



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 26

Licensing and disclosure: Making the transition to the FSR regime

October 2001

Important note

This publication is intended to be a helpful guide to the transitional provisions for licensing and product disclosure. It describes what we see as the key features of those provisions in a general way.

This guide is not intended to be comprehensive or to describe how the transitional provisions will apply in every situation. This guide may not cover some important aspects of the transitional provisions, and may simplify aspects of them. You will need to read it together with the transitional provisions and the FSR Act, as well as the regulations made on 8 October.

The contents of this guide are based on the transitional provisions and the FSR Act as at the date of this publication, Thursday 25 October 2001, and the regulations made on 8 October 2001 for the purposes of the transitional provisions and the FSR Act. You will need to consider the effects on the contents of this guide of any changes to the FSR Act and the transitional provisions, including the proposed further regulations.

We intend to amplify the parts of this guide describing ASIC's licensing process in forthcoming process publications, such as the *AFS Licensing Kit*.

The contents of this guide do not constitute legal advice. You will need to seek your own legal advice to find out how the transitional provisions and regulations will apply to you.

We will consider any comments on this guide in the development, issue and review of any transitional provisions policy that we may issue. At this time, we do not intend to issue another version of this guide.

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What this guide is about

1 This publication is intended to be a helpful guide to how the transitional provisions under Part 10.2 of the *Corporations Act 2001* (Corporations Act) as amended by the *Financial Services Reform (Consequential Provisions) Act 2001* (transitional provisions) will apply to:

- (a) financial services licensing under Parts 7.6–7.8 of the *Financial Services Reform Act 2001* (FSR Act); and
- (b) financial product disclosure under Part 7.9 of the FSR Act.

Note 1: New Part 10.2 of the Corporations Act commenced on 27 September 2001. Parts 7.6–7.9 will commence on 11 March 2002, and form part of the Corporations Act from that date.

Note 2: This guide does not consider the transitional provisions for Australian or overseas market operators applying for an Australian markets licence, or for operators of clearing and settlement facilities applying for an Australian CS facility licence. However, this guide does consider some aspects of the transitional provisions for those operators of existing exempt stock markets and exempt futures markets who will be required to hold an Australian financial services licence under the new regulatory regime.

2 This guide will help you understand ASIC’s views as to how the key features of the transitional provisions will operate and what you will need to do to move to the new regulatory regime. However, it is your responsibility to determine your obligations under the FSR Act and the transitional provisions, including the regulations, and we encourage you to seek your own advice where necessary.

3 This guide explains:

- (a) our approach to the transitional provisions;
- (b) some aspects of the transitional provisions as they relate to licensing (**Section 1**) and product disclosure (**Section 2**). These are:
 - (i) What is the transition period?
 - (ii) What law operates during the transition period?
 - (iii) What are the processes for moving to the new regulatory regime?
 - (iv) What law applies after the transition period?

- (c) some aspects of how an entity's transition to the new licensing regime relates to its transition to the new product disclosure regime (**Section 3**).

4 This guide should be read together with our forthcoming:

- (a) FSR policy statements on *Licensing: Discretionary powers and transition* and *Disclosure: Discretionary powers and transition*, which will set out how ASIC proposes to use its transitional discretionary powers under the transitional provisions;

Note: We plan to publish these documents before 1 December 2001.

- (b) FSR process-related publications, such as the *AFS Licensing Kit*, which will amplify the parts of this guide describing ASIC's licensing processes.

Note: We aim to publish the *AFS Licensing Kit* in February 2002.

5 This guide is based on:

- (a) the FSR Act and the transitional provisions; and
- (b) the regulations made on 8 October 2001 for the purposes of the FSR Act and the transitional provisions.

Note 1: If amendments are made to the FSR Act, the transitional provisions or the regulations after the publication of this guide on Thursday 25 October 2001, you should consider any effect they may have on the content of this guide.

Note 2: For guidance on how to apply for an Australian financial services licence, whether under legislative streamlining or the ASIC licensing process, see our process guideline *How do you get an Australian financial services (AFS) licence?* (Release 2.0 — October 2001) and other licensing process-related guidance publications we plan to issue before 11 March 2002 (eg *AFS Licensing Kit*).

Our approach to the transitional provisions

6 The transitional provisions establish arrangements for existing industry participants to make the transition to the new regulatory regime under the Corporations Act as amended by the FSR Act. On 8 October 2001 by proclamation, **11 March 2002** was fixed as the day on which Schedule 1 of the FSR Act will commence (FSR commencement). This Schedule contains the licensing and product disclosure provisions under Parts 7.6–7.9.

