



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 215

Assessment and approval of training courses for financial product advisers: Update to RG 146

August 2013

About this paper

This consultation paper sets out ASIC's proposals for changes to the assessment and approval of training courses for financial product advisers set out in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

The purpose of this paper is to seek the views of Australian financial services (AFS) licensees and their representatives and training organisations on our proposals.

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 19 August 2013 and is based on the Corporations Act as at the date of issue.

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.

Contents

The consultation process	4
A Background to the proposals	6
Current regulatory requirements	6
ASIC Training Register	7
Financial product advice training in Australia	8
Overview of our proposals	11
B Our proposals	12
Replacement of ASIC Training Register	12
Guidance on written certification	14
Recognition of foreign qualifications	16
Implementation	17
C Regulatory and financial impact	18
Appendix: Draft Class Order [CO 14/XX] <i>Assessment and approval</i>	
 <i>of training courses for financial product advisers</i>	19
Key terms	23
List of proposals and questions	26

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 ASIC Training Register and the proposed changes to the assessment and approval of training courses. 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 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 30 September 2013 to:

Nicole Chew
Lawyer, Financial Advisers
Australian Securities and Investments Commission
Level 5, 100 Market Street Sydney NSW 2000
facsimile: 02 9911 2414
email: policy.submissions@asic.gov.au

What will happen next?

Stage 1	19 August 2013	ASIC consultation paper released
Stage 2	30 September 2013	Comments due on the consultation paper
Stage 3	April 2014	Updated Regulatory Guide 146 <i>Licensing: Training of financial product advisers</i> (RG 146) released Commencement of draft Class Order [CO 14/XX] <i>Assessment and approval of training courses for financial product advisers</i>

A Background to the proposals

Key points

This section:

- explains the current regulatory requirements for the training of financial product advisers (see paragraphs 1–5);
- explains the function of the ASIC Training Register (see paragraphs 6–9), and the class no-action position in Media Release (13-149MR) *ASIC consults on enhancements to training standards* (see paragraphs 10–11);
- gives an overview of the regulatory regime for the provision of financial product advice training (see paragraphs 12–22); and
- gives an overview of our proposals in relation to the ASIC Training Register and related guidance (see paragraphs 23–25).

Current regulatory requirements

- 1 Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146) sets out the minimum knowledge requirements, skill requirements (for some financial product advisers) and educational level requirements (collectively, the ‘training standards’) for natural persons who provide financial product advice in Australia (advisers). All advisers must, as a matter of law, comply with these training standards unless they fall within certain limited exceptions. The training standards vary depending on the adviser’s activities. The obligation to comply with the training standards is established through the interaction of a number of requirements.
- 2 The *Corporations Act 2001* (Corporations Act) requires Australian financial services (AFS) licensees to:
 - (a) comply with the conditions on their licence (s912A(1)(b));
 - (b) maintain competence to provide the financial services covered by their licence (s912A(1)(e)); and
 - (c) ensure that their representatives are adequately trained and competent to provide those financial services (s912A(1)(f)).
- 3 In general, AFS licence conditions require licensees who are authorised to provide financial product advice to retail clients to ensure that they (if the licensee is a natural person) and all natural persons who provide financial product advice on their behalf:

- (a) have completed relevant training courses at an appropriate level as approved by ASIC in writing; or
- (b) have been individually assessed as competent by an assessor approved by ASIC in writing (see conditions 7(a) and 7(b) of Pro Forma 209 *Australian financial services licence conditions* (PF 209)).

Note: In this paper, 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).

- 4 There are limited exceptions and alternatives to the requirement in paragraph 3. For example, our policy in RG 146 and the AFS licence conditions in PF 209 do not require training courses for financial product advice on basic deposit products, facilities for making non-cash payments that are related to a basic deposit product or First Home Saver Accounts issued by an authorised deposit-taking institution (ADI) to be assessed by an authorised assessor or listed on the ASIC Training Register. These courses may be assessed by licensees as meeting the training standards: see condition 7(c) of PF 209. Our policy on these courses will remain unchanged and the proposals in this paper do not apply to these courses.
- 5 RG 146 provides guidance on the relevant training standards, how courses are assessed as meeting the training standards, authorised assessors and ongoing education requirements for advisers. We are currently consulting on enhancements to the training standards: see Consultation Paper 212 *Licensing: Training of financial product advisers—Update to RG 146* (CP 212).

