



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 76

Updating [PS 164]: Meeting the general obligations

November 2006

What this paper is about

1 We are updating Policy Statement 164 *Licensing: Organisational capacities* [PS 164] and plan to replace it with two separate policy statements.

2 As part of this process, we have released two consultation papers:

- (a) this paper (*Updating [PS 164]: Meeting the general obligations* (November 2006)); and
- (b) *Updating [PS 164]: Organisational competence* (November 2006).

3 Each consultation paper:

- (a) explains our overall approach in updating [PS 164];
- (b) sets out the changes we propose making; and
- (c) includes the relevant draft policy statement as an attachment.

Your feedback is invited

4 We invite you to comment on our proposals and the issues for consideration in this paper. We would also like to receive any qualitative or quantitative information to support your comments or arguments. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential.

Your comments

Comments are due by 28 February 2007 and should be sent to:

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You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

5 Following the consultation period, we aim to publish the updated policy statements by the end of May 2007. The final versions will also take into account the outcomes of our Better Regulation initiative to rationalise and redesign our regulatory documents: see *Better Regulation: ASIC initiatives* (April 2006).

Status of current [PS 164]

6 The current [PS 164] remains our policy during the consultation period and until we publish separate, updated policy statements.

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Section 1: Why we are updating [PS 164]

1.1 We are updating Policy Statement 164 *Licensing: Organisational capacities* [PS 164] to more effectively communicate our policy to industry.

1.2 This process will not involve a full-scale revision of the basic policy settings in [PS 164]—we do not think there is any need to reconsider our policy approach.

1.3 However, we are proposing to:

- (a) clarify some aspects of our policy in light of our regulatory experience;
- (b) communicate our policy using simpler language;
- (c) make minor adjustments to our policy and update references; and
- (d) consolidate and harmonise our policy on organisational competence, which is currently spread across a number of ASIC publications, including Section E of [PS 164].

1.4 To consolidate our policy on organisational competence, we plan to remove Section E from [PS 164] and combine it with the rest of our policy on organisational competence so that all of our policy on that obligation is contained in a single document.

1.5 This means that [PS 164] will be divided into two separate policy statements, namely:

- (a) *Licensees: Organisational competence*, covering the organisational competence obligation under s912A(1)(e) of the *Corporations Act 2001* (the Act); and
- (b) *Licensees: Meeting the general obligations*, covering the remainder of [PS 164]—i.e. our general approach to all of the AFS licensee obligations under s912A(1) and our policy on particular s912A(1) obligations relating to compliance, risk management, representatives and resources.

Note: Some of the general obligations are covered in more detail in separate policy statements: see paragraph 2.4 and Table 1 in Appendix A.

1.6 The consolidation and harmonisation of our policy on organisational competence is covered in a separate consultation paper, *Updating [PS 164]: Organisational competence* (November 2006).

1.7 This consultation paper (*Updating [PS 164]: Meeting the general obligations* (November 2006)) outlines the changes we plan to make to the remainder of our policy in [PS 164]—i.e. the separate policy statement *Licensees: Meeting the general obligations*. We have included a draft version of this policy statement at Appendix A.

Section 2: Improving the communication of our policy

Our proposal

2.1 Once we have removed Section E of [PS 164] to form the basis of a separate policy on organisational competence, our policy in the remainder of [PS 164] will remain substantially unchanged. However, we propose making the following ‘communication’ changes to the remainder of [PS 164]:

- (a) changing the name of the policy statement to *Licensees: Meeting the general obligations* (but retaining the number [PS 164]);
- (b) communicating our policy in simpler language;
- (c) clarifying what we expect from licensees;
- (d) in Section A, including a table that outlines where to find all of our policy on the general obligations; and
- (e) renaming and reordering some sections of the policy.

Explanation

The name and number of the policy statement

2.2 [PS 164] covers our approach to all of the general obligations under s912A(1), as well as our policy on particular s912A(1) obligations that are not covered in separate policy statements. We think that naming the updated [PS 164] *Licensees: Meeting the general obligations* will better convey the content of the policy than the title of the current [PS 164], *Licensing: Organisational capacities*.

What we expect from licensees

2.3 The general obligations are designed to apply in a flexible way, which means that licensees have a degree of choice when deciding how to comply. In the draft policy statement, we often use the phrase ‘we expect’ when setting out our policy. In using this phrase, we are describing what we look for when we assess compliance with the general obligations, based on our experience in dealing with licensees and our knowledge of regulatory regimes in other countries. However, our expectations are not intended to limit the ways in which licensees can comply.

Roadmap to our policy on the general obligations

2.4 While [PS 164] covers our approach to all of the general obligations under s912A(1), it does not cover all of the general obligations in detail. Some obligations are covered in separate policy

statements. Under our proposal, Section A of *Licencees: Meeting the general obligations* will include a table that functions as a ‘roadmap’ outlining where to find our policy on particular s912A(1) obligations: see Table 1 of the draft policy at Appendix A.

Renaming and reordering sections of our policy

2.5 The following table gives an overview of how we have ordered the sections and topics in the draft policy statement *Licencees: Meeting the general obligations* and where this information appears in the current [PS 164].

Table: Comparison of draft policy statement and [PS 164]

Draft policy statement at Appendix A	Current location in [PS 164]
Section A, ‘Complying with the general obligations’	
When do you need to comply?	Section B, ‘Our general approach to licencees’ obligations’
What do you need to do to comply?	Section A, ‘Our overall approach in this policy statement’
Licencees also regulated by APRA	Section B
Industry standards, codes and practices	Section B
Australian standards and international principles	Section C, ‘Compliance measures, processes and procedures’, and Section F, ‘Risk management’ (for particular Australian standards mentioned in those sections)
Section B, ‘Key compliance concepts’	
Nature, scale and complexity	Section B
Measures for ensuring you comply	Section B
You can’t outsource your responsibility	Section B
Section C, ‘Your broad compliance obligations’	Section B and Section C
Section D, ‘Your risk management systems’	Section F, ‘Risk management’
Section E, ‘Your people’	Section D, ‘Monitoring, supervision and training’
Section F, ‘Your resources’	Section G, ‘Non financial resources’

Your feedback: Section 2

- Q2.1** Do you think the draft policy statement at Appendix A is clear and easy to understand? If not, how do you think we could improve the communication of our policy?
- Q2.2** In trying to improve our communication, do you think we have changed our policy in a way that adversely affects you or your business? If so, how do you suggest we correct this?
- Q2.3** Do you agree with our proposal to change the name of the policy statement to *Licensees: Meeting the general obligations* but retain the policy number [PS 164]?
- Q2.4** Do you think our use of the phrase 'we expect' in the draft policy statement unnecessarily limits the ways in which you can comply with the general obligations? If so, in what circumstances?

