



ASIC

Australian Securities & Investments Commission

REPORT 176

Response to submissions on CP 108 Margin lending: Training of financial advisers

December 2009

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 108 *Margin lending: Training of financial advisers* (CP 108) and details our responses in relation to those issues.

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.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 146 *Licensing: Training of financial advisers* (RG 146).

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A Overview/consultation process

- 1 Under the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* (the Act), margin lending facilities are included as financial products under Ch 7 of the *Corporations Act 2001* (Corporations Act). In Consultation Paper 108 *Margin lending: Training of financial advisers* (CP 108), we sought feedback on proposals in relation to the training standards advisers will need to meet if they provide advice on margin lending facilities to retail clients.
- 2 CP 108 set out proposals in two areas:
 - (a) firstly, how margin lending facilities should be categorised for the purposes of the Australian financial services (AFS) licensee training requirements, as set out in Regulatory Guide 146 *Licensing: Training of financial advisers* (RG 146)—i.e. whether they should be Tier 1 or Tier 2—and, consequently, what training requirements will apply to advisers if they advise on margin lending products; and
 - (b) when the training requirements should begin to apply to advisers who advise on margin lending products.

CP 108 also included an attached draft version of RG 146 updated to include these proposals.
- 3 This report highlights the key issues that arose out of the submissions received to CP 108 and our responses to those issues.
- 4 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 108. We have limited this report to the key issues.
- 5 For a list of the non-confidential respondents to CP 108, see Appendix 1. Copies of the submissions are on the ASIC website at www.asic.gov.au/cp under CP 108.

Responses to consultation

- 6 We received 12 responses to CP 108 from a variety of sources including training providers, law firms and relevant industry bodies. We are grateful to respondents for taking the time to send us their comments.
- 7 There was widespread support for our proposal to categorise margin lending facilities as Tier 1 products, and overall, respondents considered that the likely costs of implementing the proposal would not be disproportionate to the potential benefit for retail investors in ensuring that advisers complete training to the more advanced level. As a result of this feedback, we have

proceeded with implementing our proposals to categorise margin lending facilities as Tier 1 products: see Section B of this report and the final updates to RG 146.

- 8 Respondents were also generally supportive of our proposal to allow advisers 12 months from the commencement of the new legislation to complete the training requirements, but noted that there is some chance that this period of time may not be sufficient. Based on this feedback, we have allowed a longer transition period, that is, 18 months from the commencement of the new legislation: see Section C and the final updates to RG 146. Some respondents also provided additional information on issues that may arise during the transitional period, which proved extremely helpful: these issues are discussed further in Section C.

B Categorisation of margin lending facilities

Key points

Respondents strongly supported our proposal to categorise margin lending facilities as Tier 1 products', and therefore, we have implemented our proposals in the final updates to RG 146.

Some respondents queried whether the making of a assessing suitability under the new 'responsible lending conduct' requirements would involve the giving of personal financial advice. Under the new regulation of margin lending, an issuer that conducts suitability assessments as part of the process of issuing margin lending facility products, but that does not provide any financial advice to clients, will not require a specific AFS licence authorisation to give financial product advice.

Should margin lending facilities be categorised as Tier 1 products?

Appropriateness of Tier 1 standard

- 9 On the whole, respondents were very supportive of our proposal to categorise margin lending facilities as Tier 1 products. Respondents felt that margin lending facilities are sufficiently complex and market-linked to justify the imposition of the more advanced Tier 1 training standards.
- 10 Respondents were also generally supportive of the new specialist knowledge training requirements for margin lending we set out in a draft updated version of RG 146 attached to the consultation paper. A few respondents suggested additional content for the specialist knowledge requirements.
- 11 One respondent did not support the approach of treating margin lending as a stand-alone area of knowledge, and argued instead that margin lending training should be undertaken as part of extended training courses on other related areas of knowledge, such as securities and managed investments.

ASIC's response

As a result of this feedback, we have implemented our proposals to categorise margin lending facilities as Tier 1 products. We have taken respondents' proposed additional content into account in finalising the specialist knowledge requirements for margin lending: see new Appendix A2.10 of RG 146.

In relation to whether margin lending should be treated as a stand-alone area of knowledge, or whether training should be given as an extension of other knowledge areas, we think that margin lending facilities have some unique features (e.g. the

provision of credit, margin calls), which necessitate specific training. The requirements of RG 146 mean that advisers will also have to complete the training requirements relating to products acquired through the margin lending facility before giving advice on this, ensuring that advisers have a well-rounded knowledge of the area in which they provide advice.

Costs for new and existing advisers

- 12 A number of respondents provided us with useful information in relation to the likely costs associated with training advisers to the Tier 1 level. Respondents submitted that costs may arise in areas such as:
- training course fees;
 - time off work for each adviser to complete the training; and
 - general implementation costs for updating training policies and procedures, and upgrading IT systems.
- 13 In general, respondents considered that the likely costs of implementing the proposal would not be disproportionate to the potential benefit for retail investors in ensuring that advisers complete training to the more advanced level.
- 14 One respondent submitted that, for advisers who are already advising on margin lending, and who have built up significant knowledge in the area, it is too onerous to require them to undertake a specialist knowledge training course at the Tier 1 level, and these advisers should be subject to much lighter requirements.

ASIC's response

We acknowledge that meeting the training requirements for margin lending will involve some costs to affected licensees. However, we think that the costs involved in meeting the training requirements we have set are justified by the need to ensure that retail clients receive advice on margin lending to the same standard as they would any other comparable financial product.