ASIC Training Register

- 6 The ASIC Training Register is a register of approved training courses and assessment services that met the criteria in RG 146. It was the means by which AFS licensees could meet conditions 7(a) and 7(b) of PF 209: see paragraph 3.
- 7 Courses and assessment services on the ASIC Training Register were taken to have been approved by ASIC in writing.
- 8 The ASIC Training Register only lists training courses relevant to initial training. It does not cover ongoing education requirements under Section F of RG 146.
- 9 On 24 September 2012, we put the ASIC Training Register under review.

Class no-action position

- 10 In Media Release (13-149MR) *ASIC consults on enhancements to training standards*, we provided a class no-action position for the period of time

during which the ASIC Training Register is under review. Until we have implemented a mechanism to replace the ASIC Training Register, we will not take any action against an AFS licensee for breach of conditions 7(a) or 7(b) of PF 209 provided that the licensee is satisfied that they (if the licensee is a natural person) and each individual who provides financial product advice on behalf of the licensee has:

- (a) on or before 24 September 2012:
 - (i) completed training courses listed on the ASIC Training Register at an appropriate level that are relevant to their functions and tasks; or
 - (ii) been individually assessed as competent by an authorised assessor listed on the ASIC Training Register; or
- (b) completed training courses at an appropriate level relevant to their functions and tasks, which an authorised assessor (as defined in RG 146) has approved as meeting the relevant training standards in RG 146; or
- (c) been individually assessed as competent by an authorised assessor (as defined in RG 146).

- 11 This class no-action position is given in accordance with our policy in Regulatory Guide 108 *No-action letters* (RG 108)—that is, it is not a legal opinion, but is an expression of regulatory intent. For further information, see RG 108 and, in particular, RG 108.33.

Financial product advice training in Australia

- 12 To help understand the proposals in this paper, this section gives an overview of how financial product advice training in Australia is delivered and regulated, and how this intersects with our guidance on training standards in RG 146.

Delivery of training courses

- 13 Generally, training courses on financial product advice are delivered by two types of education organisation:
- (a) registered training organisations (RTOs), which provide training in the vocational educational and training (VET) sector; and
 - (b) self-accrediting organisations (SAOs), which deliver education in the higher education system.

Note: We intend to change the title and definition of SAO to ‘higher education provider’: see paragraph 22. However, for the purpose of this paper, we will continue to use the current terminology.

- 14 The higher education system comprises both public and private universities, Australian branches of overseas universities, and other higher education providers with and without self-accrediting authority.
- 15 Our policy in RG 146 also accommodates training courses developed by AFS licensees in partnership with RTOs or SAOs, or assessed by these organisations as meeting the training standards: see RG 146.64.

The role of authorised assessors

- 16 RG 146 introduces the concept of ‘authorised assessors’. Authorised assessors carry out assessments of training courses and individuals to ensure that they meet the training standards in RG 146. This was a prerequisite to being listed on the ASIC Training Register: see RG 146.63–RG 146.77.
- 17 Under RG 146, the role of an authorised assessor can be undertaken by:
- (a) an RTO;
 - (b) an SAO; or
 - (c) a professional or industry association relevant to the financial services industry that has been accredited by ASIC.
- 18 The role of an RTO or SAO when acting as an authorised assessor is to:
- (a) benchmark their own training courses or those of AFS licensees or other training providers against the knowledge requirements and the skill requirements in RG 146;
 - (b) examine their own processes and procedures or those of AFS licensees or other training providers to assess whether the courses can successfully meet the training standards; and/or
 - (c) assess an individual adviser against the training standards.
- 19 In effect, often a training course provider and an authorised assessor will be one and the same organisation.
- 20 A professional or industry association that is an authorised assessor carries out similar functions as set out in paragraph 18, with the exception that it cannot assess its own courses or courses in which it has a financial or other interest: see RG 146.97 and Appendix D of RG 146.

