



**ASIC**

Australian Securities & Investments Commission

# **[PF 209] Pro Forma 209 Australian financial services licence conditions**

*Reissued: November 2011*

*Pro Forma 209 [PF 209] sets out the standard licence conditions that, subject to individual circumstances, will usually be applied to licences authorising a person to provide financial services under an Australian financial services (AFS) licence. The prescribed conditions under regulation 7.6.04 of the Corporations Regulations will also apply in addition to the conditions outlined in this Pro Forma but will not appear on the AFS licence.*

Australian Securities and Investments Commission  
Corporations Act 2001 — Section 914A

## **Authorisation**

*(This condition expressly authorises the type of financial services a licensee can provide on specific types of financial products. This condition will be tailored to the licensee's individual circumstances, including the types of clients that the licensee provides financial services to or transacts with. Where appropriate, specific capacity, method and product limitations will be incorporated into this condition.)*

1. This licence authorises the licensee to carry on a financial services business to:
  - (a) provide financial product advice for the following classes of financial products:
    - (i) *[all products listed]*; and
    - (b) deal in a financial product by:
      - (i) issuing, applying for, acquiring, varying or disposing of a financial product in respect of the following classes of financial products; and
        - (A) *[all products listed]*; and
      - (ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of financial products:

- (A) [*all products listed*]; and
- (iii) underwriting:
  - (A) [*securities or managed investment interests*]; and
- (iv) arranging for another person to issue, apply for, acquire, vary or dispose of a financial product in respect of the following classes of financial products:
  - (A) [*all products listed*]
- (v) arranging for another person to apply for, acquire, vary or dispose of a financial product in respect of the following classes of financial products
  - (A) [*all products listed*]
- (vi) arranging for another person to underwrite:
  - (A) [*securities or managed investment interests*]
- (c) make a market for the following financial products:
  - (i) [*all products listed*]; and
- (d) operate the following kinds of registered managed investment schemes (including the holding of any incidental property) in its capacity as responsible entity of:
  - (i) [*insert name of scheme*] scheme, a scheme which only holds [*insert kind of scheme*]  
(ARSN: *xxx xxx xxx*); and/or
  - (ii) [*insert kind(s) of scheme*]; and
- (e) provide the following custodial or depository services:
  - (i) [*all services listed*];
- (f) provide traditional services;  
to retail and/or wholesale clients.

### **Authority to use Broker Terms**

*(This condition is imposed where a licensee has asked ASIC for authorisation to use the following expressions and ASIC is satisfied that the criteria for the use of such expression(s) have been met.)*

#### **2. The licensee:**

- (a) is authorised to assume or use the following expression(s) or any other like word or expression (whether or not in English) that is of like import to that expression:
  - (i) **Stockbroker or Sharebroker;**
  - (ii) **Futures Broker;**
  - (iii) **Life Insurance Broker;**
  - (iv) **General Insurance Broker; or**
  - (v) **Insurance Broker or Insurance Broking;**

only while the licensee continues to meet the eligibility requirements under subsection 923B(3) and ASIC would be able, under section 923B, to impose a condition authorising its assumption or use; and

- (b) must notify ASIC within 10 business days of any matter which would prevent:
  - (i) the licensee from meeting the eligibility requirements under subsection 923B(3); or
  - (ii) ASIC from imposing a condition authorising the licensee to use the expression(s) set out in paragraph 2(a) above under subsection 923B(3).

### **Key Person Requirements**

*(This condition is imposed at ASIC's discretion having regard to various issues, including organisational structure of the licensee and the organisational competence of the licensee.)*

- 3. If any of the following officer(s) or key person(s) cease to be officers of the licensee or to perform duties on behalf of the licensee with respect to its financial services business:

- (a) **[insert name of key person]**; and
- (b) **[insert name of key person]**;

the licensee must notify ASIC in writing within 5 business days of the following matters:

- (c) the date the officer or key person ceased to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business; and
- (d) the name, address, date of commencement, educational qualifications and experience of any replacement officer or key person the licensee has appointed to perform duties on behalf of the licensee with respect to its financial services business; and
- (e) if the licensee does not have a replacement officer or key person, detailed reasons as to why the licensee has not nominated a replacement; and
- (f) a detailed description of how the licensee will continue to comply with the Act and the conditions of this licence following the officer(s) or key person(s) identified above, or any replacement of such person, ceasing to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business.

### **Compliance Measures to Ensure Compliance with Law and Licence**

*(This condition is imposed on all licensees.)*

- 4. The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.

### **Notification to Current or Former Representative's Clients**

*(This condition is imposed on all licensees authorised to provide personal advice to retail clients. It will not be imposed on licensees limited to providing general advice.)*

- 5. Where, under Division 8 of Part 7.6:

- (a) ASIC makes a banning order against a current or former representative of the licensee; or
- (b) the Court makes an order disqualifying a current or former representative of the licensee;

the licensee must, if directed in writing by ASIC, take all reasonable steps to provide the following information in writing to each retail client to whom the representative had provided personal advice within 3 years prior to the date of the banning order or disqualification order:

- (c) the name of the representative; and
- (d) any authorised representative number allocated to the representative by ASIC; and
- (e) the terms of the banning or disqualification order; and
- (f) contact details of the licensee for dealing with enquiries and complaints regarding the banning or disqualification or the conduct of the representative as a representative of the licensee.

### **Training Requirements for Representatives**

*(This condition is imposed on all licensees authorised to provide financial product advice to retail clients. This condition relates to ASIC Regulatory Guide 146 (formerly referred to as Policy Statement 146.)*

- 6. The licensee must for 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):
  - (a) identify the tasks and functions that person performs on behalf of the licensee; and
  - (b) determine the appropriate knowledge and skills requirements required to competently perform those tasks and functions; and
  - (c) implement procedures for continuing training.
- 7. 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):
  - (a) has completed training courses at an appropriate level that are or have been approved by ASIC in writing that are relevant to those functions and tasks; or
  - (b) has been individually assessed as competent by an assessor that is or has been approved by ASIC in writing; or
  - (c) in respect of financial product advice on basic deposit products and facilities for making non-cash payments that are related to a basic deposit product or First Home Saver Accounts issued by an ADI (i.e. FHSA deposit accounts), has completed training courses that are or have been assessed by the licensee as meeting the appropriate level that are relevant to those functions and tasks.
- 8. Condition 7 does not apply in relation to:
  - (a) a natural person who is a customer service representative and who provides financial product advice:

- (i) derived from a script approved by a natural person who complies with paragraphs 7(a), (b) and (c) (“qualified person”); or
  - (ii) under the direct supervision of a qualified person present at the same location; or
- (b) a natural person who is a para-planner or trainee adviser and who provides advice under the direct supervision of a qualified person who is, in addition to the licensee, responsible for:
- (i) ensuring that any financial product advice that is provided by the para-planner or trainee adviser for which a Statement of Advice must be given, is reflected in a Statement of Advice that has been reviewed by the qualified person before the Statement of Advice is given, to ensure that the Statement of Advice would comply with all the requirements of the Act; and
  - (ii) managing and leading any verbal explanation of the financial product advice to the client,

where the licensee has established procedures to ensure that the natural person does not provide financial product advice to retail clients on behalf of the licensee, other than in the manner specified in this paragraph, and the licensee monitors whether or not those procedures are effective.

9. Condition 7 does not apply in relation to financial product advice:
- (a) given to retail clients in advertising to which s1018A applies, provided that:
    - (i) this licence authorises the provision of financial product advice; and
    - (ii) a responsible officer of the licensee approves such advertising before its publication or dissemination to retail clients; or
  - (b) for which there is an exemption under the Act from the obligation to hold a licence.

#### **Financial Requirements for a Body Regulated by APRA**

*(This condition is imposed on all licensees who are a body regulated by the Australian Prudential Regulation Authority (APRA). Where a licensee is both a body regulated by APRA and a market participant or clearing participant, this condition will be imposed on the licence and not condition 12 of this Pro Forma, however the licensee is still required to meet the financial requirements relevant to the licensed market or licensed CS facility they operate in.)*

10. The licensee must be a body regulated by the Australian Prudential Regulation Authority (“APRA”).
11. Where the licensee can no longer meet, or has breached, condition 10 of this licence, the licensee must give a written report to ASIC pursuant to subsection 912D(1) which includes:
- (a) the date on which the licensee ceased to be a body regulated by APRA; and
  - (b) the reasons why the licensee is no longer a body regulated by APRA.

#### **Financial Requirements for Market Participants and Clearing Participants**

*(This condition is imposed on all licensees who are market participants or clearing participants as described in ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166). Where a*

*licensee is both a market participant (or a clearing participant) and a body regulated by APRA, this condition will not be imposed on the licence—however the licensee is still required to meet the financial requirements relevant to the licensed market or licensed CS facility they operate in.)*

12. Where the licensee is a market participant, or a clearing participant of ASX Clear, conditions 13 to 26 (inclusive) do not apply to the licensee.