Section 3: Referring to international principles and Australian standards

Our proposal

Australian standards

3.1 Our policy currently refers to the Australian standard on compliance programs and the Australian and New Zealand standard on risk management systems. As well as updating our policy to refer to the latest versions of these standards, we propose:

- (a) referring to Australian Standard *AS 4811–2006: Employment screening*; and
- (b) saying that we encourage licensees to use it as a guide when designing and assessing the effectiveness of their measures for monitoring and supervising representatives: see [PS no.87] of the draft policy statement at Appendix A.

International principles

3.2 We also propose supplementing our current policy by referring to the following international principles:

- (a) IOSCO *Principles on Outsourcing of Financial Services for Market Intermediaries* (February 2005);
- (b) the principles set out in the Joint Forum report *Outsourcing in Financial Services* (February 2005);
- (c) the principles set out in the IOSCO report *Compliance Function at Market Intermediaries* (March 2006); and
- (d) Joint Forum *High-Level Principles for Business Continuity* (August 2006).

3.3 Our policy will say that we encourage licensees to use these principles as a guide when designing and assessing the effectiveness of:

- (a) their measures relating to outsourced functions (see [PS no.30] of the draft policy statement at Appendix A, which refers to both the IOSCO and Joint Forum principles on outsourcing);
- (b) their compliance measures (see [PS no.52] of the draft policy statement, which refers to the IOSCO principles on the compliance function); and
- (c) their risk management systems (see [PS no.73] of the draft policy statement, which refers to the Joint Forum principles on business continuity).

Explanation

Why refer to international principles and additional Australian standards?

3.4 Our proposal to refer to the Australian standard on employment screening is consistent with our current approach in [PS 164] where we refer to:

- (a) the Australian Standard *AS 3806–1998: Compliance programs*; and
- (b) the Australian and New Zealand Standard *AS/NZS 4360–1999: Risk management systems*.

Note: These Australian standards have been superseded by *AS 3806–2006: Compliance programs* and *AS/NZS 4360–2004: Risk management systems*. We plan to update our policy to refer to the current versions of the standards.

[PS 164] currently says that these two Australian standards are useful benchmarks for licensees to use as a guide in planning and implementing compliance measures and risk management systems: see [PS 164.54] and [PS 164.110].

3.5 We think there are benefits in supplementing our current policy by referring to the international principles in paragraph 3.2. To some extent, the international principles on the compliance function and business continuity deal with the same subject matter as the Australian standards on compliance programs and risk management systems. However, unlike the Australian standards, the international principles are specific to the financial services industry or, in the case of the IOSCO principles, specific to market intermediaries (i.e. licensees whose business relates to securities and managed investment products).

How to obtain copies of these documents

3.6 You can download:

- (a) the IOSCO principles on the compliance function and outsourcing from the IOSCO website (www.iosco.org); and
- (b) the Joint Forum principles on outsourcing and business continuity from the websites of IOSCO (www.iosco.org), the International Association of Insurance Supervisors (www.iaisweb.org) or the Bank for International Settlements (www.bis.org).

3.7 Australian standards, including the standard on employment screening, are available for purchase via the Standards Australia website (www.standards.org.au).

Your feedback: Section 3

- Q3.1** Do you agree with this proposal? If not, why not? Do you think this proposal will cause any practical difficulties?
- Q3.2** Are there any other international principles or Australian standards that you think our policy should refer to? If so, what are they and why do you think we should refer to them?

Appendix A: Draft policy statement

Licensees: Meeting the general obligations

[Draft PS no]

Licensees: Meeting the general obligations

Chapter 7—Financial services and markets

Issued dd/mm/yyyy

What this policy statement is about

[PS no.1] This policy statement helps Australian financial services (AFS) licensees and licence applicants to comply with most of the general obligations under s912A(1) of the *Corporations Act 2001* (Corporations Act).

Note: The general obligations not covered in this policy are covered in separate policy statements: see [PS no.5].

[PS no.2] It gives guidance on:

- A** complying with the general obligations
see [PS no.7]–[PS no.23]
- B** key compliance concepts that apply to all of the general obligations
see [PS no.24]–[PS no.43]
- C** what we look for when we assess compliance measures
see [PS no.44]–[PS no.66]
- D** what we look for when we assess risk management systems
see [PS no.67]–[PS no.76]

E what we look for when we assess measures for monitoring, training and supervision of representatives
see [PS no.77]–[PS no.96]

F what we look for when we assess the adequacy of human and technological resources
see [PS no.97]–[PS no.111]

[PS no.3] This policy statement also includes a Schedule that lists questions for licensees and licence applicants to consider when designing and testing their arrangements for complying with the general obligations.

[PS no.4] We have issued this policy statement to help licensees and licence applicants understand what we look for when we:

- (a) assess an application for an AFS licence or an application to vary licence authorisations; and
- (b) check a licensee’s ongoing compliance with the general obligations.

[PS no.5] This policy statement should be read in conjunction with our other policies on the general obligations. These are:

- (a) Policy Statement 165 *Licensing: Internal and external dispute resolution* [PS 165];
- (b) Policy Statement 166 *Licensing: Financial requirements* [PS 166];
- (c) Policy Statement 181 *Licensing: Managing conflicts of interest* [PS 181]; and
- (d) Draft policy statement *Licensees: Organisational competence*, which is Appendix A of the consultation paper *Updating [PS 164]: Organisational competence* (November 2006).

Note: Table 1 in Section A outlines where to find our policy on particular s912A(1) obligations.

[PS no.6] Licence applicants should also read the *AFS Licensing Kit* (November 2005). The Kit gives guidance on the licence application and variation processes, and what licence applicants must do to demonstrate that they are able to meet their obligations.

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A Complying with the general obligations

Our policy

The general obligations

[PS no.7] If you are an AFS licensee, you have general obligations under s912A(1) of the Corporations Act to:

- (a) do all things necessary to ensure that the financial services covered by your licence are provided efficiently, honestly and fairly (s912A(1)(a));
- (b) have adequate arrangements in place for managing conflicts of interest (s912A(1)(aa));
- (c) comply with the conditions on your licence (s912A(1)(b));
- (d) comply with the financial services laws (s912A(1)(c));
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws (s912A(1)(ca));
- (f) unless you are regulated by APRA, have adequate financial, technological and human resources to provide the financial services covered by your licence and to carry out supervisory arrangements (s912A(1)(d));
- (g) maintain the competence to provide the financial services covered by your licence (s912A(1)(e));
- (h) ensure that your representatives are adequately trained and competent to provide those financial services (s912A(1)(f));
- (i) if you provide financial services to retail clients, have a dispute resolution system (s912A(1)(g)); and
- (j) unless you are regulated by APRA, establish and maintain adequate risk management systems (s912A(1)(h)).