Licensing and product disclosure

What we expect of you — planning and preparing for transition

7 We consider that the onus is on industry participants to start preparing early and to complete the transition to the new regulatory regime within the statutory timeframe.

8 As an industry participant, you will need to plan your transition from your old regulatory regime(s) to the new regulatory regime carefully, to ensure that:

- (a) you understand which regime applies to the different aspects of your conduct at different times;
- (b) your representatives and other relevant persons understand which regime applies to the different aspects of their conduct at different times; and
- (c) you, your representatives and other relevant persons comply with those different regimes.

Licensing

Applying for an AFS licence under the new regulatory regime

9 Under the transitional provisions, current financial service providers will have up to 2 years from FSR commencement (up to 11 March 2004) to obtain an Australian financial services (AFS) licence. However, as a practical matter you will need to apply in sufficient time to allow us to process your application and decide whether or not to grant you an AFS licence within the 2-year transitional period.

10 We encourage entities to apply early for an AFS licence. Current financial service providers (including those eligible for legislative streamlining as described in Section 1.3) should not consider that they can delay their application until shortly before the end of the 2-year transitional period.

Note: See also our message after paragraph 1.1.3 of this guide.

Applications under the relevant old legislation

11 In the lead-up to FSR commencement on 11 March 2002, we strongly encourage entities who are considering making an application under the relevant old legislation to wait and apply under the new regulatory regime.

12 Under the transitional provisions, we will not be able to process applications for:

- (a) a licence under the old Corporations Act; or
- (b) registration under the *Insurance (Agents and Brokers) Act 1984* (IABA);

if they are lodged with us on or after 11 March 2002.

13 Further, we may not be able to process such applications under the relevant old legislation if they are lodged with us between now (end October 2001) and 11 March 2002 (ie it will depend on the number of applications we receive and their quality). It is even more unlikely that we will be able to process such applications where they are lodged with us **after 11 January 2002**. If you make such an application under the relevant old legislation, and we are not able to process it before 11 March 2002, we will return the application to you. You would then need to make another application under the new regulatory regime.

14 We also encourage entities who are considering applying for a variation to their existing licence under the old Corporations Act during their transition period to instead apply for an AFS licence under the new regulatory regime.

Product disclosure

15 Under the transitional provisions, the financial product disclosure regime under Part 7.9 of the FSR Act will apply from 11 March 2002 to products in a class of products where an offer to issue the product was first made by the issuer after 11 March 2002 (new product classes). For other products (existing products), the new financial product disclosure

regime will apply from 11 March 2004 unless the product issuer “opts in” before that time.

16 However, some financial product disclosure obligations will apply to all financial products **from 11 March 2002**: see s1438 of the transitional provisions, and paragraph 2.1.5 of this guide.

17 Product issuers may opt into the new financial product disclosure regime at different times for different products. Product issuers may also opt into the new financial product disclosure regime before or after they move to the new licensing regime by obtaining an AFS licence.

Your comments

18 We want to provide you with guidance about our plans for policy and processes as soon as we can to help you plan effectively. While we have done our best to cover the main issues, you will need to make your own preparation plans. It is possible we have missed some key issues or have not taken into account the way the new legislation will significantly affect specific industry situations.

19 We are keen to hear from you on our general approach, and what might be missing from it, as well as your answers to the specific questions below.

Question 1

Do you consider that any interpretation of the law in this guide is materially incorrect? If so, where? How should our interpretation be amended and why?

Question 2

Are there any inconsistencies between the old regulatory regimes and the new regulatory regime that would make it impossible to comply with the old and the new regulatory regimes at the same time, as required under the transitional provisions? If yes, please specify and explain why it is not possible to comply with the old and new regulatory regime. Please include in your answer what arrangements you have considered that might allow you to comply with the old and new regulatory regimes.

20 We will consider any comments on this guide in the development, issue and review of any transitional provisions policy and any further guidance that we issue, such as the *AFS Licensing Kit*. At this time, we do not intend to issue another version of this guide.

Comments should be sent to:

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

Section

1

Licensing

This section of the guide covers aspects of the transitional provisions as they relate to financial services licensing under Parts 7.6–7.8 of the FSR Act.