### **Base Level Financial Requirements**

*(This condition is imposed on all licensees who are not a body regulated by APRA: see ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166).)*

13. The licensee must:
- (a) be able to pay all its debts as and when they become due and payable; and
  - (b) either:
    - (i) have total assets that exceed total liabilities as shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's total assets would currently not exceed its total liabilities; or
    - (ii) have adjusted assets that exceed adjusted liabilities calculated at the balance date shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's adjusted assets would currently not exceed its adjusted liabilities; and
  - (c) for all licensees except those with an authorisation to operate registered managed investment schemes in the capacity of a responsible entity, meet the cash needs requirement by complying with one of the following five options:
    - (i) Option 1 (reasonable estimate projection plus cash buffer)—refer to definition of “Option 1” under this licence; or
    - (ii) Option 2 (contingency based projection)—refer to definition of “Option 2” under this licence; or
    - (iii) Option 3 (financial commitment by an Australian ADI or comparable foreign institution)—a requirement that an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider gives the licensee an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of the demand to the licensee's creditors or a trustee for the licensee's creditors, that the licensee reasonably expects will apply for at least three months, taking into account all commercial contingencies for which the licensee should reasonably plan; or
    - (iv) Option 4 (expectation of support from an Australian ADI or comparable foreign institution)—a requirement that the licensee:
      - (A) is a subsidiary of an Australian ADI or a corporation approved by ASIC in writing for the purpose of this condition; and
      - (B) reasonably expects that (based on access to cash from its related bodies corporate) it will have adequate resources (when needed) to meet its liabilities for at least the next three months (including any additional liabilities that the licensee might incur during that

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period), taking into account all adverse commercial contingencies for which the licensee should reasonably plan; and

- (C) ensures that a responsible officer of the licensee has documented that the officer has the reasonable expectation for at least the following three month period together with the reasons for forming the expectation, the contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; or
- (v) Option 5 (parent entity prepares cash flow projections on a consolidated basis)—a requirement that the licensee ensures that:
  - (A) the cash flows of the licensee and each of its related bodies corporate, other than any body regulated by APRA (“licensee group”), are managed on a consolidated basis; and
  - (B) there is a body corporate within the licensee group of which all members of the licensee group are subsidiaries that is not a body regulated by APRA (“parent entity”); and
  - (C) the parent entity complies with Option 1 or Option 2 as if it were the licensee, cash flows of any member of the licensee group were cash flows of the licensee and any cash held by a member of the licensee group, other than as trustee or as trustee of a relevant trust, were so held by the licensee; and
  - (D) a report by the parent entity’s auditor that is a registered company auditor is given to ASIC with the licensee’s annual audit report under condition 28 of this licence, in relation to each financial year of the licensee and for any other period that ASIC requests, by a date that ASIC requests, with respect to compliance by the parent entity with Option 1 or Option 2 as they would apply in accordance with subparagraph (C), reflecting the report that would be required from the auditor of a licensee, for that period purporting to comply with Option 1 or Option 2; and
  - (E) either of the following applies:

Alternative A—the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee’s liabilities which the licensee reasonably expects will apply for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan; or

Alternative B—the licensee reasonably expects that (based on access to cash from members of the licensee group), it will have adequate resources to meet its liabilities (including any additional liabilities that the licensee might incur while the commitment applies) for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan and a responsible officer of the licensee has documented that the officer has the reasonable expectation in respect of at least the following three months together with the reasons for forming the expectation, the

contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; and

- (F) the licensee has no reason to believe that the parent entity has not complied with the requirement at subparagraph (C) or has failed to comply in a material respect with its obligations under Chapter 2M or, if the parent entity is not a company, under any other laws (whether law in Australia or not) relating to financial reporting that apply to it.

For 5 years after the end of the last financial year that includes a part of the period to which any document prepared for subparagraph (c)(iv)(C) or Alternative B in subparagraph (c)(v)(E) relates, the licensee must keep the document and give it to ASIC if ASIC requests.

### **Financial Requirements for Custody Services, Margin Lending Facilities and Trustee Companies providing Traditional Services**

*(This condition is imposed on all licensees who are not a body regulated by APRA, depending on the role(s) the licensee plays in providing financial services for IDPSs, custodial or depository services and margin lending facilities as described in ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166). Outlined below are four scenarios to guide you on the type of conditions that will be imposed for IDPSs, custody services and margin lending facilities. If you perform a combination of the roles outlined below, your licence will contain the appropriate combination of these conditions.)*

14. [No longer in use]

15. [No longer in use]

*(a) Where the licensee is authorised to operate an investor directed portfolio service (IDPS) as an IDPS operator, the following conditions will be imposed.*

16. The licensee must have at least \$50,000 net tangible assets (“NTA”), where the licensee:

- (a) does not perform transactional functions or hold IDPS property or hold other assets of an IDPS; and
- (b) ensures that where the licensee is responsible to clients for:
  - (i) transactional functions—the transactional functions are performed by, or on behalf of, a person engaged by the licensee who is an eligible custodian or who holds NTA of at least 0.5% of the value of:
    - (A) the assets; plus
    - (B) any other IDPS property not counted in calculating the value of assets; of the IDPSs the licensee operates or for which the licensee performs transactional functions with a minimum NTA of \$50,000 and a maximum NTA of \$5 million; and
  - (ii) holding IDPS property or other assets of an IDPS not held by clients—the IDPS property or other assets are held by a person who holds NTA of at least \$5 million or is an eligible custodian (or a subcustodian appointed by that person); and



- (iii) transactional functions or holding IDPS property or other assets of the IDPS, is liable to the licensee or clients directly for the due performance of those functions.

17. The licensee must have at least \$5 million NTA, where:

- (a) the licensee holds IDPS property or other assets of an IDPS; or
- (b) any other person that holds IDPS property or other assets of an IDPS, and for whom the licensee is responsible to clients does not have, and is not acting as subcustodian for a person that has, \$5 million NTA or is not an eligible custodian.

18. Where conditions 16 and 17 of this licence do not apply to the licensee, the licensee must have at least NTA of 0.5% of the value of:

- (a) assets; plus
- (b) any other IDPS property not counted in calculating the value of assets of the IDPS the licensee operates;

of the IDPSs the licensee operates or for which the licensee performs transactional functions with a minimum NTA requirement of \$50,000 and a maximum NTA requirement of \$5 million NTA.

*(b) Where the licensee provides custodial or depository services the following condition will be imposed.*

19. The licensee must have at least \$5 million net tangible assets (“NTA”) where the licensee provides a custodial or depository service that:

- (a) has custody of client assets other than incidentally to another financial service provided by the licensee or a related body corporate; or
- (b) holds IDPS property or other assets of an IDPS.

*(c) Where the licensee issues a margin lending facility.*

19A. The licensee must have:

- (a) at least NTA of 0.5% of the value of:
  - (i) for a standard margin lending facility—the secured property;
  - (ii) for a non-standard margin lending facility—any transferred securities, 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:
  - (i) for a standard margin lending facility where:
    - (A) the licensee holds the secured property; or
    - (B) any other person holds the secured property and that person does not have at least \$5 million NTA unless they are an eligible custodian; or
  - (ii) for a non-standard margin lending facility where:

- (A) the licensee is the transferee of transferred securities; or
- (B) any other person is the transferee of transferred securities and that person does not have at least \$5 million NTA unless they are an eligible custodian.

(d) Where the licensee is a trustee company that provides traditional services, the following condition will be imposed.

19B. The licensee must have at least \$5 million net tangible assets (“NTA”) where the licensee provides traditional services as a trustee company.

### **Financial Requirements for Foreign Exchange Dealers**

*(This condition is imposed on all licensees authorised to deal in foreign exchange contracts.)*

20. Where:

- (a) the licensee carries on a business of entering, as principal, into foreign exchange contracts that are financial products in Australia; and
- (b) a counterparty to a foreign exchange contract that the licensee enters into as principal in Australia covered by this licence is a person who is not:
  - (i) an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or
  - (ii) a person that is required under their AFS licence to have \$10 million of tier one capital,

the licensee must either:

- (c) have \$10 million of tier one capital, as defined in the Australian Prudential Regulation Authority’s (“APRA”) Prudential Standards and Guidance Notes for Authorised Deposit-Taking Institutions as in force at the date of this licence; or
- (d) have adjusted surplus liquid funds (“ASLF”) of the sum of:
  - (i) \$50,000; plus
  - (ii) 5% of adjusted liabilities between \$1 million and \$100 million; plus
  - (iii) 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding \$100 million,up to a maximum ASLF of \$100 million.

### **Financial Requirements for Holding Client Money or Property**

*(This condition is imposed on all licensees who are not a body regulated by APRA, as described in ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166). However it is only triggered if the licensee holds \$100,000 or more of client money or property.)*

21. If at any time the licensee:

- (a) is required to hold money in a separate account under Division 2 of Part 7.8; or
- (b) holds money or other property on trust for a client or is required to do so under regulation 7.8.07(2) of the Corporations Regulations or otherwise; or

- (c) has the power to dispose of a client's property under power of attorney or otherwise;

the licensee must ensure that the licensee has at least \$50,000 in surplus liquid funds ("SLF") unless the total value of the money and property for all clients is less than \$100,000 excluding:

- (d) money that has satisfied a client's liability on an insurance contract where the licensee is acting under a binder or section 985B applies, or property acquired by investment of that money; or
- (e) the value of property where the licensee merely holds a document of title, and the client has legal title to the property.

### **Financial Requirements for Licensee Transacting with Clients**

*(This condition is imposed on all licensees who are not a body regulated by APRA, as described in ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166). However it only is triggered if the licensee incurs actual or contingent liabilities of \$100,000 or more from transacting with clients.)*

22. If the licensee incurs actual or contingent liabilities of the relevant kind by entering into a transaction with a client(s) in the course of providing a financial service to the client(s), the licensee must have adjusted surplus liquid funds ("ASLF") of 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,

up to a maximum ASLF of \$100 million.

This condition does not apply to the licensee if:

- (d) the total of:
  - (i) the current liabilities that would be included in the calculation of the licensee's adjusted liabilities; and
  - (ii) the contingent liabilities that if crystallised would be a current liability and be included in the calculation of the licensee's adjusted liabilities, is less than \$100,000; or
- (e) the licensee has no:
  - (i) liabilities to clients that would be included in calculating its adjusted liabilities; or
  - (ii) contingent liabilities to clients which if crystallised would be included in calculating its adjusted liabilities,other than under debentures the licensee issued under Chapter 2L.

For the purpose of paragraphs (d) and (e), the licensee may disregard a liability or a contingent liability that:

- (f) is a contingent liability that is neither a derivative nor a liability from underwriting securities or managed investment products; or

- (g) the licensee reasonably estimates has a probability of less than 5% of becoming an actual liability; or
- (h) is covered by money or property that the licensee holds in a separate account under Part 7.8 or on trust for clients; or
- (i) is adequately secured as defined in paragraph (a) or (b) of the definition of “adequately secured” under this licence; or
- (j) is a liability incurred by entering into a transaction on a licensed market that is to be settled using a clearing and settlement facility, the operation of which is authorised by an Australian CS facility licence; or
- (k) is under a foreign exchange contract and the licensee is required to have \$10 million of tier one capital under another condition of this licence because the licensee has entered a foreign exchange contract as principal; or
- (l) is under a derivative where:
  - (i) the licensee does not make a market in derivatives; and
  - (ii) the licensee entered into the dealing for the purposes of managing a financial risk; and
  - (iii) either the licensee’s dealings in derivatives are not a significant part of its business or of the business of it and its related bodies corporate taken together; and
  - (iv) the licensee did not enter into the dealing on the instructions of another person; or
- (m) is under a foreign exchange contract where the licensee:
  - (i) does not make a market in foreign exchange contracts; and
  - (ii) entered into the contract for the purposes of enabling a payment in one of the currencies under the foreign exchange contract; and
  - (iii) did not enter into the foreign exchange contract on the instruction of another person; or
- (n) is under a margin lending facility where the licensee agrees to provide credit to another person, to the extent that any portion of the credit remains undrawn.