When do you need to comply with the general obligations?

[PS no.8] You must comply with the general obligations from the time your AFS licence is granted and on an ongoing basis. If we have reason to believe that you are not complying with your obligations, we may take administrative action, which could include suspending or cancelling your licence, or imposing additional licence conditions: s915C(1) and 914A(1).

Note: For guidance on our administrative powers, see *Licensing: Administrative action against financial services providers—An ASIC guide* (April 2006).

[PS no.9] If we conduct a surveillance visit on your business, we may check your ongoing compliance with the general obligations, including the measures you have for ensuring compliance.

[PS no.10] If you breach or are likely to breach your general obligations, you may need to notify us of that breach: s912D.

Note: For guidance on breach reporting, see *Breach reporting by AFS licensees—An ASIC guide* (May 2006).

Applying for an AFS licence

[PS no.11] If you are applying for an AFS licence, you must be able to show that you can comply with the general obligations from the time you are granted a licence, and on an ongoing basis: reg 7.6.03(g). We cannot grant you a licence if we have any reason to believe you will not be able to comply with your general obligations once you have a licence: s913B(1)(b).

Note: If you are applying for an AFS licence, you should read the *AFS Licensing Kit* (November 2005). The Kit explains the licence application process and the ‘proof’ documents you may need to provide to support your application.

[PS no.12] We do not expect your business to be fully operational at the time you apply for an AFS licence. However, when you apply, you must be able to show that you have arrangements in place to ensure compliance once you are granted a licence.

What do you need to do to comply?

[PS no.13] We do not think we can or should give prescriptive guidance on what you need to do to comply with the general obligations. The general obligations are designed to apply in a flexible way, and the Corporations Act places responsibility on you to decide *how* to comply with them.

[PS no.14] However, to help you comply with the general obligations, this policy statement:

- (a) outlines key compliance concepts that apply to all of the general obligations—see Section B;
- (b) describes what we look for when we assess compliance with various general obligations—see Sections C to F; and
- (c) includes questions to help you design and test your measures for complying with the general obligations covered in Sections C to F—see the Schedule at the end of the policy.

[PS no.15] This policy statement does not cover all of the general obligations. Some general obligations are covered in separate policy statements: see Table 1.

Table 1: Roadmap to our policy on the general obligations

Type of obligation	General obligation	Where to find our policy
Your broad compliance obligations	Providing your financial services efficiently, honestly and fairly: s912A(1)(a)	Section C
	Complying with the conditions on your licence: s912A(1)(b)	Section C
	Complying with the financial services laws: s912A(1)(c)	Section C
Your internal systems	Risk management systems (if you are not regulated by APRA): s912A(1)(h)	Section D
	Arrangements for managing conflicts of interest: s912A(1)(aa)	Policy Statement 181 <i>Licensing: Managing conflicts of interest</i> [PS 181]
	Dispute resolution systems (if you provide services to retail clients): s912A(1)(g)	Policy Statement 165 <i>Licensing: Internal and external dispute resolution</i> [PS 165]
Your people	Ensuring your representatives comply with the financial services laws: s912A(1)(ca)	Section E
	Ensuring your representatives are adequately trained and competent: s912A(1)(f)	Section E and, if you provide financial product advice to retail clients, also Policy Statement 146 <i>Licensing: Training of financial product advisers</i> [PS 146]
	Maintaining the competence to provide your financial services: s912A(1)(e)	Draft policy statement <i>Licensees: Organisational competence</i>
Your resources	Adequacy of human and technological resources (if you are not regulated by APRA): s912A(1)(d)	Section F
	Adequacy of financial resources (if you are not regulated by APRA): s912A(1)(d)	Policy Statement 166 <i>Licensing: Financial requirements</i> [PS 166]

Underlying principles

[PS no.16] This policy aims to strike a balance between certainty and flexibility for licensees, while furthering the primary goals of the licensing regime and the general obligations. At the broadest level, these regulatory goals are to promote:

- (a) consumer confidence in using financial services; and
- (b) the provision of efficient, honest and fair financial services by all licensees and their representatives.

Explanation

Our regulatory approach

What if you are regulated by APRA?

[PS no.17] If you are a body regulated by APRA, you do not have to read Sections D and F of this policy. This is because the general obligations to have adequate resources and risk management systems do not apply to you: s912A(1)(d) and (h). This is the case even if only a part of your financial services business is an activity that APRA regulates. APRA, not ASIC, imposes any requirements for risk management and resources that apply to you.

Note: The term ‘body regulated by APRA’ has the meaning given in s3(2) of the *Australian Prudential Regulation Authority Act 1998*.

[PS no.18] In administering the other general obligations, we will take into account that you are regulated by APRA and we will aim to minimise regulatory duplication. When you apply for an AFS licence, we will accept copies of relevant documents you have provided to APRA. In some areas, you may not need to provide particular supporting ‘proof’ documents. We regularly communicate with APRA and coordinate regulatory activities where we share an interest.

Industry standards, codes and practices

[PS no.19] In administering the licensing regime, we take into account whether you comply with established industry practices or standards, as well as what the Corporations Act explicitly requires.

[PS no.20] Reference to industry standards and practices is often a useful way for you to show us that you meet a certain expected standard. For some licensees it may also be a requirement of the law or a licence condition.

[PS no.21] We aim to work with industry and consumer groups to develop industry standards as a means of setting good practice for compliance with the licensee obligations. We will also approve codes of conduct where we have a regulatory responsibility to do so.

Note: Our policy on approving codes of conduct under s1101A of the Corporations Act is set out in Policy Statement 183 *Approval of financial services sector codes of conduct* [PS 183].

Australian standards and international principles

[PS no.22] In assessing compliance with the general obligations, we also take into account whether you comply with relevant Australian standards and international principles. This policy statement refers to various Australian standards and international principles that we encourage you to use as a guide when deciding how to ensure you comply with particular obligations.

[PS no.23] We accept that there may be situations where you do not comply with every element of the relevant Australian standard or international principles but that nevertheless you comply with the general obligations (e.g. local subsidiaries of global companies may adopt the approach of their parent company). Nonetheless, we think that the Australian standards and international principles referred to in this policy statement are useful benchmarks for you to consider when deciding whether you have adequate measures for ensuring you comply with the general obligations.

B Key compliance concepts

Our policy

[PS no.24] The following key concepts underpin what we look for when we assess compliance with the general obligations. You need to bear them in mind when reading Sections C to F.

1. What you need to do depends on the nature, scale and complexity of your business

[PS no.25] There are many different kinds of licensees providing a diverse range of financial services. We do not take a ‘one-size-fits-all’ approach to regulation. Rather, we acknowledge that what you need to do to comply with your obligations will vary according to the ‘nature, scale and complexity’ of your business: see [PS no.32].