Regulation of authorised assessors and training course providers

- 21 There are five different regulators with oversight of authorised assessors and training course providers (ASQA, VRQA, TAC, TEQSA and ASIC): see Table 1.

Table 1: Regulation of authorised assessors and training course providers

Authorised assessor	Regulator	What is regulated
Registered training organisations (RTOs) Note: The authorised assessor and training course provider in the VET sector are often one and the same organisation.	Australian Skills Quality Authority (ASQA)	RTOs in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia and Tasmania (together, the 'ASQA states and territories'), and RTOs in Victoria and Western Australia that offer courses to overseas students and/or offer courses to students (including through offering courses online) in one of the ASQA states and territories
	Victorian Registration and Qualifications Authority (VRQA)	RTOs that enrol: <ul style="list-style-type: none"> • only domestic students; and • students in Victoria only, or in Victoria and Western Australia only
	Training and Accreditation Council (TAC)	RTOs that enrol: <ul style="list-style-type: none"> • only domestic students; and • students in Western Australia only, or in Victoria and Western Australia only
Self-accrediting organisations (SAOs) Note: The authorised assessor and training course provider in the higher education sector are often one and the same organisation.	Tertiary Education Quality and Standards Agency (TEQSA)	All SAOs
Professional or industry associations accredited by ASIC Note: These associations are authorised to assess courses delivered by SAOs and RTOs that are not associated with the professional or industry association.	ASIC	All ASIC-accredited professional or industry associations

Note: As the proposals in this paper only relate to the function of the ASIC Training Register and the relevant training courses listed on the ASIC Training Register, this table does not take into account the exemptions we provide to AFS licensees in relation to training courses for financial product advice on basic deposit products, facilities for making non-cash payments that are related to a basic deposit product or First Home Saver Accounts issued by an ADI: see paragraph 4.

Self-accrediting organisations

22

We have been informed by TEQSA that our current definition of SAO does not incorporate all of the possible higher education providers in Australia. We intend to amend the definition of SAO to address this. We also intend to change the name of this term to 'higher education provider' to reflect the amended definition.

Overview of our proposals

- 23 The financial services industry has had a significant period of time in which to become familiar with the training courses available in relation to the training standards in RG 146. We are not the regulator of training courses in Australia and this is not our role or function. The regulators listed in Table 1 that regulate training course providers in the VET sector and the higher education sector have expertise in education and training and are better placed than ASIC to perform this role.
- 24 We are therefore proposing in this paper to:
- (a) replace the ASIC Training Register with a class order (see draft Class Order [CO 14/XX] *Assessment and approval of training courses for financial product advisers* (draft [CO 14/XX]) in the appendix to this paper), which sets out how AFS licensees can meet their obligations in PF 209 (see proposal B1(a));
 - (b) retain an archived ASIC Training Register for the period up until 24 September 2012 (see proposal B1(b));
 - (c) provide guidance in an updated RG 146 on our expectation that authorised assessors will provide written certification to students of training courses that meet the training standards in RG 146 (see proposal B2); and
 - (d) remove the recognition of foreign qualifications from RG 146, with the exception of our mutual recognition of New Zealand advisers (see proposal B3).
- 25 We are also proposing that draft [CO 14/XX] will commence at the same time as our proposals on written certification and recognition of foreign qualifications. This is expected to be in April 2014, with the release of an updated RG 146: see proposal B4.

B Our proposals

Key points

This section sets out our proposals to:

- replace the ASIC Training Register with draft [CO 14/XX] (see proposal B1(a));
- retain an archived ASIC Training Register (see proposal B1(b));
- provide guidance on our expectation that authorised assessors will provide written certification to students of training courses that meet the training standards in RG 146 (see proposal B2); and
- remove the recognition of foreign qualifications, with the exception of our mutual recognition of New Zealand advisers, from RG 146 (see proposal B3).

We are proposing that draft [CO 14/XX] will commence in April 2014: see proposal B4.

