the facility, to be given equivalent marketable securities. This means that the AFS licensee will need to use its own assets to meet the financial obligations to its clients and it will need to carefully manage its assets and liabilities to enable it to meet its compliance obligations. By contrast, under a standard margin lending facility, the secured property is held by the client or a nominated custodian and is separate from the licensee's assets and therefore does not raise the same concerns regarding the adequacy of its financial resources.
- 26 We consider that the ASLF requirement is appropriate to reflect the additional risks for managing financial resources inherent in a non-standard margin lending facility because it is a way of providing a more comprehensive measure of the availability of liquid assets to the licensee in light of the scale of its operations and various risks to the licensee's financial resources in the current period. The ASLF requirement also provides a trigger to identify AFS licensees at risk of non-compliance. If the licensee's ASLF falls below trigger points then the governing body of the licensee is obliged to certify in writing that they have conducted reasonable enquiries into the licensee's financial position and have no reason to believe that the licensee will not meet its license obligations.

What liabilities should be excluded from the calculation of the adjusted surplus liquid fund requirement?

- 27 Where an AFS licensee agrees to provide credit to another person under any margin lending facility but the credit remains undrawn or it is drawn down in tranches and the aggregate liability to all clients exceeds \$100,000 the licensee may have to comply with the ASLF requirement in Section F of RG 166 as currently drafted.

Proposal

- B5 We propose that an AFS licensee will not have to comply with the ASLF requirement in Section F of RG 166 if the licensee agrees to provide credit under a margin lending facility and that credit remains undrawn.

Your feedback

- B5Q1 Do you agree with this proposal? If not, why not?
- B5Q2 Please give details of any consumer risks created by our proposal. For example, potential costs and risks if the lender fails to make funds available to settle a client transaction.
- B5Q3 Do you think that it would enhance consumer protection if ASIC imposed an obligation that a lender must comply with the ASLF requirement if the credit is not drawn down in the short-term?

Rationale

- 28 We believe that in the circumstances considered at paragraph 27, it is not appropriate to impose the ASLF requirement in Section F of RG 166.
- 29 Imposing the ASLF requirement because a lender has clients with undrawn credit balances may encourage lenders to ensure that their clients are drawn down to their maximum capacity. Imposing the ASLF requirement may therefore encourage clients to be fully geared, which creates greater risks for the client. To avoid this unintended consequence, we propose that Section F of RG 166 should be amended so that a liability consisting of an undrawn credit balance will be disregarded for the purposes of determining whether the lender must comply with the ASLF requirement.

C Regulatory and financial impact

30 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 they will strike an appropriate balance between:

- (a) protecting consumers by ensuring that licensees who provide margin lending financial services have adequate financial resources to conduct their business in compliance with the Corporations Act, a financial buffer should the business fail and incentives to comply through risk of financial loss; and
- (b) implementing financial requirements in a way that is not overly burdensome.

31 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, completing a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).

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

33 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
CO 98/55 (for example)	An ASIC class order (in this example numbered 98/55)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
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 service	Has the meaning given in Pt 7.1, Div 4 of the Corporations Act
licensee	A person who holds an AFS licence
margin lending facility	'margin lending facility' means: <ol style="list-style-type: none"> a standard margin lending facility; or a non-standard margin lending facility; or a facility declared by ASIC to be a margin lending facility. Note: This is the definition in the Bill.
Margin lending financial service	Margin lending financial service is: <ol style="list-style-type: none"> a dealing in a margin lending facility; or the provision of financial product advice in relation to a margin lending facility.

Term	Meaning in this document
non-standard margin lending facility	<p>A non-standard margin lending facility is a facility under the terms of which:</p> <ul style="list-style-type: none"> (a) a natural person (the client) transfers one or more marketable securities, or a beneficial interest in one or more marketable securities (the transferred securities) to another person (the provider); and (b) the provider transfers property to the client (the transferred property) as consideration or security for the transferred securities; and (c) the transferred property is, or may be, applied wholly or partly to acquire one or more financial products, or a beneficial interest in one or more financial products; and (d) the client has a right, in the circumstances determined under the terms of the facility, to be given marketable securities equivalent to the transferred securities; and (e) if the current LVR of the facility exceeds a ratio, percentage, proportion or level (however described) determined under the terms of the facility, then: <ul style="list-style-type: none"> (i) the client becomes required to take action; or (ii) the provider becomes entitled to take action; or (iii) another person becomes required or entitled to take action; <p>in accordance with the terms of the facility to reduce the current LVR of the facility.</p> <p>Note: This is the definition contained in the Bill.</p>
retail client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
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)