2. You must have measures for ensuring you comply with your obligations as a licensee

[PS no.26] We use the expression ‘measures’ or ‘compliance measures’ in this policy to refer to your processes, procedures or arrangements for ensuring that, as far as reasonably practicable, you comply with your obligations as a licensee, including the general obligations: see [PS no.45].

[PS no.27] We generally expect you to:

- (a) document your measures in some form: see [PS no.33];
- (b) fully implement them and monitor and report on their use: see [PS no.34]–[PS no.37]; and
- (c) regularly review the effectiveness of your measures and ensure they are up-to-date: see [PS no.38]–[PS no.39].

If you do not do this, we think you will find it more difficult to comply with the general obligations, and to show you are complying with them.

[PS no.28] Your measures will be affected by the nature, scale and complexity of your business.

3. You can outsource functions, but not your responsibility as a licensee

[PS no.29] If you outsource functions that relate to your AFS licence, we expect you to be able to show us that you:

- (a) have measures in place to ensure that due skill and care is taken in choosing suitable service providers;

- (b) can and will monitor the ongoing performance of service providers; and
- (c) will appropriately deal with any actions by service providers that breach service level agreements or your obligations as a licensee.

Using the international principles on outsourcing

[PS no.30] We encourage you to use the following international principles as a guide when designing and assessing the effectiveness of your measures relating to outsourced functions:

- (a) *IOSCO Principles on Outsourcing of Financial Services for Market Intermediaries* (February 2005); and

Note: IOSCO is the International Organization of Securities Commissions. The international principles in this document are primarily relevant to licensees whose business relates to securities and managed investment products. You can download a copy of this document from the IOSCO website (www.iosco.org).

- (b) the principles set out in the Joint Forum report *Outsourcing in Financial Services* (February 2005).

Note: The Joint Forum has been established by the Basel Committee on Banking Supervision (BCBS), IOSCO and the International Association of Insurance Supervisors (IAIS) to deal with issues common to the banking, securities and insurance sectors. You can download a copy of this document from the website of IOSCO (www.iosco.org), IAIS (www.iaisweb.org) or the Bank for International Settlements (www.bis.org).

Underlying principles

[PS no.31] The key concepts are designed to promote consumer protection and market integrity while still being flexible enough to apply to all of the general obligations. We have developed these key concepts based on our experience as a regulator of financial service providers and our knowledge of regulatory regimes in other countries.

Explanation

Nature, scale and complexity

[PS no.32] What you need to do to comply with the general obligations will vary depending on factors such as:

- (a) the products and services you offer;
- (b) the diversity and structure of your operations (including the geographical spread of your operations and the extent to which you outsource any of your functions);

- (c) the volume and size of the transactions you are responsible for;
- (d) how many of your clients are retail and how many wholesale;
- (e) whether you give financial product advice and, if so, whether it is personal or general advice;
- (f) whether your main business is the provision of financial services; and
- (g) the number of people in your organisation.

Measures for ensuring you comply with your obligations

Documenting your measures

[PS no.33] Documentation helps you demonstrate whether or not you are complying with the general obligations. When you document your measures, we generally expect this will include details of who is responsible, the time frames involved and associated record-keeping and reporting.

Implementing, monitoring and reporting on your measures

[PS no.34] It is not enough just to document your measures. You also need to fully implement them. This means you need to put them into practice and integrate them into the day-to-day conduct of your business.

[PS no.35] For measures to work effectively in practice, you need people at all levels of your business, including your senior management, to understand them and be committed to their success. Integrating your measures into the culture of your business helps ensure they are effective on an ongoing basis.

[PS no.36] You also need to monitor and report on your compliance, including reporting relevant breaches to us under s912D. We generally expect that you will keep records of your monitoring and reporting, including records of reports on compliance and breach notifications.

[PS no.37] We understand that, in some instances, your monitoring and reporting will be built into your business processes. We also acknowledge that your compliance measures might reflect your corporate group's overall approach to compliance. Whatever the case, you need to be able to show us how you are able to monitor your compliance and appropriately address any compliance breaches.

Reviewing your measures

[PS no.38] Regularly reviewing your measures will help to ensure they remain effective. In some cases, it may be sensible for you to consider external review. Where compliance issues have arisen (such as major breaches or repeated compliance failures), external compliance review is particularly appropriate.

[PS no.39] You need to review your measures when there are changes to your obligations, your business or the environment in which you operate. We generally expect that you will have a process for identifying changes that may impact on the effectiveness of your measures.

Outsourcing

[PS no.40] We recognise that many licensees outsource functions that relate to their AFS licence, including administrative or operational functions. Outsourcing may be to external parties or other entities within a corporate group. Functions that are commonly outsourced include:

- (a) IT systems for storing records in relation to the provision of financial services;
- (b) recruitment and training of representatives;
- (c) research on financial products in relation to which financial services are provided;
- (d) the operation of call centres;
- (e) periodic compliance reviews of representatives; and
- (f) unit pricing.

Note: For guidance on outsourcing of unit pricing functions, see section 4.6 of *Unit pricing: Guide to good practice—Joint ASIC and APRA guide* (November 2005).

You are still responsible

[PS no.41] If you outsource functions that relate to your AFS licence, you remain responsible for complying with your obligations as a licensee: s769B.

[PS no.42] We also note that under the *Superannuation (Industry) Supervision Act 1993*, superannuation trustees retain ultimate responsibility for the operation of the superannuation fund. Under s601FB(1) of the Corporations Act, responsible entities retain ultimate responsibility for the operation of a managed investment scheme.

Third parties providing financial services on your behalf

[PS no.43] If a third party provides financial services to clients on your behalf, they will generally need to be your authorised representative or hold their own AFS licence: see s911B(1)(d). If they are a licensee, they will generally be taken to be the provider of the financial services and will be responsible for complying with the general obligations in relation to the provision of those services: see s911B(3).

C Your broad compliance obligations

Our policy

[PS no.44] You must:

- (a) do all things necessary to ensure your financial services are provided efficiently, honestly and fairly: s912A(1)(a);
- (b) comply with the financial services laws: s912A(1)(c); and
- (c) comply with the conditions on your AFS licence: s912A(1)(b).

In this policy, we refer to these obligations as the 'broad compliance obligations'.

[PS no.45] You must have measures in place for ensuring you comply with these obligations on an ongoing basis: see condition 4 of the standard licence conditions in Pro Forma 209 *Australian financial services licence conditions* [PF 209]. We generally expect you will document your measures: see [PS no.27].