Contents

- 1.1 What is the transition period?
- 1.2 What law operates during the transition period?
- 1.3 What are the processes for moving to the new regulatory regime?
- 1.4 What law applies after the transition period?
- 1.5 Special transitional arrangements for insurance agents and insurers

1.1 What is the transition period?

- 1.1.1 In general, the transition period for a financial service provider in relation to activities it carries out before 11 March 2002 (existing activities) begins on 11 March 2002 and ends:
- (a) when the entity obtains an AFS licence covering those activities;
 - (b) when the entity starts to be covered by an exemption from licensing under s911A(2); or
 - (c) 11 March 2004;
- whichever occurs first (its transition period): see s1431.

Note 1: An entity's transition period will also end if it ceases to have the status that entitled it to a transition period: see s1431. For example, if ASIC cancels a securities licence under the relevant old legislation on or after 11 March 2002, the transition period of the entity that held that licence will end.

Note 2: An entity may have more than one transition period if it moves to the new licensing regime at different times in relation to different activities.

PRINCIPALS

Current financial service providers and existing activities

- 1.1.2 "Current financial service providers" are entities that under the transitional provisions:
- (a) are providing financial services before 11 March 2002;
 - (b) that will require an AFS licence under the FSR Act authorising those services.

These include:

- (a) holders of a securities dealers licence;
- (b) holders of an investment advisers licence;
- (c) holders of a futures brokers licence;
- (d) holders of a futures advisers licence;
- (e) bodies regulated by the Australian Prudential Regulation Authority (APRA), including some trustees of superannuation entities;

- (f) registered general insurance brokers and registered life insurance brokers;
- (g) registered foreign insurance agents;
- (h) holders of a general authority under regulation 38A of the *Banking (Foreign Exchange) Regulations*;
- (i) entities providing financial services lawfully before 11 March 2002 who were not subject to the licensing regime under the old Corporations Act, where those activities will now be subject to the requirement to hold an AFS licence, including:
 - (i) operators of existing exempt stock markets and exempt futures markets who will be required to hold an AFS licence;
 - (ii) other persons covered by an exemption from the requirement to hold a licence under Chapters 7 and 8 of the old Corporations Act;
 - (iii) persons operating a custodial service;
 - (iv) providers of non-cash payment facilities;
 - (v) underwriting agencies; and
 - (vi) existing representatives of a financial service provider who plan to operate as a principal under the new regulatory regime (for example, possibly some insurance agents, including multi-agents).

Note: Entities may fall into more than one of these categories in relation to different activities.

- 1.1.3** Current financial service providers who plan to provide financial services as a principal under the new regulatory regime will have up to 2 years after 11 March 2002 to obtain an AFS licence under the new regulatory regime for their existing activities. However, current financial service providers should not delay their application until shortly before the end of the 2-year transitional period.

Note 1: Current financial service providers who ought to be licensed or registered under the relevant old legislation but are not, will *not* get the benefit of the 2-year transitional period. They will be subject to the new regulatory regime on 11 March 2002, in addition to being liable for prosecution under the relevant old legislation.

Note 2: This guide does not deal with whether an entity is required to hold an AFS licence. You will need to seek your own legal advice to determine whether you are required to hold an AFS licence, based on the FSR Act and the final FSR regulations.

See also our forthcoming FSR Policy Proposal Paper No 11 *Australian market licences: Australian operators* (planned for issue by end October 2001) for some proposed guidance on when persons conducting a stock market or a futures market under the old Corporations Act will be required to hold an AFS licence. We may also provide guidance on the transitional provisions for market operators in the future.

Our message: apply early

ASIC faces a large administrative task in licensing many thousands of financial service providers in the 2 years after 11 March 2002. We encourage current financial service providers to apply early in the 2-year transitional period for an AFS licence under the new regulatory regime, whether you expect your application to be legislatively streamlined or considered under the ASIC licensing process: see Section 1.3 of this guide. The earlier you lodge your application, the more help we will be able to give you with your application.

We are asking all current financial service providers to lodge their completed applications with us at least 3 months before the end of the 2-year transitional period (ie by 11 December 2003). We will give priority to complete applications that are lodged before this time.

If you delay lodging your complete application until less than 3 months before the end of the 2-year transitional period, there is a risk that we may not be able to process it before the end of the 2-year transitional period. For entities that delay their applications, the risk that we will not be able to process your application before the end of the 2-year transitional period will increase the longer you take to lodge your complete application.

If you do not hold an AFS licence by the end of the 2-year transitional period, you will be unlicensed from the end of that period, for at least a time. As a result, you will be unable to lawfully provide financial services until we process your application and decide to grant you an AFS licence.