In this condition, a reference to a client includes a person who acquires or disposes of financial products in a transaction that the licensee entered into at a price the licensee stated in the course of making a market.

### **Reporting Triggers and Requirements for Financial Requirement Conditions of this Licence**

*(This condition is imposed on all licensees who are not a body regulated by APRA, as described in ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166). However it only applies if the licensee triggers the reporting requirements within this condition.)*

23. The licensee must ensure the reporting requirements under conditions 24 and 25 of this licence are met where either paragraph (a) or paragraph (b) applies:
- (a) the trigger points described in paragraphs (i) and (ii) below occur:

- (i) the licensee has adjusted liabilities of more than \$1 million and less than or equal to \$100 million; and
  - (ii) the licensee has an ASLF of less than 5.5% of adjusted liabilities; or
- (b) the trigger points described in paragraphs (i), (ii) and (iii) below occur:
- (i) the licensee has adjusted liabilities of more than \$100 million; and
  - (ii) the licensee does not have \$100 million ASLF; and
  - (iii) the licensee has an ASLF that is less than \$500,000 above the minimum ASLF required under condition 22 of this licence.
24. Where the licensee's ASLF is below the trigger points, the licensee must not enter into any transactions with clients that could give rise to further liabilities, contingent liabilities or other financial obligations until the licensee's board or other governing body has certified in writing that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A.
25. Where the licensee's board or other governing body has made the certification required under condition 24, the licensee must ensure that the licensee's board or other governing body certifies in writing at least monthly that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A until the licensee's ASLF continuously exceeds the trigger point for a period exceeding one month.
26. The licensee must keep each certification issued by the licensee's board or other governing body under conditions 24 and 25 of this licence for at least 5 years from the date of such certification. The licensee must provide ASIC with a copy of each certification within 3 business days of the date of each certification.

### **Audit Opinion on Financial Requirements**

*(This condition is imposed on all licensees. The type of condition imposed depends on whether the licensee is a body regulated by APRA or not, as described in ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166). Outlined below are two scenarios to provide guidance on the type of condition to be imposed.)*

*(a) Where the licensee is a body regulated by APRA, the following condition will be imposed on the licence. Where the licensee is both a body regulated by APRA and a market participant or a clearing participant, as described in RG 166, this condition will also be imposed on the licence and not condition 28 of this Pro Forma.*

27. The licensee must lodge with ASIC an opinion by a registered company auditor ("the audit opinion") addressed to the licensee and ASIC:
- (a) for each financial year, at the same time the licensee is required to lodge a balance sheet under Part 7.8; and
  - (b) for any period of time that ASIC requests, by the date ASIC requests the audit opinion to be lodged;

that states whether for the relevant period on a positive assurance basis the licensee was a body regulated by APRA at the end of the financial year or for any period of time that ASIC requests.

(b) *Where a licensee is not a body regulated by APRA, the following condition will be imposed on the licence.*

28. The licensee must lodge with ASIC an opinion by a registered company auditor (“the audit opinion”) addressed to the licensee and ASIC for the following periods:

- (a) for each financial year, at the same time the licensee is required to lodge a balance sheet under Part 7.8; and
- (b) for any period of time that ASIC requests, by the date ASIC requests the audit opinion to be lodged,

that states whether during:

- (c) any part of the period for which the licensee:
  - (i) relied on being a market participant or a clearing participant of ASX Clear, on a positive assurance basis, the licensee was a participant in the:
    - (A) ASX market; or
    - (B) Chi-X market; or
    - (C) ASX 24 market, and restricted its financial services business to participating in the ASX 24 market and incidental business; or
    - (D) licensed CS facility operated by ASX Clear; and
  - (ii) relied on being a body regulated by APRA, on a positive assurance basis, the licensee was a body regulated by APRA; and
- (d) any part of the period for which the licensee was not authorised to operate registered schemes in the capacity of a responsible entity:
  - (i) in the auditor’s opinion, the licensee:
    - (A) complied with all the financial requirements under conditions 13 to 26 (inclusive) of this licence other than paragraph 13(c) of this licence, except for paragraph (e) of the definition of “Option 1” under this licence if the licensee purports to comply with “Option 1”; and
    - (B) except for any period stated in the report when the licensee purports to comply with subparagraph 13(c)(iii), (iv) or (v), had at all times a projection (covering at least the following 3 months) that purports to, and appears on its face to comply with, paragraph (a) of the definition of “Option 1” or paragraph (a) of the definition of “Option 2” under this licence (depending on which option the licensee purports to be complying with); and
    - (C) except for any period stated in the report when the licensee purports to comply with subparagraph 13(c)(iii), (iv) or (v), correctly calculated the projections on the basis of the assumptions the licensee adopted for the projections described in subparagraph (d)(i)(B) of this condition; and
    - (D) for any period when the licensee relied on subparagraph 13(c)(iii) of this licence, has obtained from an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider an enforceable and unqualified commitment to

pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of demand to the licensee's creditors or a trustee for the licensee's creditors; and

- (E) for any period when the licensee relied on subparagraph 13(c)(iv), following an examination of the documents prepared for subparagraph 13(c)(iv)(C), the licensee complied with subparagraph 13(c)(iv)(A) and subparagraph 13(c)(iv)(C) for the period to which the report relates; and
  - (F) for any period when the licensee relied on subparagraph 13(c)(v), the licensee complied with subparagraph 13(c)(v)(A) and (B); and
  - (G) for any period when the licensee relied on Alternative A in subparagraph 13(c)(v)(E), the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee's liabilities.
- (ii) except for any period stated in the report when the licensee purports to comply with subparagraph 13(c)(iii), (iv) or (v), following an examination of the documents the licensee relies on in complying with "Option 1" or "Option 2" as defined under this licence, the auditor has no reason to believe that:
- (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) for managing the risk of having insufficient financial resources to comply with the conditions of this licence; or
  - (B) the licensee failed to comply with the cash needs requirement using either "Option 1" or "Option 2" as defined under this licence (as applicable) except for:
    - (1) paragraphs (a), (c) and (e) of the definition of "Option 1" as defined under this licence; or
    - (2) paragraphs (a) and (c) of the definition of "Option 2" as defined under this licence; or
  - (C) if the licensee relied on "Option 1" as defined under this licence, the assumptions the licensee adopted for its projection were unreasonable; or
  - (D) if the licensee relied on "Option 2" as defined under this licence, the basis for the selection of assumptions to meet the requirements for the projection adopted was unreasonable; and
- (iii) for any period when the licensee relied on subparagraph 13(c)(iv), following an examination of the documents prepared for subparagraph 13(c)(iv)(C), the auditor has no reason to believe that:
- (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) for managing the risk of having insufficient financial resources to comply with the conditions in this licence; and

- (B) the basis for the selection of the assumptions adopted was unreasonable; and
- (iv) for any period when the licensee relied on subparagraph 13(c)(v) under Alternative B, following an examination of the documents prepared for Alternative B, the auditor has no reason to believe that:
  - (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) for managing the risk of having insufficient financial resources to comply with the conditions in this licence; or
  - (B) the basis for the selection of the assumptions adopted was unreasonable.

### **Professional Indemnity Compensation Requirements**

*(This condition is imposed on licensees, having regard to the transitional arrangements for compensation as described in ASIC Regulatory Guide 167 (formerly referred to as Policy Statement 167), depending on the role the licensee plays in providing financial services or in individual circumstances where ASIC requires the licensee to have professional indemnity arrangements in place. Outlined below are two scenarios to provide guidance on the type of conditions that will be imposed. ASIC will review these requirements in light of regulations under s912B.)*

*(a) Where the licensee is authorised to operate a registered scheme in the capacity of a responsible entity and/or operate an IDPS as an IDPS operator, the following condition will be imposed.*

29. The licensee must maintain an insurance policy covering professional indemnity and fraud by officers that:

- (a) is adequate having regard to the nature of the activities carried out by the licensee under the licence; and
- (b) covers claims amounting in aggregate to whichever is the lesser of:
  - (i) \$5 million; or
  - (ii) the sum of the value of all IDPS property of all IDPS for which it is the operator and all scheme property of all registered schemes for which it is the responsible entity.

*(b) Where the licensee is required to have professional indemnity requirements in place as a result of individual circumstances, the following condition may be imposed.*

30. The licensee must where so notified by ASIC in writing maintain a policy of professional indemnity insurance that conforms with the specifications set out in that notice.

31. No longer in use.

### **External Dispute Resolution Requirements**

*(This condition is imposed on all licensees who provide financial services to retail clients.)*

32. Where the licensee provides financial services to retail clients, the licensee must be a member of one or more External Disputes Resolution Scheme(s) (“EDRS”) which covers, or together cover, complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.



33. Where the licensee ceases to be a member of any EDRS, the licensee must notify ASIC in writing within 3 business days:
- (a) the date the licensee ceases membership of the EDRS(s); and
  - (b) the reasons the licensee's membership of the EDRS(s) has ceased (including circumstances where the EDRS is no longer operating, failure by the licensee to renew their membership of the EDRS or where the EDRS has terminated the licensee's membership of the EDRS); and
  - (c) details of the new EDRS(s) the licensee intends to or has joined (including the date the membership commences and the name of the EDRS); and
  - (d) details that provide confirmation that the licensee is covered by EDRS(s) covering complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.