Replacement of ASIC Training Register

Proposal

B1 We propose to:

- (a) replace the ASIC Training Register with draft [CO 14/XX] to permit:
 - (i) RTOs and SAOs to self-assess their own courses as authorised assessors; and
 - (ii) RTOs, SAOs and professional or industry associations accredited by ASIC to assess courses delivered by other training course providers; and
- (b) retain an archived ASIC Training Register as a reference tool for AFS licensees and advisers who have completed courses that were on the ASIC Training Register on 24 September 2012.

Your feedback

- B1Q1 Do you agree with our proposal to replace the ASIC Training Register with draft [CO 14/XX]? If not, why not?
- B1Q2 Do you agree that we should retain an archived ASIC Training Register as a reference tool? If not, why not?
- B1Q3 Do you consider that the proposal to replace the ASIC Training Register with draft [CO 14/XX] will impose additional costs on advisers, AFS licensees, training course providers or others? Please provide specific details.

B1Q4 Do you consider that the proposal to replace the ASIC Training Register with draft [CO 14/XX] will result in benefits for consumers, training course providers or others? Please provide details.

Rationale

- 26 The ASIC Training Register was established around the time of the introduction of the financial services reform regime in Ch 7 of the Corporations Act. The ASIC Training Register was designed to assist AFS licensees and training course providers in understanding which courses met the requirements of our policy in RG 146.
- 27 We consider that it is time that ASIC step back from the role of approving training courses in relation to financial product advice, for the reasons set out in paragraph 23.
- 28 In addition, we note that the ASIC Training Register did not add the value or quality assurance that it was perceived to add. Assessment of training courses and authorised assessors who could conduct individual assessments was conducted at a point in time and ‘on the papers’ only—that is, whether a course mapped against the training standards in RG 146 was determined through a review of the course outline and other documents submitted to ASIC. No audits or site visits were conducted. This meant that the quality assurance process was limited.
- 29 Our policy in RG 146 already requires training courses to be assessed by authorised assessors as well as being listed on the ASIC Training Register. The proposal to no longer maintain the ASIC Training Register removes a layer of administration for training course providers.
- 30 Provided that training course providers are willing to provide certification as envisaged (see proposal B2), there should be no change to the compliance requirements for AFS licensees.

Operation of draft [CO 14/XX]

- 31 Under draft [CO 14/XX] conditions 7(a) and 7(b) of PF 209 are still relevant to advisers who have, on or before 24 September 2012:
- (a) completed training courses listed on the ASIC Training Register that meet the training standards that are relevant to the functions and tasks performed by the adviser; or
 - (b) been individually assessed as competent by an authorised assessor listed on the ASIC Training Register.
- 32 That is, AFS licensees can determine whether these advisers have completed a course approved by ASIC by reference to the ASIC Training Register. The ASIC Training Register will still be available on our website for these

purposes and, up to 24 September 2012, courses on the ASIC Training Register are taken to be approved by ASIC in writing for the period of their registration.

- 33 However, the effect of draft [CO 14/XX] is that the ASIC Training Register will not be used to verify the training completed by other advisers—that is:
- (a) advisers who complete training courses that meet the training standards on or after 25 September 2012 that are relevant to the functions and tasks they perform; or
 - (b) advisers who are individually assessed as competent on or after 25 September 2012.
- 34 AFS licensees will need to determine whether these advisers are adequately trained and competent by determining whether they have:
- (a) completed training courses that have been assessed by an authorised assessor as meeting the relevant training standards; or
 - (b) been individually assessed by an authorised assessor as competent because they meet the training standards.
- 35 This means that the ASIC Training Register should no longer be used by AFS licensees to verify courses or individual assessments completed on or after 25 September 2012. No new courses will be registered and the ASIC Training Register will not be maintained.

Archived version of the ASIC Training Register

- 36 We are proposing to keep the ASIC Training Register as an archived reference tool for AFS licensees to use to verify courses completed on or before 24 September 2012. Based on feedback in informal consultation, it will be clearly marked as such on our website.