[PS no.46] This section explains what we look for when we assess the adequacy of your compliance measures. When reading this section, you need to bear in mind the key concepts in Section B. See the Schedule at the end of the policy for more help in designing and testing your own measures.

Your compliance measures

[PS no.47] We consider that the broad compliance obligations are both stand-alone obligations and obligations that encompass the other general obligations. For this reason, we expect your measures for ensuring compliance with the broad compliance obligations will cover all of your obligations as a licensee including:

- (a) the rest of the general obligations (including those covered in Sections D, E and F of this policy);
- (b) your licence conditions; and
- (c) any other financial services laws that apply to you.

[PS no.48] We also expect that your compliance measures will:

- (a) take into account the specific compliance risks of your business, especially those that may materially affect consumers or market integrity; and

- (b) enable you to:
 - (i) communicate to your representatives what they need to do to comply;
 - (ii) monitor compliance with all of your licensee obligations; and
 - (iii) address and report any compliance breaches.

Responsibility for compliance

[PS no.49] We generally expect that you will allocate to a director or senior manager responsibility for:

- (a) overseeing your compliance measures; and
- (b) reporting to the governing body (including having ready access to the governing body).

[PS no.50] You need to ensure that the area responsible for compliance:

- (a) is independent enough to do its job properly;
- (b) has adequate staff, resources and systems; and
- (c) has access to relevant records.

[PS no.51] It may be appropriate for you to have a separate compliance function (which may be outsourced to a third party). This is likely to be the case for larger, more complex businesses (including a corporate group), but not for licensees whose business is small or whose main business is not the provision of financial services.

Using the Australian standard and international principles on compliance

[PS no.52] We encourage you to use the following Australian standard and international principles as a guide when designing and assessing the effectiveness of your compliance measures:

- (a) Australian Standard *AS 3806–2006: Compliance programs*; and

Note: You can purchase a copy of this Australian standard via the Standards Australia website at www.standards.org.au.

- (b) the principles set out in the IOSCO report *Compliance Function at Market Intermediaries* (March 2006).

Note: These international principles are primarily relevant to licensees whose business relates to securities and managed investment products. You can download this report from the IOSCO website at www.iosco.org.

Underlying principles

[PS no.53] Compliance with your obligations as a licensee is central to the protection of consumers and the promotion of market integrity.

[PS no.54] Having effective compliance measures is a way for you to ensure you comply with your obligations as a licensee, including identifying and appropriately dealing with instances of non-compliance. Compliance measures also help you demonstrate to us that you can comply and are complying with your obligations.

Explanation

The broad compliance obligations

[PS no.55] The broad compliance obligations are both stand-alone obligations and obligations that encompass the other general obligations. This means that:

- (a) if you fail to comply with one or more of the other general obligations, you are also likely to breach the broad compliance obligations; and
- (b) even though you may be complying with all of the other general obligations, you may still be in breach of the broad compliance obligations. This is because the broad compliance obligations are also stand-alone obligations.

Providing financial services efficiently, honestly and fairly

[PS no.56] You need to do all things necessary to ensure your financial services are provided in a way that meets *all* of the elements of ‘efficiently, honestly and fairly’. If you fail to comply with the other general obligations, it is unlikely that you will be complying with the ‘efficiently, honestly and fairly’ obligation.

[PS no.57] However, the ‘efficiently, honestly and fairly’ obligation is also a stand-alone obligation that operates separately from the other general obligations. For example, if you have contractual obligations to clients and breach them, this might not be a breach of the other general obligations, but it could amount to a failure to provide your financial services efficiently, honestly and fairly.

Complying with the financial services laws

[PS no.58] The obligation to comply with the financial services laws encompasses the other general obligations. However, it also includes an obligation to comply with:

- (a) Chapter 7 or other Chapters of the Corporations Act that may apply to you (e.g. the disclosure requirements); and
- (b) provisions of the *Australian Securities and Investments Commission Act 2001* and other Commonwealth, state and territory legislation dealing with financial services: see s761A.

Complying with your licence conditions

[PS no.59] The conditions on your AFS licence reinforce some of the general obligations, so breaching a licence condition will sometimes also be a breach of the general obligation that the condition relates to.

Note: The standard licence conditions are set out in Pro Forma 209 *Australian financial services licence conditions* [PF 209]. For our policy on licence conditions, see Section C of Policy Statement 167 *Licensing: Discretionary powers* [PS 167].

Nature, scale and complexity of your business

[PS no.60] Your compliance measures might include one or a number of different documents and any of a variety of stand-alone or integrated information technology (IT) systems. As a general rule, the smaller and simpler your business, the smaller and simpler we expect your measures to be.

[PS no.61] For example, if you deal in a narrow range of simple products as an incidental part of your main business or you are a very small business, you may meet your compliance obligations by having a checklist focusing on compliance risks that would adversely affect consumers and the provision of efficient, honest and fair financial services.

[PS no.62] On the other hand, if your main business is to provide financial services and products, you deal in a broad range of products and you have numerous staff that are spread out geographically, you are more likely to meet your compliance obligations by having compliance measures that involve the use of manuals, programs and dedicated compliance staff.

[PS no.63] If you use external providers to provide functions that relate to your AFS licence, we think your compliance measures will need to be different from those you would need if you performed those functions in-house.

Compliance measures and risk management systems

[PS no.64] From our experience, it is common for some licensees' compliance measures to be integrated into their risk management systems. Compliance measures can be one of several controls you can use to address or mitigate risks to your business (including the risk of non-compliance with your obligations under the Corporations Act). The general obligation to maintain adequate risk management systems is explained in Section D.

[PS no.65] If you are regulated by APRA, the general obligation to have adequate risk management systems does not apply to you: see [PS no.17]. However, this does not affect the need for you to meet our requirements on compliance measures, even if your compliance measures are integrated into your risk management systems.

The role of senior management

[PS no.66] The level of senior management involvement in overseeing your compliance measures might extend to:

- (a) communicating the measures to those responsible for implementing them and other stakeholders;
- (b) ensuring that the area responsible for the measures has adequate staff and resources;
- (c) ensuring staff education and awareness of the measures;
- (d) implementing clear reporting lines for the manager(s) responsible for the measures; and
- (e) receiving regular reports on the measures.

D Your risk management systems

Our policy

[PS no.67] You must have adequate risk management systems: s912A(1)(h). You must also have measures in place to ensure you comply with this obligation on an ongoing basis. We generally expect you to document these measures: see [PS no.27].

[PS no.68] This section explains what we look for when we assess the adequacy of your risk management systems. When reading this section, you need to bear in mind the key concepts in Section B. For more help in designing and testing your measures, see the Schedule at the end of the policy.

[PS no.69] If you are regulated by APRA, you do not need to read this section: see [PS no.17].