**Agreement with Holder of Financial Product on Trust**

*(This condition is imposed on all licensees who are authorised to operate a registered scheme in the capacity of a responsible entity and/or operate an IDPS as an IDPS operator and/or provide a custodial or depository service)*

34. If the licensee:

- (a) operates a registered scheme in the capacity of a responsible entity; or
- (b) operates an IDPS as an IDPS operator; or
- (c) provides a custodial or depository service;

and in the course of operating that scheme or providing that service the licensee enters into an arrangement:

- (d) with another person ("holder") to hold scheme property, IDPS property or to hold financial products on trust for or on behalf of the licensee or another person; or
- (e) between a responsible entity or IDPS operator in that capacity and another person ("master custodian") under which the master custodian is authorised to arrange for a third person ("subcustodian") directly or indirectly to hold scheme property or IDPS property; or
- (f) with a subcustodian arranged by a master custodian;

the licensee must ensure that at all times:

- (g) the arrangement is covered by a contract that is in writing; and
- (h) the contract clearly specifies:
  - (i) the nature of the arrangement and the obligations of each party; and
  - (ii) the rights that the parties will have in relation to ongoing review and monitoring of the holder or any subcustodian or for an agreement made by the licensee with a master custodian ("master agreement"), the master custodian and the standards against which their performance will be assessed; and
  - (iii) how the holder, any subcustodian, or for a master agreement, the master custodian, will certify that it complies with, and will continue to comply

with, the requirements of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133) when read in conjunction with ASIC Regulatory Guides 148 and 167 (formerly referred to as Policy Statements 148 and 167) (as each of those Regulatory Guides is in force as at the date of this licence); and

- (iv) how instructions will be given to the holder, subcustodian or for a master agreement, the master custodian; and
- (v) how the client of the licensee will be compensated if the client suffers any loss due to a failure by the holder, any subcustodian, or for a master agreement, the master custodian, to comply with its duties or to take reasonable care based on the standards applying in the relevant markets for the assets held and the extent to which the holder, any subcustodian, or for a master agreement, the master custodian, must maintain a minimum level of professional indemnity insurance; and
- (vi) that the holder, any subcustodian and, for a master agreement, the master custodian is prohibited from taking a charge, mortgage, lien or other encumbrance over, or in relation to, the assets held under the arrangement unless it is for expenses and outlays made within the terms of the contract (but not including any unpaid fees of the holder, master custodian or subcustodian) or in accordance with the licensee's instructions; and
- (vii) in the case of a responsible entity or IDPS operator who has a master agreement, what should be in the written contract with any subcustodian used in accordance with these conditions including the liability of the subcustodian to the master custodian and the licensee when acts or omissions of the subcustodian are in breach of the subcustodian's obligations; and
- (viii) how records of the assets held will be kept and maintained by the holder, any subcustodian, or for a master agreement, the master custodian; and
- (ix) requirements for reporting by the holder, any subcustodian, or for a master agreement, the master custodian, including notifications of any dealing in or transfers of the assets; and
- (x) requirements for the holder to provide all reasonable access and assistance to any registered company auditor engaged to conduct an audit in relation to the licensee.

The contract is not required to contain the matters specified in paragraph (iii), (v) or (vi) or to be in writing to the extent that the licensee establishes by documentary evidence that it is not practicable for the licensee to:

- (a) hold the relevant financial products (being property outside Australia) itself; or
- (b) engage a custodian that is willing to include such matters in the contract to hold that property on reasonable commercial terms;

and provided that the licensee has disclosed to the client that these terms will not be included.

## **Property**

*(This condition is imposed on all licensees who are authorised to operate a registered scheme in the capacity of a responsible entity, operate an IDPS as an IDPS operator, provide custodial or depository services and/or provide traditional services. Outlined below is the scenario where the licensee is authorised to perform all three roles described above, to guide you on the type of condition that will be imposed. If you perform only one or some of the roles outlined above, your licence will be tailored to reflect this.)*

35. The licensee must ensure that at all times:

- (a) if the licensee is responsible to clients of the IDPS for the holding of the IDPS property, each person who holds IDPS property complies with the requirements of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133), except requirements expressed to apply to duties under s601FC(1)(i), when read with ASIC Regulatory Guide 148 (formerly referred to as Policy Statement 148) (as each of those Regulatory Guides is in force as at the date of this licence) relating to the holding of IDPS property and maintains proper records identifying the IDPS property; and
- (b) in relation to a registered scheme for which the licensee is the responsible entity, the holder of any scheme property complies with the requirements of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133) (as in force as at the date of this licence) relating to the holding of scheme property and maintain proper records identifying the scheme property; and
- (c) in relation to any custodial or depository service that the licensee provides other than as the operator of an IDPS, the holder of any property complies with the requirements of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133) except requirements expressed to apply to duties under s601FC(1)(i), when read with ASIC Regulatory Guides 148 and 167 (formerly referred to as Policy Statements 148 and 167) (as each of those Regulatory Guides is in force as at the date of this licence) and maintains proper records in relation to the financial products held; and
- (d) if the licensee is a trustee company which holds estate assets in relation to its provision of traditional services, the trustee company complies with the standards in Section A of ASIC Regulatory Guide 133 (formerly referred to as Policy Statement 133) except requirements expressed to apply to duties under s601FC(1)(i) and maintains proper records in relation to the estate assets held.

## **Proprietary Company IDPS Licensees**

*(This condition is imposed on licensees who are proprietary limited companies authorised to operate an IDPS as an IDPS operator.)*

36. Where the licensee is a proprietary company, the licensee must:

- (a) not perform transactional functions of the IDPS or hold IDPS property of the IDPS; and
- (b) lodge a financial report and a directors' report for each financial year complying with the requirements of Divisions 1, 4, 5 and 6 of Part 2M.3 as if it were a public company and those provisions of the Act applied to it; and

- (c) lodge an audit report prepared by a registered company auditor complying with the requirements of Division 3 of Part 2M.3 as if it were a public company and those provisions of the Act applied to it; and
- (d) lodge the reports with ASIC prepared in accordance with paragraphs (b) and (c) above within 4 months after the end of the financial year; and
- (e) comply with, and ensure that, its directors comply with sections 195, 201A and 203D as if it were a public company and those provisions of the Act applied to it.

**Proprietary Company IDPS Licensees Must Engage Another Party to Perform Transactional Functions of the IDPS**

*(This condition is imposed on licensees who are proprietary limited companies authorised to operate an IDPS as an IDPS operator.)*

37. Where the licensee is a proprietary company, the licensee must appoint another person who meets the net tangible asset requirements as set out in ASIC Regulatory Guide 166 (formerly referred to as Policy Statement 166) (as at the date of this licence) to perform the transactional functions in relation to the IDPS or ensure that another licensee authorised to operate the IDPS has agreed to perform the transactional functions or to appoint another person to do so on behalf of that licensee.

**Agreement with Person Performing Transactional Functions of the IDPS**

*(This condition is imposed on all licensees authorised to operate an IDPS as an IDPS operator.)*

38. If the licensee appoints another person (“the administrator”) to perform the transactional functions of the IDPS, the licensee must ensure that at all times a written agreement is in place between the licensee and the administrator that clearly specifies:
- (a) the nature of the arrangement and the obligations of each party; and
  - (b) the rights that the licensee will have in relation to ongoing review and monitoring of the administrator and the standards against which the administrator’s performance will be assessed; and
  - (c) how instructions will be given by:
    - (i) the licensee to the administrator; and
    - (ii) where the administrator is not the custodian—by the administrator to the custodian;
  - (d) how clients will be compensated by the administrator if the clients suffer any loss due to a failure by the administrator to comply with its duties under its agreement with the licensee and the extent to which the administrator must maintain a minimum level of professional indemnity insurance; and
  - (e) how records of the IDPS will be kept and maintained by the administrator; and
  - (f) requirements for reporting by the administrator to the licensee, including notifications of any transfers to, or from, the IDPS’s accounts; and

- (g) requirements for the administrator to provide all reasonable access and assistance to any registered company auditor engaged to conduct an audit in relation to the IDPS.

**Compliance with Class Order 02/294 as an IDPS Operator**

*(This condition is imposed on licensees authorised to operate an IDPS as an IDPS operator.)*

- 39. The licensee must comply with the requirements of Class Order 02/294 as at the date of this licence and as amended by any disallowable legislative instrument.

**Compliance with Class Order 04/194 as an MDA Service Operator**

*(This condition is imposed on licensees authorised to operate an MDA service under Class Order 04/194.)*

- 40. The licensee may operate an MDA service that is not under a registered scheme and must do so only in reliance on:
  - (a) Class Order 04/194 as at the date of this licence and as amended by any disallowable legislative instrument; or
  - (b) any disallowable legislative instrument that replaces Class Order 04/194; or
  - (c) an individual instrument of relief granted by ASIC to the licensee which expressly provides relief to operate an MDA service.

**Licensee may operate as an external MDA custodian pursuant to Class Order 04/194**

*(This condition is imposed on all licensees who indicate in their licence application that they will be acting as an external MDA custodian that will directly contract with retail clients.)*

- 41. The licensee must not provide an MDA service to a retail client except when operating a registered scheme.
- 42. Despite condition 41, the licensee may provide custodial or depository services relating to an MDA service in reliance on the relief for an external MDA custodian under:
  - (a) paragraphs 2.1, 2.2 or 2.3 of Class Order 04/194 as at the date of this licence and as amended by any disallowable legislative instrument; or
  - (b) any corresponding provisions in any disallowable legislative instrument that replaces Class Order 04/194; or
  - (c) an individual instrument of relief granted by ASIC to the licensee which expressly provides relief to an MDA service.

**Prohibition to Operate a Managed Discretionary Account Service**

*(This condition is imposed on all licensees who indicate in their licence application that they will not be operating an MDA service, or acting as an external MDA custodian.)*

- 43. The licensee must not provide an MDA service to a retail client except when operating a registered scheme.