Guidance on written certification

Proposal

- B2** We propose to provide guidance in an updated RG 146 on our expectation that authorised assessors will provide written certification to students of their assessment of training courses against the training standards in RG 146.

Your feedback

- B2Q1** Do you think that authorised assessors will provide this certification? If not, why not?
- B2Q2** What are other means by which AFS licensees could verify that training courses have been assessed by authorised assessors as meeting the training standards?

B2Q3 Do you consider that written certification will impose additional costs on AFS licensees, training course providers, advisers or consumers? If yes, please provide specific details on how this is calculated.

B2Q4 Do you consider that written certification will benefit AFS licensees, training course providers, advisers or consumers? Please provide details.

Rationale

- 37 We do not consider that providing written certification would impose any additional burden on authorised assessors as, in effect, the benchmarking against the training standards in RG 146 already occurs. Importantly, this proposal does not require authorised assessors to certify the competency of advisers. Instead, authorised assessors would certify only that courses meet the training standards in RG 146.
- 38 AFS licensees must:
- (a) consider what type of advice an adviser will provide (i.e. general advice or personal advice) and the types of financial products advised on (Tier 1 products or Tier 2 products);
 - (b) identify the appropriate training courses required to meet the relevant training standards; and
 - (c) verify that the training undertaken is appropriate to the advice being provided.
- 39 Based on feedback from informal consultation, we understand there is a concern about record-keeping requirements if students are provided with written certification, especially if the relevant RTO is no longer registered or operating. However, we note RTOs have an obligation to forward to ASQA a digital copy of the records for each student who was enrolled in a course during the period of registration if:
- (a) the RTO voluntarily withdraws its registration;
 - (b) its registration has lapsed;
 - (c) its registration is not renewed; or
 - (d) its registration is cancelled by ASQA.
- The RTO must do this within 30 days of its registration expiring, or of ceasing to operate.
- 40 For SAO record keeping, there are established practices that relate to transcripts and conferral of higher education awards.

Recognition of foreign qualifications

Proposal

B3 We propose to:

- (a) remove the recognition of foreign qualifications, with the exception of our mutual recognition of New Zealand advisers, from an updated RG 146; and
- (b) revise our policy in RG 146 to acknowledge that advisers who hold a foreign qualification may apply for:
 - (i) recognition of prior learning in relation to Australian training courses for up to 50% of the course requirements; or
 - (ii) an exemption that permits an adviser who holds a foreign qualification to undergo an individual assessment without necessarily holding the requisite five of the past eight years experience outlined in RG 146.

Feedback

- B3Q1 Do you agree with our proposal to remove the recognition of foreign qualifications from RG 146? If not, why not?
- B3Q2 Do you agree with our proposed policy change on foreign qualifications in proposal B3(b) to permit advisers to apply for recognition of prior learning or for an exemption from the experience requirement? If not, why not?
- B3Q3 Do you currently rely on the recognition of foreign qualifications in RG 146? If you are an AFS licensee, please provide details of the number of advisers who rely on this policy.
- B3Q4 Will training course providers provide recognition of prior learning in the manner proposed in proposal B3(b)(i)? Please provide details.
- B3Q5 Do you consider that this proposal will impose additional costs on AFS licensees, advisers or training course providers? Please provide details.
- B3Q6 Do you consider that this proposal will benefit consumers by improving the quality of advice provided? Please provide details.

Rationale

- 41 Our current policy on foreign qualifications is that we will generally accept foreign qualifications relevant to the activities the adviser undertakes. Advisers need to obtain evidence that a course has been recognised by a relevant overseas regulatory body (e.g. the Monetary Authority of Singapore): see RG 146.83.
- 42 Advisers with foreign qualifications still need to complete a relevant course that meets the requirements of the training standards in RG 146 which

addresses Australian legal requirements (e.g. obligations under the Corporations Act and relevant codes of conduct, and knowledge of other relevant Australian legislation, including taxation and superannuation): see RG 146.85.