Risk management systems

[PS no.70] We generally expect your risk management systems will:

- (a) be based on a structured and systematic process that takes into account your obligations under the Corporations Act;
- (b) identify and evaluate risks faced by your business, focusing on risks that adversely affect consumers or market integrity (this includes risks of non-compliance with the financial services laws);
- (c) establish and maintain controls designed to manage or mitigate those risks; and
- (d) fully implement and monitor those controls to ensure they are effective.

[PS no.71] Your risk management systems will need to adapt as your business develops and your business risk profile changes over time.

Financial risks

[PS no.72] Your risk management systems will normally address the risk that your financial resources will not be adequate. We have set out the financial requirements (for non APRA-regulated licensees) in Policy Statement 166 *Licensing: Financial requirements* [PS 166].

Using the Australian standard and international principles

[PS no.73] We encourage you to use the following Australian standard and international principles as a guide when designing and assessing the effectiveness of your risk management systems:

- (a) Australian and New Zealand Standard *AS/NZS 4360–2004: Risk management systems*; and

Note: You can purchase a copy of this Australian standard via the Standards Australia website at www.standards.org.au.

- (b) Joint Forum *High-Level Principles for Business Continuity* (August 2006).

Note: You can download this report from the website of IOSCO (www.iosco.org), IAIS (www.iaisweb.org) or the Bank for International Settlements (www.bis.org).

Underlying principles

[PS no.74] The requirement for risk management systems ensures you explicitly identify the risks you face and have measures in place to keep those risks to an acceptable minimum. Risks in this context include risks to:

- (a) consumers who use your services; and
- (b) the integrity of the markets in which you operate.

Explanation

Nature, scale and complexity of your business

[PS no.75] Your risk management systems will depend on the nature, scale and complexity of your business and your risk profile. They will be different for each licensee.

[PS no.76] If you use external providers to provide functions that relate to your AFS licence, we think your risk management measures will need to be different from those you would need if you performed those functions in-house.

E Your people

Our policy

[PS no.77] You must:

- (a) take reasonable steps to ensure that your representatives (i.e. the people who act on your behalf) comply with the financial services laws: s912A(1)(ca); and
- (b) if those people provide financial services, ensure they are trained and competent to do so: s912A(1)(f).

[PS no.78] You must also have measures in place for ensuring you comply with these obligations on an ongoing basis. We generally expect you to document your measures: see [PS no.27].

[PS no.79] This section explains what we look for when we assess compliance with these obligations. When reading this section, you need to bear in mind the key concepts in Section B. For more help in designing and testing your measures, see the Schedule at the end of the policy.

[PS no.80] You must also have adequate resources, including people, to provide your financial services and carry out supervision: s912A(1)(d). This particular obligation is covered in Section F.

Monitoring and supervision

[PS no.81] To ensure your representatives comply with the financial services laws, we consider that you need to monitor and supervise them.

Who do you need to monitor and supervise?

[PS no.82] Any person who acts on your behalf is your 'representative': see s910A. Your representatives include:

- (a) your employees and directors;
- (b) your authorised representatives; and
- (c) any third party service providers you use to provide functions relating to your licence.

How closely do you need to supervise them?

[PS no.83] The level of monitoring and supervision your representatives need will depend on the nature, scale and complexity of your business (e.g. the function your representatives perform, whether your business operates from one or a number of locations etc.).

[PS no.84] We do not think that you need to scrutinise every activity of your representatives. However, we generally expect you will need measures that:

- (a) allow you to determine whether your representatives are complying with the financial services laws (including your licence conditions); and
- (b) include a robust mechanism for remedying any breaches.

Measures for monitoring and supervision

[PS no.85] Your measures for monitoring and supervision will normally show how you:

- (a) keep track of who your representatives are, what role they perform and whether they are appropriately authorised;
- (b) ensure your representatives (including your authorised representatives) act within the scope of what you have authorised them to do;
- (c) ensure your representatives understand your compliance arrangements;
- (d) monitor your representatives' compliance; and
- (e) respond to compliance failures.

Employment screening

[PS no.86] We generally expect your measures for monitoring and supervision will include carrying out appropriate background checks before you appoint new representatives. These checks could include referee reports, searches of ASIC's Register of Banned and Disqualified Persons, police checks etc.

[PS no.87] We encourage you to use Australian Standard *AS 4811–2006: Employment screening* as a guide when designing and assessing the effectiveness of this aspect of your measures for monitoring and supervising your representatives.

Note: You can purchase a copy of this Australian standard from the Standards Australia website at www.standards.org.au.

Training and competence

[PS no.88] The obligation to ensure your representatives are trained and competent applies only in relation to your representatives who provide financial services.

[PS no.89] We expect you to:

- (a) identify the knowledge and skills your representatives need to competently provide your financial services;
- (b) ensure that they have the necessary knowledge and skills;
- (c) ensure that they undertake continuing training programs to maintain and update their knowledge and skills; and
- (d) maintain a record of the training they have undertaken (this is required under reg 7.6.04(1)(d)).

Training standards for financial product advice to retail clients

[PS no.90] We have specified minimum training standards for representatives (and natural person licensees) who provide financial product advice to retail clients. These are set out in Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146]. The training standards are knowledge and skills requirements that can generally be met by completing appropriate training courses on the ASIC Training Register or being individually assessed as competent by an authorised assessor listed on the ASIC Training Register.

[PS no.91] The [PS 146] training standards are minimum standards that apply to all representatives (and natural person licensees) who provide financial product advice to retail clients: see licence conditions 6 and 7 in [PF 209]. However, there are special rules for customer service representatives, para-planners and trainee advisers: see [PS no.95]–[PS no.96].

Representatives providing other financial services

[PS no.92] We have not specified training standards for representatives (and natural person licensees) providing services other than financial advice to retail clients. However, you must still ensure that your representatives providing other services are trained and competent to perform their role and functions.

[PS no.93] You may be able to adapt the training standards in [PS 146] to help you determine the appropriate knowledge and skills needed by your representatives providing other financial services.

Underlying principles

[PS no.94] The requirement to monitor, supervise and train your representatives aims to ensure that your representatives do their jobs properly, understand and apply internal processes and are competent to perform the tasks they are given.

Explanation

Customer service representatives, para-planners and trainee advisers

[PS no.95] You remain responsible for all of the financial services provided under your licence, regardless of how, or by whom, those services are provided. If you, or any of your representatives, use customer service representatives, para-planners and/or trainee advisers who do not meet the [PS 146] training standards, you must ensure that they are:

- (a) trained and competent to perform their role and functions (see [PS 146.16] and [PS 146.18]); and
- (b) supervised by representatives who:
 - (i) meet the [PS 146] training standards; and
 - (ii) play a material role in the provision of any advice to retail clients.