**Protection of Underlying Land in Primary Production Schemes**

*(Conditions 44, 45 and 46 are imposed on all licensees who are authorised to operate primary production registered schemes in the capacity of a responsible entity.)*

44. The licensee must, by the time specified in condition 45, ensure (in relation to each scheme) that an instrument that confers the right, for the purpose of the scheme, to use the land on which any primary production will occur in the operation of the scheme, is lodged for registration under State or Territory land titles law, in the name of:
- (a) the members collectively; or
  - (b) each member in relation to that portion of the land on which the primary production business in which the member has an interest is being conducted; or
  - (c) the custodian where it holds the interest as trustee for the members; or
  - (d) the licensee, either:
    - (i) as trustee for the members; or
    - (ii) beneficially in the course of and in accordance with its duties as responsible entity; or
  - (e) any nominee of the members that is entitled to hold scheme property, where it holds the interest as trustee for the members; or
  - (f) a company, provided that, for the duration of the scheme:
    - (i) all the issued shares in the company are held by all the members of the scheme; and
    - (ii) the proportion of shares held by each member is the same as the proportion of interests in the scheme held by that member; and
    - (iii) the constitution of the company contains provisions that can only be modified by unanimous resolution of members of the company and that prohibit:
      - (A) disposing of, or otherwise dealing with, the land in whole or part except after the primary production business to which the scheme relates is completed; and
      - (B) the conduct by the company of any business or activity other than the making of the land available for primary production to occur in the operation of the scheme or any other business or activity that the company may be required to conduct by law; or
  - (g) the custodian, or another person as agent for the licensee for the purpose of the licensee holding the interest on trust for members.
45. The time specified for the purpose of lodgement under condition 44 is prior to or immediately after the issue of the interest in the scheme.
46. The licensee must use its best endeavours to cause each instrument which is lodged for registration under condition 44 to be registered as soon as possible after lodgement and to be registered in such a way that it cannot be adversely affected by any existing or subsequent mortgagee, secured creditor or transferee (other than in connection with a borrowing or other transaction that is entered into by the licensee in accordance with the constitution of the scheme and its duties as responsible entity).

### **Adherence to Mandatory Cooling-Off Periods for Time-sharing Schemes**

*(This condition is imposed on all licensees authorised to deal in time-sharing schemes and/or operate registered time-sharing schemes in the capacity of a responsible entity.)*

47. The licensee must ensure that:

- (a) where it facilitates or is a party as principal or agent to an offer of interests in a registered time-sharing scheme:
  - (i) immediately upon providing to any person a Product Disclosure Statement or an application form in relation to the offer, it will also provide that person with a separate written cooling-off statement in a form approved by ASIC; and
  - (ii) the right to withdraw during the cooling-off period is prominently disclosed in any Product Disclosure Statement and application form issued by the licensee; and
  - (iii) a record is maintained of all persons to whom cooling-off statements have been issued that contains:
    - (A) particulars of the date each cooling-off statement was issued to the person; and
    - (B) the person's signed acknowledgement of receipt of the cooling-off statement; and
- (b) where an offeree notifies the licensee within the cooling-off period that it does not wish to proceed with the issue or sale, all consideration provided by the offeree, including any administration or other fees, must be returned to the offeree without penalty.

### **Charges and Levies for Time-sharing Schemes**

*(This condition is imposed on all licensees authorised to deal in time-sharing schemes and/or operate registered time-sharing schemes in the capacity of a responsible entity.)*

48. The licensee must:

- (a) in relation to any unsold interests in a time-sharing scheme operated by the licensee, pay the same continuing charges and levies (such as maintenance levies and special levies) as a member would be required to pay in relation to the same interest in that scheme; and
- (b) provide to all members, in writing and at least annually, full particulars of the composition and calculation of all continuing charges and levies to be imposed on members (including provision for maintenance and refurbishment).

### **Handling of Purchase Money for Time-sharing Schemes**

*(This condition is imposed on all licensees authorised to deal in time-sharing schemes and/or operate registered time-sharing schemes in the capacity of a responsible entity.)*

49. The licensee must ensure that where it facilitates or is party to, as principal or agent, an offer of interests in a registered time-sharing scheme:

- (a) all money paid by the offeree is deposited in an account styled as a trust account with an Australian ADI not later than the business day following

receipt and is not applied in any manner other than by payment to another such account until both:

- (i) a registrable dealing conferring title to any real property that the member is to acquire is lodged with the relevant authority; and
  - (ii) the construction of the property to which the interests being acquired by the offeree relates, and any improvements necessary to permit normal use of that property is substantially completed; and
- (b) if the development of property is not substantially completed by the date specified in the Product Disclosure Statement, any purchase money paid and any income earned on that money is repaid to the offeree (or any transferee from the offeree) less deductions of any fees and disbursements properly chargeable against the income (if necessary by winding up the scheme); and
- (c) any deposit for the purchase or issue of an interest in a time-sharing scheme is less than 30% in value of the total purchase or issue price.

### **Key Person Notification for Horse Racing Schemes to Lead Regulator and ASIC**

*(This condition is imposed on all licensees who operate horse racing schemes, as described in ASIC Regulatory Guide 91 (formerly referred to as Policy Statement 20).)*

50. If the licensee is a corporation that operates a scheme that is a horse racing syndicate (“horse racing scheme”) that is not a registered scheme under Class Order 02/319 as at the date of this licence and as amended by any disallowable legislative instrument, it must:
- (a) at all times have a key person approved in writing by the lead regulator (as defined for Class Order 02/319 as at the date of this licence and as amended by any disallowable legislative instrument) governing the scheme; and
  - (b) immediately inform ASIC in writing of the name and address of each key person approved as such by the lead regulator governing the scheme.

### **Accounting Records for Horse Racing Schemes**

*(This condition is imposed on all licensees who operate horse racing schemes, as described in ASIC Regulatory Guide 91 (formerly referred to as Policy Statement 20).)*

51. The licensee must keep separate accounting records in respect of each horse racing scheme promoted by the licensee or any representative of the licensee which correctly record and explain the transactions and financial position of the scheme during its promotion and operation by the licensee, such records to be kept in such way as will enable true and fair profit and loss accounts and a statement of assets and liabilities to be prepared in respect of the scheme at any time.

### **Accounts for Horse Racing Schemes**

*(This condition is imposed on all licensees who operate horse racing schemes, as described in ASIC Regulatory Guide 91 (formerly referred to as Policy Statement 20).)*

52. The licensee must prepare and lodge a profit and loss statement and a statement of assets and liabilities for each horse racing scheme with the lead regulator governing the scheme within 90 days of the end of each financial year of the licensee as determined under section 989A.



53. Where requested by ASIC, the licensee must prepare and lodge a profit and loss statement and a statement of assets and liabilities for a horse racing scheme it operates with ASIC.

**Separate Trust Account Requirements for Horse Racing Syndicates**

*(This condition is imposed on all licensees who operate horse racing schemes, as described in ASIC Regulatory Guide 91 (formerly referred to as Policy Statement 20).)*

54. The licensee must:
- (a) open and maintain a separate trust account with an Australian ADI in respect of each horse racing scheme; and
  - (b) only use the account for the deposit and payment of all money relating to the operation of the scheme; and
  - (c) deposit all money received in relation to the scheme in the account; and
  - (d) withdraw money from the account, only in accordance with the terms of any agreement approved by the lead regulator governing the scheme.

**Licensee Registered as Promoter of Horse Racing Syndicate with Lead Regulator**

*(This condition is imposed on all licensees who operate horse racing schemes, as described in ASIC Regulatory Guide 91 (formerly referred to as Policy Statement 20).)*

55. The licensee must be registered as a promoter of each horse racing scheme with a lead regulator unconditionally or subject only to the condition that a licence be granted under section 913B.

**Stockbroker Responsibility for Subsidiary Nominee Companies**

*(This condition is imposed on those licensees who elect to take responsibility for the acts and omissions of a subsidiary nominee company who provide custody services on their behalf.)*

56. A participant referred to in paragraph 7.6.01(1)(v) of the Corporations Regulations must:
- (a) comply with the Act as if any subsidiary nominee company relying on the licensing exemption in paragraph 7.6.01(1)(v) is a representative of the participant within the meaning of Chapter 7; and
  - (b) without limiting (a), have arrangements in place under which the participant accepts liability, as between the participant and clients, for any acts or omissions of the subsidiary nominee company in relation to the provision of the financial services mentioned in paragraph 7.6.01(1)(v), as if they were acts or omissions of a representative of the participant under section 917E.

**Retention of Financial Services Guides, Statements of Advice and material relating to personal advice**

*(This condition is imposed on all licensees and applies where licensees provide financial product advice to retail clients.)*

57. Where the licensee provides financial product advice to retail clients, the licensee must ensure that copies (whether in material, electronic or other form) of the following documents are retained for at least the period specified:

- (a) each Financial Services Guide (“FSG”) (including any Supplementary FSG) given by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity—for a period commencing on the date of the FSG and continuing for at least 7 years from when the document was last provided to a person as a retail client; and

Note: Where the same FSG is given numerous times by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity, it will satisfy paragraph (a) if at least one copy of each FSG used by the licensee or authorised representative from time to time is kept together with a record of the period of time during which the FSG was being used.

- (b) a record of the following matters relating to the provision of personal advice to a retail client (other than personal advice for which a Statement of Advice (“SOA”) is not required or for which a record of the advice is kept in accordance with subsection 946B(3A)):
- (i) the client’s relevant personal circumstances within the meaning of subparagraph 945A(1)(a)(i); and
  - (ii) the inquiries made in relation to those personal circumstances within the meaning of subparagraph 945A(1)(a)(ii); and
  - (iii) the consideration and investigation conducted in relation to the subject matter of the advice within the meaning of paragraph 945A(1)(b); and
  - (iv) the advice, including reasons why advice was considered to be “appropriate” within the meaning of paragraphs 945A(1)(a) to (c), for a period of at least 7 years from the date that the personal advice was provided;
- (c) any SOA provided by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity—for a period of at least 7 years from the date the document was provided to the client.

58. The licensee must establish and maintain measures that ensure, as far as is reasonably practicable, that it and its representatives comply with their obligation to give clients an FSG as and when required under the Act. The licensee must keep records about how these measures are implemented and monitored.