- 43 To improve the quality of advice, it is important that advisers who are trained overseas meet the equivalent standards for Australian training courses, including in relation to course content.
- 44 Our current policy needs to be clarified because our currently stated policy may allow those who are not appropriately trained to provide financial product advice in Australia. Our proposal on the recognition of prior learning should ensure that advisers with foreign qualifications are not required to complete duplicate and unnecessary training.
- 45 Therefore, we are proposing to remove the recognition of foreign qualifications from RG 146, with the exception of our recognition of New Zealand advisers: see RG 146.86. In contrast to other countries, New Zealand has a formal mutual recognition agreement with Australia under the *Trans-Tasman Mutual Recognition Act 1997*.

Implementation

Proposal

B4 We propose that draft [CO 14/XX] will commence in April 2014.

Your feedback

- B4Q1 Do you agree with the proposed commencement date of April 2014? If not, why not?
- B4Q2 Does the proposed commencement date provide enough time to provide written certification to students? Please provide details on the amount of time required to implement the certification requirement.

Rationale

- 46 We are proposing to make draft [CO 14/XX] in April 2014. We consider this will allow training course providers sufficient time to provide the written certification referred to in proposal B2. When the class order is made, the class no-action position set out in paragraphs 10–11 will cease to apply. Our other proposals would also be implemented as part of our update to RG 146—expected to be in April 2014.

C 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 they will strike an appropriate balance between:
- (a) providing a process for ensuring that training courses for financial product advisers are appropriately assessed and approved; and
 - (b) providing guidance for how AFS licensees can meet their obligations in relation to the required training for advisers who provide financial product advice.
- 48 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 49 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is 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 RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Appendix: Draft Class Order [CO 14/XX] Assessment and approval of training courses for financial product advisers

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 926A(2)(c) — Declaration

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraph 926A(2)(c) of the *Corporations Act 2001* (the Act).

Title

2. This instrument is ASIC Class Order [CO 14/*****].

Commencement

3. This instrument commences on the day it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (FRLI) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of **register**). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Part 7.6 (other than Divisions 4 and 8) of the Act applies in relation to all persons as if that Part were modified or varied by, after subsection 912A, inserting:

“Section 912AC Training requirements for advisers

- (1) This section applies to a financial services licensee that holds a licence to which both of the following apply:
 - (a) the licence covers the provision of financial product advice to retail clients;
 - (b) a condition is imposed on the licence to the effect that the licensee must ensure that any natural person who provides financial product advice to retail clients on behalf of the licensee (including the licensee if he or she is a natural person):

- (i) has completed training courses at an appropriate level that are or have been approved by ASIC in writing that are relevant to functions and tasks performed by the person; or
 - (ii) has been individually assessed as competent by an assessor that has been approved by ASIC in writing.
- (2) Despite subsection (1), this section does not apply to a financial services licensee to the extent that the licensee (if he or she is a natural person), or a person who provides financial product advice to retail clients on behalf of the licensee had, before the commencement of this section:
 - (a) completed training courses included on the training register that meet the training standards that are relevant to the functions and tasks performed by the person; or
 - (b) been assessed by an assessor included on the training register as meeting the training standards that are relevant to the functions and tasks performed by the person.
- (3) A financial services licensee that complies with subsection (4) is taken to comply with a condition imposed on the licence of the kind specified in paragraph (1)(b).
- (4) The financial services licensee must ensure that, having regard to the type of financial product advice that may be provided and the kinds of financial products to which the advice may relate, any natural person who provides financial product advice to retail clients on behalf of the licensee (including the licensee if the licensee is a natural person):
 - (a) has completed training courses that have been assessed by an authorised assessor as meeting the training standards; or
 - (b) has been individually assessed by an authorised assessor as competent because the person meets the training standards; or
 - (c) has completed a foreign qualification accepted by ASIC.
- (5) In this section:

accredit means a process for approval by an accrediting authority of a training course, leading to a qualification recognised under the Australian Qualifications Framework using the quality assurance standards for the relevant education and training sector.

accrediting authority means a body that is authorised under legislation or has been given responsibility to:

- (a) accredit training courses leading to qualifications recognised under the Australian Qualifications Framework; or
- (b) register institutions to issue qualifications recognised under the Australian Qualifications Framework.