[PS no.96] As a general rule, if you use a disproportionately high number of para-planners who do not meet the [PS 146] training standards compared with the number of your representatives who do meet the training standards, we believe there is an increased risk that you will not be satisfying your obligations.

F Your resources

Our policy

[PS no.97] You must have adequate financial, technological and human resources to provide the financial services covered by your licence and to carry out supervisory arrangements: s912A(1)(d).

[PS no.98] You must also have measures in place to ensure that you have adequate resources on an ongoing basis. We generally expect you to document these measures: see [PS no.27].

[PS no.99] This section explains what we look for when we assess the adequacy of your human and technological resources. When reading this section, you need to bear in mind the key concepts in Section B. For more help in designing and testing your measures, see the Schedule at the end of the policy.

[PS no.100] The financial resources part of this obligation is covered in Policy Statement 166 *Licensing: Financial requirements* [PS 166].

[PS no.101] If you are regulated by APRA, you do not need to read this section: see [PS no.17].

Human resources

[PS no.102] Whether your human resources are adequate will depend on the nature, scale and complexity of your business: see [PS no.110]. However, you need to have enough people to enable you to:

- (a) comply with all of your obligations under the law;
- (b) carry out monitoring and supervision; and
- (c) meet your current and anticipated future operational needs.

[PS no.103] Your measures for ensuring that you have enough people will normally include:

- (a) recruitment processes and succession planning;
- (b) systems for inducting and training new staff;
- (c) performance management systems; and
- (d) processes for staff retrenchment and redundancy.

Reviewing whether you have enough human resources

[PS no.104] You need to regularly review the adequacy of your human resources.

[PS no.105] We generally expect that you will identify key indicators that your human resources are inadequate. These key indicators are likely to include:

- (a) customer complaints about the quality of customer service or financial product advice;
- (b) a low ratio of compliance staff to representatives;
- (c) client accounts and interests not being monitored when staff are absent;
- (d) a large number of inexperienced staff (e.g. staff who have been in your business less than 6 months); and
- (e) a large number of vacant positions.

Technological resources

[PS no.106] Whether your technological resources are adequate will depend on the nature, scale and complexity of your business: see [PS no.110]. However, you need to have enough technological resources to enable you to:

- (a) comply with all of your obligations under the law;
- (b) maintain client records and data integrity;
- (c) protect confidential and other information; and
- (d) meet your current and anticipated future operational needs.

Reviewing whether you have enough technological resources

[PS no.107] You need to regularly review the adequacy of your technological resources: see [PS no. 111].

[PS no.108] We know that the financial services industry uses a variety of technological resources, ranging from phones, faxes and personal computers to sophisticated networks and/or customised IT systems. We do not think you need to have sophisticated IT systems if simpler systems enable you to meet the criteria in [PS no.106].

Underlying principles

[PS no.109] Having sufficient technological and human resources is crucial to your ability to demonstrate that you have the capacity to carry on your financial services business in full compliance with the law and to supervise your representatives. Failure to have enough resources may create an unacceptable risk that you may not comply with all of your obligations as a licensee.

Explanation

Nature, scale and complexity of your business

[PS no.110] Whether your human and technological resources are adequate will depend on a number of factors, including:

- (a) the number of clients you have;
- (b) the number of representatives who provide financial services on your behalf;
- (c) your organisational structure;
- (d) the number of transactions you are likely to enter into, and the size of those transactions;
- (e) the financial services you offer, including the nature of the products those services relate to; and
- (f) the extent to which you use IT systems.

Reviewing your IT systems

[PS no.111] When reviewing your IT systems, you need to consider:

- (a) your IT system security;
- (b) the currency of your hardware and software;
- (c) the quality and relevance of the applications you use;
- (d) your disaster recovery systems and business resumption capacity;
- (e) the number of users;
- (f) the ongoing viability of software and other service providers;
- (g) the response times of your IT systems;
- (h) the down times of your IT systems;
- (i) your use of legacy IT systems; and
- (j) complaints (e.g. from staff, clients or service providers) about your IT systems.

Schedule: Designing and testing your measures

[PS no.112] This Schedule sets out questions to consider when designing and testing your measures for ensuring you comply with the general obligations covered in Sections C to F of this policy. You need to read this Schedule in conjunction with the corresponding section of this policy.

[PS no.113] The Schedule is not intended as a compliance checklist—it does not cover everything you need to consider, and it may cover some things that do not apply to you. You still need to consider your individual circumstances, including the nature, scale and complexity of your business.

[PS no.114] We will continue to review and update the Schedule in light of our regulatory experience.

Your broad compliance obligations

Compliance framework

- Have you documented your compliance measures?
- Has your governing body signed off on them?
- How do you monitor whether your compliance measures are being followed? Who is responsible?
- How do you review your compliance arrangements to ensure they remain effective and up-to-date (e.g. to deal with new products)?
- Do you undertake regular external reviews of your compliance measures and their monitoring?
- How do you assess the impact of outsourcing on your compliance measures?

Implementing compliance measures

- How do you communicate your compliance measures to your staff?
- Are your compliance measures integrated into relevant operational processes?
- How do you promote a culture of compliance within your organisation?

Compliance function

- Have you set up a separate compliance function within your organisation?
- Do you have a compliance manager? Do they report to the governing body (or its delegate)?
- Are compliance staff adequately trained and qualified in compliance responsibilities?
- Are the responsibilities of compliance staff clearly defined and understood?
- Do compliance staff have access to the information they need to perform their role?

Responding to compliance failures

- How do you ensure that you identify and take action to remedy compliance failures and other compliance issues, including action to prevent their recurrence?

- How do you identify and address systemic compliance failures or other trends in compliance issues?

Breach reporting

- Is there a clear, well-understood and documented process for reporting compliance breaches (including to the governing body or its delegate)?
- How do you ensure that relevant breaches are reported to ASIC under s912D? Who is responsible for reporting to ASIC?
- What records do you keep of compliance breaches (e.g. a breach register)?
- Do you regularly review your compliance measures to take into account past breaches?

Safeguarding client money and assets

- How do you ensure that client money and assets are separated from your money and assets?

Record-keeping

- How do you ensure that you keep adequate accounting, business and compliance monitoring records?
- How do you ensure that you retain records for the statutory period?

Conduct and disclosure obligations

- How do you ensure that you comply with your conduct obligations under the Corporations Act, e.g. requirements about giving personal advice to retail clients?
- How do you ensure that you comply with your disclosure obligations, e.g. obligations relating to advertising, Product Disclosure Statements and Financial Services Guides?