**Licensee responsibility for overseas financial service providers**

*(This condition is only imposed on those licensees where their overseas financial service providers intend to rely on the licensing exemption available under regulation 7.6.01(1)(na).)*

59. A financial services licensee referred to in paragraph 7.6.01(1)(na) of the Corporations Regulations must:
- (a) comply with the Act as if any overseas financial service provider it engages to provide financial services on its behalf, who is relying on the exemption in paragraph 7.6.01(1)(na), is a representative of the licensee within the meaning of Chapter 7; and
  - (b) without limiting (a), have arrangements in place under which the licensee accepts liability, as between the licensee and clients, for any acts or omissions of the overseas financial service provider in relation to the provision of

financial services mentioned in paragraph 7.6.01(1)(na), as if they were acts or omissions of a representative of the licensee under section 917E.

**Licensee responsibility for securitisation entity**

*(This condition is only imposed where the licensee accepts responsibility for a securitisation entity that intends to rely on Class Order 04/1526.)*

60. The licensee must, in relation to a person (“the nominee”) that is a securitisation entity notified in writing to ASIC as a person in relation to whom this condition applies:
- (a) as far as possible, comply with the Act as if the nominee were a representative of the licensee in relation to any financial service of the kind referred to in subparagraphs 2(a), (b) or (d) of Class Order 04/1526 as at the date of the licence and as amended by any disallowable legislative instrument; and
  - (b) have a deed poll in place under which there are enforceable, unlimited and irrevocable covenants in favour of each person to whom a financial service is provided from time to time by the nominee of the kind referred to in subparagraphs 2(a), (b) or (d) of Class Order 04/1526 as at the date of the licence and as amended by any disallowable legislative instrument for any liability (other than an exempt liability) arising from acts or omissions of the nominee relating to the relevant financial service while this condition applies in relation to the nominee, as if the nominee were a representative of the licensee.

In this condition, “securitisation entity” and “exempt liability” have the meanings given in Class Order 04/1526 as at the date of the licence and as amended by any disallowable legislative instrument.

**Underwriting issues of interests in managed investment schemes by associates**

*(This condition is only imposed where the licensee intends to underwrite or sub-underwrite the issue of interests in a registered scheme where the responsible entity of the scheme relies on Class Order 05/26.)*

61. The licensee must comply with condition 62 in relation to any interests it acquires in a registered scheme, where:
- (a) the licensee is an associate of the responsible entity of the scheme; and
  - (b) the licensee acquires the interests as an underwriter or sub-underwriter; and
  - (c) the responsible entity determined the issue price of the interests under subsection 601GAA(2) or subsection 601GAA(3) as notionally inserted by Class Order 05/26.
62. The licensee:
- (a) must not exercise voting rights in respect of the interests; and
  - (b) must only dispose of the interests:
    - (i) in the ordinary course of trading on the ASX market or an approved foreign market (as defined in subsection 601GAA(13) as notionally inserted by Class Order 05/26); or
    - (ii) to a person who is not an associate of the responsible entity; or

- (ii) to a person who is an associate of the responsible entity that acquires interests in an eligible fiduciary capacity (as defined in subsection 601GAA(12C) as notionally inserted by Class Order 05/26).

### **Terms and Definitions**

*(This paragraph is included in all licences to clarify the interpretation of legal references, terms and headings used in the licence.)*

In this licence references to paragraphs, subsections, sections, Divisions, Parts and Chapters are references to provisions of the Corporations Act 2001 (“the Act”) unless otherwise specified. Headings contained in this licence are for ease of reference only and do not affect interpretation.

Terms used in this licence have the same meaning as is given to them in the Act (including, if relevant, the meaning given in Chapter 7) and the following terms have the following meanings:

*(This definition is only imposed where the licensee is authorised to operate an IDPS-like registered scheme in the capacity of a responsible entity.)*

**accessible investments** means assets that may be held through an IDPS-like scheme.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**actual or contingent liabilities of the relevant kind means:**

- (a) an actual or contingent monetary liability; or
- (b) an actual or contingent liability under a non-standard margin lending facility, in the circumstances determined under the terms of the facility, to transfer marketable securities to the client.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**adequately secured** means:

- (a) secured by an enforceable charge over a financial product (other than a financial product issued by the licensee or its associate) if:
  - (i) the financial product is:
    - (A) regularly traded on:
      - (1) a financial market (as defined in subsection 767A(1) and disregarding subsection 767A(2)) operated by a market licensee or a licensee other than the licensee or its associate that in the reasonable opinion of the licensee produces sufficiently reliable prices to assess the value of the security provided by the charge;
      - (2) an ASIC-approved foreign market under ASIC Regulatory Guide 72 (formerly referred to as Policy Statement 72) as at the date of this licence; or
      - (3) a foreign market approved in writing for the purpose by ASIC; or

- (B) an interest in a registered scheme for which withdrawal prices are regularly quoted by the responsible entity and the licensee believes on reasonable grounds that withdrawal may be effected within 5 business days; and
- (ii) the market value of the financial product is:
  - (A) if the financial product is a debt instrument—at least 109% of the amount owing; or
  - (B) otherwise—at least 120% of the amount owing; or
- (b) secured by a registered first mortgage over real estate that has a fair market valuation at least equal to 120% of the amount owing; or
- (c) owing from an eligible provider; or
- (d) secured by an enforceable charge over amounts owing to another licensee which themselves are adequately secured.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**adjusted assets** means the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M if the licensee were a reporting entity:

- (a) minus the value of excluded assets that would be included in the calculation; and
- (b) minus the value of any receivable of the licensee that would be included in the calculation, up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable; and
- (c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC up to the amount of the bond; and
- (d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities; and
- (e) plus
  - (i) the amount of any eligible undertaking that is not an asset; or
  - (ii) if the eligible undertaking is for an unlimited amount, an unlimited amount; provided that if the eligible undertaking is given by a person who is an eligible provider only because of paragraph (b) of the definition of “eligible provider” under this licence, the amount added may be no more than one quarter of the eligible provider’s net assets (excluding intangible assets) as shown in the most recent audited financial statements lodged with ASIC; and
- (f) for calculating ASLF, plus the value of any current assets of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as assets of the licensee except to the extent the value exceeds the sum of:

- (i) the current liabilities of the trust as if they would appear on the balance sheet as assets of the licensee; and
- (ii) any adjustments to ASLF that are a result of current assets, liabilities and contingent liabilities of the trust for accounting purposes being included in calculating adjustments; and
- (g) for calculating ASLF, plus the value of the applicable percentage as set out in paragraphs (c)(i) and (iii) of the definition of “standard adjustments” under this licence of the value of any current assets that would be acquired in return for paying a contingent liability as set out in paragraphs (c)(i) and (iii) of the definition of “standard adjustments” under this licence up to the value of the applicable percentage of the relevant contingent liability.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**adjusted liabilities** means the amount of total liabilities as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M if the licensee were a reporting entity:

- (a) minus the amount of any liability under any subordinated debt approved by ASIC that would be included in the calculation; and
- (b) minus the amount of any liability that is the subject of an enforceable right of set-off that would be included in the calculation, if the corresponding receivable is excluded from adjusted assets; and
- (c) minus the amount of any liability under a credit facility that would be included in the calculation, if it is made without recourse to the licensee; and
- (d) for calculating ASLF, plus the amount of the total current liabilities of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as liabilities of the trustee; and
- (e) plus the value of any assets that are encumbered as a security against another person’s liability where the licensee is not otherwise liable, but only up to the lower of:
  - (i) the amount of that other person’s liability; or
  - (ii) the value of the assets encumbered after deducting any adjustments under this licence.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**adjusted surplus liquid funds or ASLF** means surplus liquid funds minus either:

- (a) the standard adjustments (refer to the definition of “standard adjustments” under this licence); or
- (b) such other adjustments as ASIC may from time to time consent to in writing.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**ASX market** means the licensed financial market operated by ASX Limited.

**ASX 24 market** means the licensed financial market operated by Australian Securities Exchange Limited.

**Chi-X market** means the licensed financial market operated by Chi-X Australia Pty Limited.

**clearing participant** means a participant as defined in section 761A in relation to a clearing and settlement facility (“CS Facility”) where that clearing and settlement facility is a licensed CS facility.

*(This definition is imposed where the licensee has selected this product as part of the Authorisation.)*

**consumer credit insurance** means “consumer credit insurance product” as defined in regulation 7.1.15 of the Corporations Regulations.

*(This definition is imposed where the licensee is either authorised to deal in time-sharing schemes and/or operate a registered time-sharing scheme in the capacity of a responsible entity.)*

**cooling-off period** in relation to time-sharing schemes means not less than 14 days commencing on the date on which the applicant acknowledges receipt of the Product Disclosure Statement (including, where applicable, a loose-leaf price list) and the cooling-off statement referred to in condition 47(a)(i).

*(This definition is imposed where the licensee is either authorised to deal in time-sharing schemes and/or operate a registered time-sharing scheme in the capacity of a responsible entity.)*

**cooling-off statement** in relation to time-sharing schemes means a statement in a form approved by ASIC that:

- (a) describes the effect of the cooling-off period; and
- (b) states that a signed application form will be of no effect unless the applicant also signs an acknowledgment of receipt of such a cooling-off statement.

*(This definition is imposed on all licensees authorised to provide financial product advice to retail clients. This definition relates to ASIC Regulatory Guide 146 (formerly referred to as Policy Statement 146).)*

**customer service representative** means call centre staff or front desk staff who deal with initial queries from customers.

*(This definition is imposed where the licensee is authorised to provide financial services in relation to derivatives.)*

**derivative** means “derivatives” as defined in section 761D (including regulation 7.1.04 of the Corporations Regulations) and:

- (a) includes “managed investment warrants” as defined in this licence; and
- (b) excludes “derivatives” that are “foreign exchange contracts” as defined in this licence.