The Government has made a policy decision to apply an investor protection regime to margin lending by requiring AFS licensing. All AFS licensees are required to be sufficiently competent to provide the financial services covered by their licence, and to ensure that their representatives are adequately trained; therefore, we have updated our policy in RG 146 to provide guidance to advisers on how they can meet the standards set by the law in relation to margin lending.

For existing advisers, we think that the policy settings in RG 146 are already sufficiently flexible to ensure that the training requirements will not be excessively burdensome.

If experienced advisers feel that they already have sufficient experience in margin lending facilities (i.e. five years' experience

in the past eight years), or that they have already completed a course of sufficient standard, they can apply to be individually assessed as already meeting the training requirements by an authorised assessor: see RG 146.71.

In addition, existing advisers who have completed a training course that is not listed on the ASIC Training Register, but which they believe meets the knowledge requirements for margin lending, may apply to have the course accredited by an authorised assessor: see RG 146.75.

If successful through one of these processes, they will be deemed to have met the training requirements for margin lending, and will not need to undertake a new training course. Given the flexibility already inherent in RG 146, we will not apply lighter training requirements to all existing advisers.

We may also apply some flexibility in backdating the approval of training courses: see Section C.

Does assessing suitability involve giving personal financial advice?

- 15 Some respondents expressed concern about the new ‘responsible lending conduct’ requirements to be included in an amended Ch 7 of the Corporations Act, under which issuers will themselves need to make an assessment as to whether a margin lending facility will be unsuitable for a client if issued, unless they are able to rely on a recommendation contained in a Statement of Advice: see Sch 1 item 12 of the Act.
- 16 Specifically, these respondents were concerned that, in making a suitability assessment, issuers would effectively be giving personal financial advice, and issuers would therefore need to apply to vary their AFS licence to add an authorisation to give financial product advice, and ensure that they and their representatives complete the full training requirements. These respondents requested that we provide further guidance on this issue.

ASIC’s response

Under the new margin lending provisions, making a suitability assessment will not constitute giving financial product advice. This will be made clear under new regulations inserted into the Corporations Regulations 2001.

This means that an issuer that conducts suitability assessments as part of the process of issuing margin lending facility products, but does not provide any financial advice to clients, will not require a specific AFS licence authorisation to give financial product advice. However, if an issuer also provides financial product advice to clients, it will require the requisite AFS licence authorisation, and will need to ensure that it meets the requirements of RG 146.

The training requirements set out in RG 146 apply only to licensees and representatives that provide financial product advice to retail clients. Therefore, issuers that provide no financial advice to clients will not need to complete the training requirements.

C Transitional arrangements

Key points

We have increased the transition period from 12 to 18 months to help AFS licensees fulfil the new training requirements set out in the updated version of RG 146.

What transitional arrangements should apply?

- 17 In general, respondents were supportive of our proposal to allow advisers 12 months from the commencement of the new legislation to complete the training requirements. However, many respondents noted that, successful completion of the training requirements within this timeframe will consist of a number of essential steps:
- (a) Training course providers will require some time to develop new courses, or modify existing ones, and to apply for these to be registered on ASIC's Training Register.
 - (b) This process will be assisted by inclusion of a new unit of competency on margin lending within the Financial Services Training Package developed by Innovation and Business Skills Australia (IBSA), drawing on and including the specialist knowledge set out in Appendix A2.10 of the updated RG 146. The process of developing a new competency will take some time.
 - (c) Advisers will require some time to complete training courses, or apply for alternative assessment.
- 18 Some respondents asked ASIC to take a flexible approach to implementation in order to assist advisers to meet their requirements within the 12-month transition period. Some suggestions on this included:
- (a) back-dating the approval of courses on ASIC's Training Register, so that advisers who have completed a course prior to its being recognised on the Register will not be disadvantaged; and
 - (b) releasing an interim competency, on which training course providers can rely in developing new courses if a new unit of competency cannot be added into the Financial Services Training Package in a timely manner.
- 19 Some respondents also noted that IBSA is currently beginning a review of the Financial Services Training Package, and that it is not likely that a final unit of competency for margin lending will be available until the review is completed.

ASIC's response

We are very mindful of the work that needs to be done to enable advisers to complete the training requirements within our proposed transitional period, and the importance of the availability of an IBSA unit of competency for both training providers and advisers. Based on submissions to CP 108, we have revised our original proposal for a 12-month transition period, as we are concerned that this might not give advisers sufficient time to complete their training requirements.

We decided instead to allow advisers 18 months from the commencement of the new legislation to complete the training requirements. This means that licensees will be offered a new AFS licence or licence variation on the condition that they and/or all of their representatives complete the necessary training within the required period. We think 18 months represents a sufficient period of time, while not unduly delaying the implementation of the full training requirements.

We will also generally monitor this issue closely over the course of the transitional period, and consider whether we need to give any particular assistance to training course providers and advisers. As part of this process, we will work closely with IBSA to develop the new unit of competency for margin lending in a timely manner. We envisage that this unit of competency will be very similar to the other IBSA units of competency specifically designed to satisfy the requirements of particular Tier 1 products.

Appendix: List of non-confidential respondents

- Association of Superannuation Funds of Australia
- Australian Bankers' Association
- Australasian Compliance Institute
- Australian Financial Markets Association
- Financial Education Professionals Pty Ltd
- Investment Banking Institute Pty Ltd
- Institute of Chartered Accountants in Australia
- Kaplan Education Pty Ltd
- McCullough Robertson
- Securities & Derivatives Industry Association