Your risk management systems

Risk management framework

- Have you documented your risk management systems?
- Do your documented measures show who is responsible for risk management?
- Has your governing body signed off on your risk management measures and made a commitment to ongoing risk management?
- Have you appointed senior managers to oversee risk management measures?
- Are there clear risk management reporting lines? Do your staff understand what they are required to report on, and when?
- Do you annually review your risk management measures to ensure they are effective? Does this include external review?
- Do you have a business continuity plan?

Implementing risk management

- How do you ensure that staff understand and comply with risk management measures?
- Are risk management staff adequately trained and qualified in risk management responsibilities?

Identifying risks

- How do you identify risks to your business?
- How do you identify risks to consumers and market integrity?
- Have you considered all your obligations under the Corporations Act (including the regulations and licence conditions) and identified the risks of non-compliance with them?
- How do you ensure you identify new risks as they arise (e.g. because of new products or technology)?
- Do you document the risks you identify?

Evaluating risks

- How do you establish the probability of a risk event occurring and the impact of the problem if the risk occurs?
- How do you combine the probability and impact factors to determine the overall risk?
- How do you prioritise the risks and establish which ones need to be addressed?
- Do you document the risks you evaluate and how you arrive at your evaluation?

Addressing risks

- How do you address those risks with appropriate measures and controls?
- Do you document your measures and controls for addressing risk and the reasons behind them?

Your people

Monitoring and supervision

Appointing representatives

- What background checks (e.g. referee reports) do you do before you appoint representatives? How do you check the person's identity?
- How do you ensure that you comply with your notification obligations under s916F in relation to your authorised representatives?

Monitoring and supervision framework

- Have you established a clear reporting and supervisory structure covering all your representatives? How do you ensure that you are receiving accurate information?
- Who is responsible for monitoring and supervision? To whom do they report?
- Do you have representatives who operate from locations other than your principal place of business? How do you monitor and supervise them?
- How do you ensure your representatives understand your compliance measures? How do you monitor that they are complying with your compliance measures?
- How do you identify and address higher risk activities of your representatives, e.g. providing financial product advice to retail clients, handling client money?
- Do you have a policy on disciplinary action for compliance failures or other compliance issues? Has it been clearly communicated to your representatives?

Training and competence

Training responsibilities

- How do you identify which of your representatives provide financial services?
- How do you identify and keep records of the training they complete: see reg 7.6.04(1)(d)?
- How do you identify the knowledge and skills they need?
- How do you ensure they have the necessary knowledge and skills to provide financial services?
- How do you ensure that your representatives who provide financial product advice to retail clients meet the training standards in [PS 146]?

Continuing training

- How do you ensure that your representatives who provide financial services maintain and update their knowledge and skills?
- Have you determined how much ongoing training they need?
- Do you have a regular (e.g. annual) training program for them? Who is responsible for this?
- How do you ensure your training program continues to meet the needs of your representatives?

Your resources

Technological resources

Adequacy of resources

- What technological resources (e.g. communications, IT) do you need to carry out your business?
- Have you identified key indicators that might show you do not have enough technological resources? How do you monitor these key indicators?

IT framework

- Do you have an IT strategy to support your current and future operational needs?
- Do you have a disaster recovery plan and do you test it regularly?
- Do you have in-house IT staff to provide and/or manage the delivery of IT services? If not, how are your IT services managed and delivered?
- Do you have outsourcing arrangements with third parties for the development and maintenance of your IT systems?
- Do you have contracts with third parties that include service level agreements? If so, how often do you review delivery of service levels under those agreements?

Data back-up and IT security

- Do you have data back-up and recovery plans?
- How regularly do you back up your data and how are back-ups stored (e.g. are they stored offsite)?
- Do you have network security controls in place? How do you keep viruses out of your system?
- How do you protect confidential and other sensitive information?
- Is access to physical IT infrastructure restricted?

Human resources

Adequacy of resources

- What human resources do you need for each of your business activities, e.g. compliance, monitoring and supervision, complaints handling?
- Have you identified key indicators that might show you do not have enough human resources? How do you monitor these key indicators?
- How do you ensure extra staff are available when they are needed (e.g. to supervise staff who have been involved in compliance failures)?
- How do you ensure client accounts and interests are monitored while staff are absent?

Human resources framework

- Do you have a recruitment process?
- Do you have systems for inducting and training new staff?
- Do you have a performance management process?
- Do you have a succession planning process?
- Do you have in-house human resources staff to provide and/or manage the delivery of your human resources needs? If not, how are your human resources needs managed and delivered?
- Do you have outsourcing arrangements with third parties for the development and maintenance of your human resources needs?
- Do you have contracts with third parties that include service level agreements? If so, how often do you review delivery of service levels under those agreements?

Key terms

[PS no.115] In this policy statement, terms have the following meanings:

AFS licence Australian financial services licence under s913B of the Corporations Act

APRA the Australian Prudential Regulation Authority

ASIC Australian Securities and Investments Commission

body regulated by APRA has the meaning given in s3(2) of the *Australian Prudential Regulation Authority Act 1998*

Corporations Act the *Corporations Act 2001*

financial services laws has the meaning given in s761 of the Corporations Act

general obligations the obligations of a licensee under s912A(1) of the Corporations Act

governing body the board of directors, committee of management or other governing body of the licensee (including, in relation to a licensee who is a natural person, that person)

licensee a person who holds an AFS licence

[PF 209] (for example) an ASIC pro forma (in this example numbered 209)

[PS 166] (for example) an ASIC policy statement (in this example numbered 166)

reg 7.6.04 (for example) a regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04)

representative has the meaning given in s910A of the Corporations Act

s912A (for example) a provision of the Corporations Act (in this example numbered 912A)

you licensee or applicant for an AFS licence

Related information

[PS no.116]

Headnotes

general obligations; nature, scale and complexity; compliance measures; outsourcing; efficiently, honestly and fairly; risk management systems; monitoring, supervision and training of representatives; human resources; technological resources

Pro formas

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

Policy statements and guides

Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146]

Policy Statement 165 *Licensing: Internal and external dispute resolution* [PS 165]

Policy Statement 166 *Licensing: Financial requirements* [PS 166]

Policy Statement 167 *Licensing: Discretionary powers* [PS 167]

Policy Statement 181 *Licensing: Managing conflicts of interest* [PS 181]

Draft policy statement *Licensees: Organisational competence*, which is Appendix A of the consultation paper *Updating [PS 164]: Organisational competence* (November 2006)

AFS Licensing Kit (November 2005)

Legislation

Corporations Act Chapter 7, s9, 601FB, 761A, 769B, 910A, 911B, 912A, 912D, 913B, 914A, 915C, Corporations Regulations 2001 reg 7.6.03, *Australian Prudential Regulation Authority Act 1998* s3(2)

Consultation papers

Consultation paper *Updating [PS 164]: Organisational competence* (November 2006)