*(This definition is imposed where the licensee is authorised to operate an IDPS as an IDPS operator or operate an MDA service under Class Order 04/194 or act as an external MDA custodian.)*

**disallowable legislative instrument** means any disallowable legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**eligible custodian** means:

- (a) an Australian ADI; or
- (b) a market participant or a clearing participant of ASX Clear; or
- (c) a subcustodian appointed by a person of the kind referred to in (a) or (b) of this definition.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**eligible provider** means:

- (a) an Australian ADI; or
- (b) an entity (other than a registered scheme of which the licensee or the licensee's associate is the responsible entity):
  - (i) whose ordinary shares are listed on a licensed market or an ASIC-approved foreign exchange under ASIC Regulatory Guide 72 (formerly referred to as Policy Statement 72) as at the date of this licence; and
  - (ii) that had net assets (excluding intangible assets) of more than \$50 million, as shown in the most recently audited financial statements of the provider lodged with ASIC; and
  - (iii) that the licensee has no reason to believe no longer has net assets of at least that amount; or
- (c) an Australian government (i.e. the Commonwealth or a State or Territory government) or a government of a country that is a member of the Organisation for Economic Co-operation and Development ("OECD country government"), or an agency or instrumentality of an Australian or OECD country government; or
- (d) a foreign deposit-taking institution that is regulated by an ASIC-approved regulator; or
- (e) a foreign deposit-taking institution approved in writing by ASIC for this purpose; or
- (f) an Australian CS facility licensee; or
- (g) an entity approved by ASIC in writing for this purpose.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**eligible undertaking** means the amount of a financial commitment that is:

- (a) payable on written demand by the licensee (disregarding any part previously paid or any amount that would be repayable as a current liability or, for calculating NTA, as a liability by the licensee if money were paid), provided by an eligible provider in the form of an undertaking to pay the amount of the financial commitment to the licensee, and that:
  - (i) is an enforceable and unqualified obligation; and
  - (ii) remains operative (even if, for example, the licensee ceases to hold an AFS licence) until ASIC consents in writing to the cancellation of the undertaking; or

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- (b) approved in writing by ASIC as an eligible undertaking.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**estate assets** means assets (including assets in common funds) of an estate in relation to which a trustee company is performing estate management functions.

**estate management functions** has the same meaning as in subsection 601RAC(2).

**excluded assets** means:

- (a) intangible assets (i.e. non-monetary assets without physical substance); and
- (b) except when allowed under paragraphs (e) or (f) of this definition, assets owing or receivables (“receivables”) from, or assets invested in, any person who:
  - (i) is an associate of the licensee; or
  - (ii) was an associate of the licensee at the time the liability was incurred or the investment was made; or
  - (iii) became liable to the licensee because of, or in connection with, the acquisition of interests in a managed investment scheme the licensee operates; and
- (c) except when allowed under paragraph (g) of this definition, assets:
  - (i) held as a beneficial interest or an interest in a managed investment scheme; or
  - (ii) invested in any superannuation product,  
in respect of which the licensee or its associate may exercise any form of power or control; and
- (d) except when allowed under paragraphs (e) or (f) of this definition, receivables from the trustee of any trust in respect of which the licensee or its associate may exercise any form of power or control; and
- (e) despite paragraphs (b) and (d) of this definition, a receivable is not an excluded asset to the extent that:
  - (i) it is adequately secured; or
  - (ii) the following apply:
    - (A) it is receivable as a result of a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm’s length basis; and
    - (B) no part of the consideration in relation to the transaction is, in substance, directly or indirectly invested in the licensee; and
    - (C) the total value of such assets (before any discount is applied) is not more than 20% of the assets less liabilities of the licensee; and
    - (D) for the purposes of calculating ASLF, the amount is further discounted by 10% of the value after any adjustment required by paragraph (a) or (b) of the definition of “adjusted surplus liquid funds” in this licence; or
  - (iii) the following apply:

- (A) it is receivable from an insurance company that is a body regulated by APRA and results from a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis; and
  - (B) there is no reason to believe that any amount invested in the licensee would not have been invested if the transaction that caused the receivable had not taken place or was not at the time of the investment expected to take place; and
  - (C) there is no reason to believe that the recoverability of the receivable will materially depend on the value of an investment by any person in the licensee; and
  - (D) the total value of the receivables under this subparagraph (iii) before any adjustment required by paragraph (a) or (b) of the definition of "adjusted surplus liquid funds" in this licence is applied is not more than 60% of the adjusted liabilities of the licensee disregarding this subparagraph (iii); or
- (iv) ASIC consents in writing to the licensee treating the amount owing as not being an excluded asset; and
- (f) despite paragraphs (b) and (d) of this definition, the licensee can include a receivable amount to the extent that it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of, a superannuation entity as defined in the *Superannuation Industry (Supervision) Act 1993*, an IDPS or a registered scheme to the extent that the receivable:
- (i) exceeds amounts invested by the entity, IDPS or scheme in, or lent (other than by way of a deposit with an Australian ADI in the ordinary course of its banking business) directly or indirectly by the entity, IDPS or scheme to, the licensee, a body corporate the licensee controls, a body corporate that controls the licensee or a body corporate that the licensee's controller controls; and
  - (ii) if receivable by way of fees, represents no more fees than are owing for the last 3 months; and
  - (iii) if receivable under rights of reimbursement for expenditure by the licensee, has not been receivable for more than 3 months; and
- (g) despite paragraph (c) of this definition, the licensee does not have to exclude a managed investment product unless any part of the amount invested is, in substance, directly or indirectly, invested in the licensee.

*(This definition is imposed where a licensee is authorised to operate a financial asset registered scheme in the capacity of a responsible entity.)*

**financial asset** means cash, cheques, orders for payment of money, bills of exchange, promissory notes, securities, deposit products and interests in managed investment schemes (including where the managed investment scheme invests in direct real property or mortgages) but does not include a derivative.

*(This definition is imposed where a licensee is authorised to provide financial services in relation to foreign exchange contracts and/or derivatives.)*

**foreign exchange contracts** means “foreign exchange contracts” that are financial products and includes “derivatives”, as defined in section 761D (including regulation 7.1.04 of the Corporations Regulations), that are foreign exchange contracts.

*(This definition is imposed where a licensee is authorised to operate an IDPS as an IDPS operator.)*

**IDPS** means an investor directed portfolio service in relation to which the licensee has relief under Class Order 02/294 as at the date of this licence and as amended by any disallowable legislative instrument, or relief under any disallowable legislative instrument that replaces Class Order 02/294.

*(This definition is imposed where a licensee is authorised to operate an IDPS-like registered scheme in the capacity of a responsible entity.)*

**IDPS-like scheme** means a registered scheme that has a constitution that provides that:

- (a) a member may direct that an amount of money corresponding to part or all of the amount invested by the member in the scheme be invested in accessible investments; and
- (b) the distributions of capital and income from the scheme to the member in relation to their interests in the scheme will be determined by reference to amounts received by the responsible entity or a custodian in relation to the accessible investments acquired in accordance with that direction.

*(This definition is imposed where a licensee is authorised to operate an IDPS as an IDPS operator.)*

**IDPS property** means property acquired or held through an IDPS other than property held by a client.

*(This definition is imposed where a licensee is authorised to operate a registered scheme in the capacity of a responsible entity.)*

**incidental property** means:

- (a) assets of any kind which are necessary for, or incidental to the effective operation of the scheme, the total value of which, and the total liability that may arise from the holding of which, does not exceed 10% of the value of the assets net of liabilities other than liabilities to members as members of the scheme; and
- (b) cash (including foreign currency), deposits or current accounts with an Australian ADI or units in a cash management trust that are held for no more than 3 months pending investment in assets to which the scheme relates, or expenditure or distribution to members, and foreign exchange contracts that are not derivatives for section 761D (including regulation 7.1.04 of the Corporations Regulations) held for enabling payment in the foreign currency or receipt in Australian currency of proceeds of receipts in foreign currency; and
- (c) derivatives and foreign exchange contacts that are derivatives under section 761D (including regulation 7.1.04 of the Corporations Regulations), where:
  - (i) the value or amount of the derivative or foreign exchange contact will ultimately be determined, derived or varied by reference to something else for

the purposes of paragraph 761D(1)(c) which is related to or may significantly and directly affect the receipts or costs of the fund; and

- (ii) the derivative or foreign exchange contract is acquired or disposed of by the licensee as a hedge which has the primary purpose of avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs of the fund.

*(This definition is imposed where a licensee is authorised to provide financial services in relation to derivatives.)*

**managed investment warrant** means a financial product:

- (a) that is a financial product of the kind referred to in subparagraph 764A(1)(b)(ii) or 764A(1)(ba)(ii); and
- (b) would be a derivative to which section 761D applies apart from the effect of paragraph 761D(3)(c); and
- (c) that is transferable.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**market participant** means a participant as defined in section 761A in relation to a financial market:

- (a) in the ASX market, that is required to comply with the ASIC Market Integrity Rules (ASX Market) 2010 that relate to financial requirements, taking into account any waiver by ASIC; or
- (b) in the Chi-X market, that is required to comply with the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 that relate to financial requirements, taking into account any waiver by ASIC; or
- (c) in the ASX 24 market, that:
  - (i) restricts its financial services business to participating in the ASX 24 market and incidental business; and
  - (ii) complies with the ASIC Market Integrity Rules (ASX 24 Market) 2010 that relate to financial requirements, taking into account any waiver by ASIC.

*(This definition is imposed on all licensees.)*

**MDA service** means a service with the following features:

- (a) a person (“the client”) makes client contributions; and
- (b) the client agrees with another person that the client’s portfolio assets will:
  - (i) be managed by that other person at their discretion, subject to any limitation that may be agreed, for purposes that include investment; and
  - (ii) not be pooled with property that is not the client’s portfolio assets to enable an investment to be made or made on more favourable terms; and
  - (iii) be held by the client unless a beneficial interest but not a legal interest in them will be held by the client; and

- (c) the client and the person intend that the person will use client contributions of the client to generate a financial return or other benefit from the person's investment expertise.

*(This definition is imposed where the licensee has selected this product as part of the Authorisation.)*

**miscellaneous financial investment product** means a facility:

- (a) through which, or through the acquisition of which, a person makes a financial investment as defined in section 763B; and
- (b) that is not otherwise a financial product under section 764A.

*(This definition is imposed where the licensee has selected this product as part of the Authorisation.)*

**miscellaneous financial risk product** means a facility:

- (a) through which, or through the acquisition of which, a person manages financial risk as defined in section 763C; and
- (b) that is not otherwise a financial product under section 764A.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**net tangible assets or NTA** means adjusted assets minus adjusted liabilities.

*(This definition is imposed where the licensee has selected this product as part of the Authorisation.)*

**old law futures contracts** means "futures contracts" as defined under section 9 of the Act immediately prior to 11 March 2002.