Australian Qualifications Framework means the national policy for regulated qualifications in Australian education and training as in force on 1 January 2013.

authorised assessor means:

- (a) an Australian university or other higher education provider, established by or under legislation, registered by an accrediting authority and having authority to accredit and issue their own qualifications in the fields of finance, commerce or economics;
- (b) an Australian university or other higher education provider, established by or under legislation, registered by an accrediting authority and providing training courses in the fields of finance, commerce or economics accredited by an accrediting authority;
- (c) a vocational education and training organisation registered by an accrediting authority, and having a defined scope of registration, under legislation, and having authority to issue a qualification in the fields of finance, commerce or economics, recognised under the Australian Qualifications Framework;
- (d) a professional or industry association which has been given written notice by ASIC that specifies that it is an authorised assessor for the purposes of this section.

foreign qualification accepted by ASIC means the foreign qualification that satisfies all conditions set out in paragraph RG 146.86 in Section D of ASIC Regulatory Guide 146 – Licensing: Training of Financial Product Advisers as published in July 2012.

training course means any education or training course, program, subject, unit or module of varying duration or a combination of education or training subjects, units or modules on a similar topic or an education or training course or program delivered by various means.

training register means the register on the ASIC website at <http://www.asic.gov.au> and designated as the ASIC Training Register.

training standards means the minimum standards of knowledge and skill at the appropriate education level set out in Section C (and Appendices A and B) of ASIC Regulatory Guide 146 – Licensing: Training of Financial Product Advisers as published in July 2012.”

Dated this ____ day of April 2014

[DRAFT CONSULTATION VERSION ONLY]

Signed by Grant Moodie
as a delegate of the Australia Securities and Investments Commission

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution
adviser	A financial product adviser
AFS licence	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 Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
'approved course' and 'approved training course'	A training course that has been assessed by an authorised assessor
ASIC	Australian Securities and Investments Commission
ASIC Training Register	The register that contains details of training courses and individual assessment services that were approved by authorised assessors as meeting the training standards in RG 146 until 24 September 2012
ASQA	Australian Skills Quality Authority
ASQA states and territories	Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia and Tasmania
authorised assessor	An organisation that is recognised by ASIC to assess a training course against ASIC's knowledge, skill and educational level requirements ('training standards'), or to carry out an assessment of an individual's competence
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001

Term	Meaning in this document
financial product	<p>A facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); and • 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	<p>A recommendation or a statement of opinion, or a report of either of those things, that:</p> <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. <p>This does not include anything in an exempt document</p> <p>Note: This is a definition contained in s766B(1) of the Corporations Act.</p>
financial product adviser	<p>A natural person who provides financial product advice to a retail client and is:</p> <ul style="list-style-type: none"> • an AFS licensee; or • a representative of an AFS licensee
general advice	<p>Financial product advice that is not personal advice</p> <p>Note: This is a definition contained in s766B(4) of the Corporations Act.</p>
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> • the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or • a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
PF 209	<p><i>Pro Forma 209 Australian financial services licence conditions</i></p>
reg 7.6.04 (for example)	<p>A regulation of the Corporations Regulations (in this example numbered 7.6.04)</p>
registered training organisation (RTO)	<p>An organisation that has undergone a registration process conducted by a state/territory recognition authority and is an accredited training and assessment organisation</p>

Term	Meaning in this document
representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> • an authorised representative of the licensee; • an employee or director of the licensee; • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
RG 146 (for example) means	An ASIC regulatory guide (in this example numbered 146)
s912A (for example)	A section of the Corporations Act (in this example numbered 912A), unless otherwise specified
self-accrediting organisation (SAO)	A university or higher education institution that has undergone a statutory registration process
TAC	Training and Accreditation Council
TEQSA	Tertiary Education Quality and Standards Agency
Tier 1 products	All financial products except those listed under Tier 2
Tier 2 products	General insurance products, except for personal sickness and accident (as defined in reg 7.1.14); consumer credit insurance (as defined in reg 7.1.15); basic deposit products; non-cash payment products; and FHSA deposit accounts
training course	<p>Means:</p> <ul style="list-style-type: none"> • any education or training course, program, subject, unit or module of varying duration; • a combination of education or training subjects, units or modules on a similar topic; or • an education or training course or program delivered by various methods
training standards	Minimum sets of knowledge and, where personal advice is given, skill requirements, which are assessed at particular educational levels depending on the type of financial product for which advice is provided, and set out in RG 146
VET	Vocational education and training
VRQA	Victorian Registration and Qualifications Authority