Term	Meaning in this document
standard margin lending facility	<p>A standard margin lending facility is a facility under the terms of which:</p> <ul style="list-style-type: none"> (a) credit is, or may be, provided by a person (the provider) to a natural person (the client); and (b) the credit provided is, or may be, applied wholly or partly: <ul style="list-style-type: none"> (i) to acquire one or more financial products, or a beneficial interest in one or more financial products; or (ii) to repay, wholly or partly, another credit facility (within the meaning of subparagraph 765A(1)(h)(i)), the credit provided under which was applied, wholly or partly, to acquire one or more financial products, or a beneficial interest in one or more financial products; and (c) the credit provided is, or must be, secured by property (the secured property); and (d) the secured property consists, or must consist, wholly or partly of one or more marketable securities, or a beneficial interest in one or more marketable securities; and (e) if the current LVR of the facility exceeds a ratio, percentage, proportion or level (however described) determined under the terms of the facility, then: <ul style="list-style-type: none"> (i) the client becomes required to take action; or (ii) the provider becomes entitled to take action; or (iii) another person becomes required or entitled to take action; <p>in accordance with the terms of the facility to reduce the current LVR of the facility.</p> <p>Note: This is the definition contained in the Bill.</p>

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose that an AFS licensee who deals in, or advises on, a margin lending facility will be required to comply with the base level financial requirements set out in Section B of RG 166.</p>	<p>B1Q1 Do you agree with this approach? If not, why not?</p> <p>B1Q2 Are there any aspects of a margin lending facility that make compliance with this proposal unnecessary or unreasonably onerous?</p> <p>B1Q3 Please give details of any additional costs associated with the implementation of this proposal.</p>
<p>B2 We propose to amend Section C of RG 166 so that a licensee who issues a margin lending facility must hold:</p> <p>(a) NTA of 0.5% of the value of the secured property subject to a minimum requirement of \$50,000 and a maximum requirement of \$5 million; and</p> <p>(b) at least \$5 million NTA at all times that:</p> <p>(i) the licensee holds secured property under a margin lending facility; or</p> <p>(ii) any other person holds the secured property under the margin lending facility and that person does not have at least \$5 million NTA unless they are an eligible custodian.</p>	<p>B2Q1 Do you agree with this proposal? If not, why not?</p> <p>B2Q2 Do you think there are any circumstances where this proposal should not apply?</p> <p>B2Q3 Do you agree with the proposal to apply the NTA requirements in proposal B2(a) to all AFS licensees who issue a margin lending facility? If not, why not?</p> <p>B2Q4 Should the NTA requirement in proposal B2(a) and B2(b) apply in addition to the liquidity requirements that we propose to impose on licensees who deal in a margin lending facility: see proposals B3 and B4?</p> <p>B2Q5 Please give details of any costs created by our proposal for both licensees who issue a margin lending facility and consumers. For example, what is the cost of imposing this requirement if it forces an issuer to have to change its existing arrangements for holding secured property under the facility?</p> <p>B2Q6 Are there any aspects of a margin lending facility that make this proposal impractical?</p>
<p>B3 We propose that an AFS licensee who, under the terms of a margin lending facility, or under an arrangement in connection with the facility:</p> <p>(a) holds client money in a separate account under Div 2 of Part 7.8; or</p> <p>(b) holds money or other property on trust for a client or is required to do so under reg 7.8.07(2) or otherwise; or</p> <p>(c) has the power to dispose of a client's property;</p> <p>will be required to comply with the SLF requirements in Section E of RG 166.</p>	<p>B3Q1 Do you agree with this proposal? If not, why not?</p> <p>B3Q2 For a licensee who deals in a margin lending facility, do you agree that it is necessary to impose a liquidity requirement in addition to the requirements under Section C of RG 166: see Proposal B2.</p> <p>B3Q3 Are there any aspects of a margin lending facility that make compliance with this proposal unnecessary or unreasonably onerous?</p> <p>B3Q4 Please give details of any additional costs associated with the implementation of this proposal.</p>

Proposal	Your feedback
<p>B4 We propose to amend the circumstances under RG 166.105 in which the ASLF requirement will apply. This amendment will ensure that if an AFS licensee incurs a liability under the terms of a non-standard margin lending facility to transfer marketable securities to a client, the licensee will be required to comply with the ASLF requirements.</p>	<p>B4Q1 Do you agree with this proposal? If not, why not?</p> <p>B4Q2 Does the proposal to impose liquidity requirements adequately address the additional risks to consumers inherent in a non-standard margin lending facility? Are there other ways of mitigating this risk?</p> <p>B4Q3 Are there any aspects of a non-standard margin lending facility that make compliance with this proposal impractical or unreasonably onerous?</p> <p>B4Q4 Please give details of any additional costs associated with the implementation of this proposal to issuers of non-standard margin lending facilities.</p>
<p>B5 We propose that an AFS licensee will not have to comply with the ASLF requirement in Section F of RG 166 if the licensee agrees to provide credit under a margin lending facility and that credit remains undrawn.</p>	<p>B5Q1 Do you agree with this proposal? If not, why not?</p> <p>B5Q2 Please give details of any consumer risks created by our proposal. For example, potential costs and risks if the lender fails to make funds available to settle a client transaction.</p> <p>B5Q3 Do you think that it would enhance consumer protection if ASIC imposed an obligation that a lender must comply with the ASLF requirement if the credit is not drawn down in the short-term?</p>