We consider that the onus is on industry participants to start preparing early and to complete the transition to the new regulatory regime within the statutory timeframe.

Industry participants should not rely on ASIC's power to extend the 2-year transitional period. Rather, they should plan for an early or timely transition. As indicated in the Explanatory Memorandum to the *Financial Services Reform (Consequential Provisions) Bill 2001* (see paragraph 4.61), it is envisaged that we will only extend the 2-year transitional period in very limited situations, such as in circumstances beyond the control of the person concerned.

Note: See also our forthcoming FSR policy statement on *Licensing: Discretionary powers and transition*. We aim to publish this document before 1 December 2001.

Current financial service providers and new activities

1.1.4 Under the transitional provisions, in general, there is no transition period for current financial service providers to the extent they engage in new activities after FSR commencement (that is, activities that are not the providers' regulated activities as set out in s1430(1) of the transitional provisions). Current financial service providers will need to obtain an AFS licence for those new activities before they undertake them.

1.1.5 Under regulation 10.2.38, the transition period for those solicitors and accountants in public practice before FSR commencement who:

- (a) would be subject to the requirement to hold an AFS licence; and
- (b) after FSR commencement, first conduct an investment advice business;

is the same as for current financial service providers: see paragraph 1.1.1 of this guide.

Note 1: Investment advice business has the meaning given by s77 of the old Corporations Act.

Note 2: At the end of the transition period, solicitors and accountants will be subject to the new regulatory regime unless they receive the benefit of the relevant exemptions in s766B(5) and regulation 7.1.29.

These exemptions are different from the investment advice business exemption in s77 of the old Corporations Act and should be carefully considered before they are relied upon.

Example A

An accountant in public practice before FSR commencement first gives incidental investment advice as part of that practice 6 months after FSR commencement. Under regulation 10.2.38, the accountant will have up to 18 months to obtain an AFS licence authorising the provision of financial product advice. At the end of the transition period, the accountant or solicitor will be subject to the new regulatory regime.

Example B

A solicitor in public practice before FSR commencement gives incidental investment advice as part of that practice. The solicitor is not covered by the exemption in s766B(5) and would be subject to the requirement to hold an AFS licence under the FSR Act. Under regulation 10.2.38, the solicitor will have the benefit of the transition period. At the end of the transition period, the accountant or solicitor will be subject to the new regulatory regime.

New financial service providers

- 1.1.6** Under the transitional provisions, there is generally no transition period for entities that provide financial services after FSR commencement for the first time. New financial service providers will need to obtain an AFS licence before they commence providing financial services.

Example

Company A is currently licensed under the Corporations Act to advise on and deal in securities and undertakes no other activities. Company A plans to establish a subsidiary, Company B, to advise on and deal in life insurance products. Company B will commence its insurance activities after FSR commencement and does not provide any financial services before FSR commencement. Company A will have up to 2 years after FSR commencement to obtain an AFS licence, while Company B will need to obtain an AFS licence after FSR commencement before it starts providing financial services.

- 1.1.7** Under regulation 10.2.38, the transition period for new solicitors and accountants who commence public practice after FSR commencement who:
- (a) would be subject to the requirement to hold an AFS licence; and
 - (b) after FSR commencement, conduct an investment advice business;
- is the same as for current financial service providers: see paragraph 1.1.1 of this guide.

Note 1: Investment advice business has the meaning given by s77 of the old Corporations Act.

Note 2: At the end of the transition period, solicitors and accountants will be subject to the new regulatory regime unless they receive the benefit of the relevant exemptions in s766B(5) and regulation 7.1.29.

These exemptions are different from the investment advice business exemption in s77 of the old Corporations Act and should be carefully considered before they are relied upon.

Example A

An accountant who starts public practice after FSR commencement gives incidental investment advice as part of that practice 6 months after FSR commencement. Under regulation 10.2.38, the accountant will have up to 18 months to obtain an AFS licence authorising the provision of financial product advice. At the end of the transition period, the accountant or solicitor will be subject to the new regulatory regime.

Example B

A solicitor in public practice who starts public practice after FSR commencement gives incidental investment advice as part of that practice. The solicitor is not covered by the exemption in s766B(5) and would be subject to the requirement to hold an AFS licence under the FSR Act. Under regulation 10.2.38, the solicitor will have the benefit of the transition period. At the end of the transition period, the accountant or solicitor will be subject to the new regulatory regime.