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to:</p> <p>(a) replace the ASIC Training Register with draft [CO 14/XX] to permit:</p> <p>(i) RTOs and SAOs to self-assess their own courses as authorised assessors; and</p> <p>(ii) RTOs, SAOs and professional or industry associations accredited by ASIC to assess courses delivered by other training course providers; and</p> <p>(b) retain an archived ASIC Training Register as a reference tool for AFS licensees and advisers who have completed courses that were on the ASIC Training Register on 24 September 2012.</p>	<p>B1Q1 Do you agree with our proposal to replace the ASIC Training Register with draft [CO 14/XX]? If not, why not?</p> <p>B1Q2 Do you agree that we should retain an archived ASIC Training Register as a reference tool? If not, why not?</p> <p>B1Q3 Do you consider that the proposal to replace the ASIC Training Register with draft [CO 14/XX] will impose additional costs on advisers, AFS licensees, training course providers or others? Please provide specific details.</p> <p>B1Q4 Do you consider that the proposal to replace the ASIC Training Register with draft [CO 14/XX] will result in benefits for consumers, training course providers or others? Please provide details.</p>
<p>B2 We propose to provide guidance in an updated RG 146 on our expectation that authorised assessors will provide written certification to students of their assessment of training courses against the training standards in RG 146.</p>	<p>B2Q1 Do you think that authorised assessors will provide this certification? If not, why not?</p> <p>B2Q2 What are other means by which AFS licensees could verify that training courses have been assessed by authorised assessors as meeting the training standards?</p> <p>B2Q3 Do you consider that written certification will impose additional costs on AFS licensees, training course providers, advisers or consumers? If yes, please provide specific details on how this is calculated.</p> <p>B2Q4 Do you consider that written certification will benefit AFS licensees, training course providers, advisers or consumers? Please provide details.</p>

Proposal	Your feedback
<p>B3 We propose to:</p> <ul style="list-style-type: none"> (a) remove the recognition of foreign qualifications, with the exception of our mutual recognition of New Zealand advisers, from an updated RG 146; and (b) revise our policy in RG 146 to acknowledge that advisers who hold a foreign qualification may apply for: <ul style="list-style-type: none"> (i) recognition of prior learning in relation to Australian training courses for up to 50% of the course requirements; or (ii) an exemption that permits an adviser who holds a foreign qualification to undergo an individual assessment without necessarily holding the requisite five of the past eight years experience outlined in RG 146. 	<p>B3Q1 Do you agree with our proposal to remove the recognition of foreign qualifications from RG 146? If not, why not?</p> <p>B3Q2 Do you agree with our proposed policy change on foreign qualifications in proposal B3(b) to permit advisers to apply for recognition of prior learning or for an exemption from the experience requirement? If not, why not?</p> <p>B3Q3 Do you currently rely on the recognition of foreign qualifications in RG 146? If you are an AFS licensee, please provide details of the number of advisers who rely on this policy.</p> <p>B3Q4 Will training course providers provide recognition of prior learning in the manner proposed in proposal B3(b)(i)? Please provide details.</p> <p>B3Q5 Do you consider that this proposal will impose additional costs on AFS licensees, advisers or training course providers? Please provide details.</p> <p>B3Q6 Do you consider that this proposal will benefit consumers by improving the quality of advice provided? Please provide details.</p>
<p>B4 We propose that draft [CO 14/XX] will commence in April 2014.</p>	<p>B4Q1 Do you agree with the proposed commencement date of April 2014? If not, why not?</p> <p>B4Q2 Does the proposed commencement date provide enough time to provide written certification to students? Please provide details on the amount of time required to implement the certification requirement.</p>