*(This definition is imposed where the licensee has selected this product as part of the Authorisation.)*

**old law securities options contracts** means "options contracts" as defined under section 9 of the Act immediately prior to 11 March 2002 which were "securities" as defined under subsection 92(1) of the Corporations Act immediately prior to 11 March 2002.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**Option 1** means the reasonable estimate projection plus cash buffer basis where the licensee is required to:

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's reasonable estimate of what is likely to happen over this term; and
- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and
- (d) demonstrate, based on the projection of the licensee's cash flows, that the licensee will have access when needed to enough financial resources to meet its liabilities

over the projected term of at least 3 months, including any additional liabilities the licensee projects will be incurred during that term; and

- (e) hold (other than as trustee) or be the trustee of a relevant trusts that holds, in cash an amount equal to 20% of the greater of:
  - (i) the cash outflow for the projected period of at least 3 months (if the projection covers a period longer than 3 months, the cash outflow may be adjusted to produce a 3-month average); or
  - (ii) the licensee's actual cash outflow for the most recent financial year for which the licensee has prepared a profit and loss statement, adjusted to produce a 3-month average.

For the purposes of this definition references to the licensee's cash flow include the licensee's own cash flow and any cash flow of a relevant trust but do not include cash flows of any other trust.

For the purposes of paragraph (e) of this definition, "cash" means:

- (A) current assets valued at the amount of cash for which they can be expected to be exchanged within 5 business days; or
- (B) a commitment to provide cash from an eligible provider that can be drawn down within 5 business days and has a maturity of at least a month;

but does not include any cash in a relevant trust if the licensee has reason to believe that the cash will not be available to meet all of the projected cash flows of the licensee.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**Option 2** means the cash needs requirement on the contingency-based projection basis where the licensee is required to:

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's estimate of what would happen if the licensee's ability to meet its liabilities over the projected term (including any liabilities the licensee might incur during the term of the projection) was adversely affected by commercial contingencies taking into account all contingencies that are sufficiently likely for a reasonable licensee to plan how they might manage them; and
- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and
- (d) demonstrate, based on the projection of the licensee's cash flow, that the licensee will have access when needed to enough financial resources to meet its liabilities over the projected term of at least 3 months, including any additional liabilities the licensee might incur during that term.

For the purposes of this definition references to the licensee's cash flow include any cash flow of a relevant trust.

*(This definition is imposed where the licensee is authorised to provide financial services in the capacity of a Principal Trader only)*

**participant** has the meaning given in section 761A.

**Principal Trader** means, for a participant as defined in the operating rules of ASX, a market participant whose right to participate in that market is limited to trading on its own behalf; and for a participant as defined in the operating rules of Chi-X, a market participant whose right to participate in that market is limited to trading on its own behalf.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**regulated trust account** means:

- (a) a trust account maintained by a trustee company that provides traditional services; or
- (b) a trust account maintained by a solicitor unless money in the account includes money that is excluded from regulation as trust money under the laws of the State or Territory relating to legal practitioners that are relevant to the operation of the trust account by the solicitor; or
- (c) a real estate agent's trust account; or
- (d) a trust account maintained by an entity other than the licensee and that provides protections similar to the accounts described in paragraphs (a) to (c) of this definition, and is approved by ASIC for the purpose in writing.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**relevant trust** means, for the purposes of the definitions of "Option 1" and "Option 2" of this licence, a trust:

- (a) where substantially all of the financial services business carried on by the licensee is carried on as trustee of a trust; and
- (b) that it is not a registered scheme or a superannuation entity as defined in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*.

*(This definition is imposed where the licensee is authorised to issue a margin lending facility.)*

**secured property** has the same meaning as in paragraph 761EA(2)(c).

*(This definition is imposed where the licensee is authorised to operate direct real property (stable property trusts/syndicates) registered schemes in the capacity of a responsible entity.)*

**stable property trusts/syndicates** means a trust or syndicate that only holds real property (or an interest in a stable property trust or syndicate which is a managed investment scheme operated by the licensee) that has been specifically agreed by the members and which is to be held for the duration of the scheme.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**standard adjustments** means:

- (a) discounts as follows:
  - (i) 8% for the values that reflect obligations to pay the licensee a certain sum maturing beyond 12 months unless the interest rate applicable is reset to reflect market interest rates at least annually; and
  - (ii) 16% for the values that reflect any assets other than:
    - (A) an obligation to pay the licensee a certain sum; or
    - (B) a derivative; or
    - (C) an interest in property held in trust by another licensee under Division 3 of Part 7.8 or the rights to money held by another licensee in an account under section 981B; and
- (b) 8% of the values that reflect others' obligations to pay the licensee a certain sum except to the extent that the asset is adequately secured or is a right against another licensee in respect of money or property held by that other licensee in an account under section 981B or held in trust under Division 3 of Part 7.8; and
- (c) the following amounts for contingent liabilities and contingent liabilities of any trust (other than a registered scheme) of which the licensee is trustee:
  - (i) 5% of any contingent liabilities that can be quantified under an underwriting or sub-underwriting of financial products except:
    - (A) during the 5 business days after the commitment is assumed; and
    - (B) during any period it is unlawful to accept applications for the financial products to which the underwriting relates (such as under subsection 727(3) or section 1016B) and the period ending 5 business days after the first day on which it becomes lawful to accept applications; and
    - (C) to the extent that the underwriter holds funds from persons seeking to acquire the financial products subject to the underwriting; and
  - (ii) 5% of the potential liability of any contingent liabilities that can be quantified under a derivative other than to the extent there is an offsetting position in any of the following or a combination of the following:
    - (A) the "something else" for the purposes of paragraph 761D(1)(c); and
    - (B) another derivative relating to that something else; and
    - (C) a thing that is so similar to the something else as to make the probability of net loss from the liability under the derivative exceeding any increase in the value of the thing less than 5% in the reasonable and documented opinion of the licensee,
 

except to the extent that the licensee is of the reasonable opinion that the risk that they will become liabilities (or become liabilities to a greater extent than taken into account for the purposes of applying the adjustment) because of a change in the price or value of the something else is trivial; and
  - (iii) 20% of the potential liability of any contingent liabilities that can be quantified under a guarantee or indemnity;



- (d) the relevant percentage as set out in subparagraphs (c)(ii) and (c)(iii) of the amounts that in the licensee's reasonable opinion is the maximum amount that the licensee may be liable for in relation to a contingent liability referred to in paragraph (c) where the maximum liability cannot be quantified; and
- (e) where the licensee has agreed to sell an asset that it does not hold, the amount of the adjustment that would apply if it held that asset is to be applied against adjusted assets.

For the purposes of this definition, the risk that a contingent liability will become a liability may be treated as trivial if the probability that this will occur is reasonably estimated by the licensee as less than 5%.

For the purposes of paragraphs (a) and (b) of this definition, discounts apply against the value of current assets:

- (f) used in calculating "adjusted assets" in this licence; and
- (g) of any trust (other than a registered scheme) of which the licensee is a trustee (see subparagraph (f)(ii) of the definition of "adjusted assets" in this licence); and
- (h) that are deducted under paragraph (c) of the definition of "adjusted assets" in this licence as assets to which recourse may be had for a liability of the licensee where the licensee's liability is limited to those assets but the total discounts applied to those assets shall not exceed any excess of the value of the licensee's assets to which recourse may be taken over the amount of the liability; and
- (i) that is the applicable percentage of the current assets that would be acquired in return for paying a contingent liability referred to in subparagraph (c)(i) or (iii) of this definition including rights against a sub-underwriter (see paragraph (g) of the definition of "adjusted assets" in this licence).

The licensee does not have to apply the discounts to the value of amounts payable from a client in the ordinary course of its financial services business for financial products that the client has agreed to buy, if the money is required to be—and in the reasonable estimation of the licensee probably will be—paid no more than 5 business days after the client became liable.

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**surplus liquid funds or SLF** means adjusted assets minus adjusted liabilities;

- (a) plus any non-current liabilities that were used in calculating adjusted liabilities and the value of any assets that are encumbered (where the licensee is not liable and the assets do not secure another person's current liability) that were deducted when calculating the licensee's adjusted liabilities; and
- (b) minus any non-current assets that were used in calculating adjusted assets; and
- (c) if the licensee is an eligible provider under paragraph (b) of the definition of "eligible provider" under this licence—plus one quarter of the value of the licensee's non-current assets minus any intangible assets and the amount of its non-current liabilities.

*(This definition is imposed where the licensee is authorised to provide traditional trustee company services.)*

**traditional services** means “traditional trustee company services” as defined in subsection 601RAC(1) and includes:

- (a) performing estate management functions (as defined in section 601RAC(2)); and
- (b) preparing a will, a trust instrument, a power of attorney or an agency arrangement; and
- (c) applying for probate of a will, applying for grant of letters of administration, or electing to administer a deceased estate; and
- (d) establishing and operating common funds; and
- (e) any other services prescribed by the Corporations Regulations as traditional trustee company services.

**transactional functions** means:

- (a) acquisition and disposal of assets in accordance with the instructions of the client or otherwise in accordance with the terms of the contract with the client; and
- (b) maintenance of records of investments of clients for the purposes of consolidated reporting about the client’s interests in assets acquired through or held under the IDPS.

*(This definition is imposed where the licensee is authorised to issue a margin lending facility.)*

**transferred securities** has the same meaning as in paragraph 761EA(5)(a).

*(This definition is imposed where the licensee is not a body regulated by APRA.)*

**trigger point** means either of the trigger points described in condition 23 of this licence.

*(This definition is imposed where the licensee is not a body regulated by APRA and is authorised to operate registered schemes in the capacity of a responsible entity and/or operate an IDPS as an IDPS operator.)*

**trustee company** has the same meaning as in section 601RAB.

**value of assets** means, for the purpose of conditions 16, 18 and 29 of this licence, the value of assets and other scheme property and/or IDPS property determined as follows:

- (a) in the case of assets that would be recognised in preparing a balance sheet for members under Chapter 2M—their value as if at that time such a balance sheet was being prepared; and
- (b) in the case of any other scheme property and/or IDPS property—its market value. For the purpose of this calculation mortgages held by members of a registered scheme and managed as part of the scheme must be treated as assets of the scheme.

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