REPRESENTATIVES

- 1.1.8** Under the transitional provisions, the transition period for a current financial service provider will generally apply to its representatives. However, special arrangements apply for insurance agents and insurers: see Section 1.5 of this guide.

Note 1: Under s1436 of the transitional provisions, a representative for this purpose is broadly defined to include:

- (a) an agent (however described) of the principal;
- (b) an employee or director of the principal;
- (c) any other person who is authorised to carry on activities for or on behalf of the principal.

Note 2: Representatives will remain subject to their principal's old regulatory regime for the principal's transition period, in relation to activities they carry on as a representative: see paragraph 1.2.13 of this guide.

1.2 What law operates during the transition period?

PRINCIPALS

Current financial service providers and existing activities

- 1.2.1** Current financial service providers will be subject to their old regulatory regime for their existing activities during their transition period.

Note: However, s992A (hawking) will apply to all persons, whether they are subject to their old regulatory regime (if any) or the new licensing regime (including persons covered by the new regulatory regime who are exempt from the licensing requirement), from 11 March 2002, in accordance with the proclamation under s1442A of the transitional provisions.

- 1.2.2** Current financial service providers will, as a result, remain responsible for the conduct of their representatives, and remain subject to any training and supervision requirements that apply in respect of their representatives.

Note 1: For example, securities dealers who are licensed under the old Corporations Act will remain subject to the licence condition that requires them to ensure their representatives are adequately supervised and trained. Similarly, entities that are subject to the *Code of Practice for Advising, Selling and Complaints Handling in the Life Insurance Industry* before FSR commencement should continue to comply with it while they are subject to their old regulatory regime.

Note 2: Representatives will remain subject to their principal's old regulatory regime for the principal's transition period: see paragraph 1.2.12 of this guide.

- 1.2.3** Under the transitional provisions, current financial service providers can continue to appoint representatives, or vary or revoke these appointments, under their old regulatory regime, during their transition period.
- 1.2.4** Similarly, if necessary, ASIC can also continue to exercise its powers under the relevant old legislation to make, vary or revoke instruments during the 2-year transitional period.

1.2.5 Entities that obtain an AFS licence during their transition period in respect of some of their existing activities may:

- (a) become subject to the new regulatory regime for those activities; and
- (b) remain subject to their old regulatory regime for their other activities for their transition period.

Note: However, we encourage applicants to apply at one time: see our message after paragraph 1.3.25 of this guide.

Example

P is a licensed securities dealer under the old Corporations Act and is also advising and dealing in life insurance products. P obtains an AFS licence under the new regulatory regime in respect of its securities activities on FSR commencement. From this time, P is subject to the new regulatory regime in respect of its securities activities.

P may decide to apply for a variation to its AFS licence, in respect of its life insurance activities 12 months later. After assessment of its application, P is granted this variation. From that time, P is subject to the new regulatory regime in respect of all of its financial services.

However, if P applied for an AFS licence under the new regulatory regime that covered all its existing activities (its securities activities and its life insurance activities):

- (a) it would only have to go through the licensing process once; and
- (b) it would become subject to the new regulatory regime in respect of all its activities at the same time.

Our message: apply at one time

We encourage entities to apply for a new AFS licence for all their existing financial services activities at the one time. For more details: see our message under paragraph 1.3.30 of this guide.

1.2.6 Entities that are covered by an exemption from the requirement to hold an AFS licence under s911A(2) in respect of some of their existing activities may remain subject to their old regulatory regime for their other existing activities for their transition period.

Example

P is a licensed investment adviser under the old Corporations Act. P is also a liquidator.

On FSR commencement, P will be exempt under s911A(2)(f)(ii) from the requirement to hold an AFS licence in respect of financial services it provides while performing the function and exercising the powers of a liquidator.

P will remain subject to the old Corporations Act in respect of its investment advice activities, until it obtains an AFS licence under the new regulatory regime covering those activities, or after 2 years, whichever occurs first.

1.2.7 Any entities that:

- (a) may be covered by an exemption from the requirement to hold an AFS licence under the old Corporations Act; and
- (b) are not exempt from the requirement to hold an AFS licence

will remain covered by the relevant old legislation for their transition period: see s1432 and 1430.

1.2.8 Once a financial service provider obtains an AFS licence under the new regulatory regime, the new regulatory regime in Parts 7.6–7.8 of the FSR Act applies to the activities covered by the AFS licence, including the obligations in s912A, and the requirements to provide a financial services guide and a statement of advice to retail clients.

Note: However, insurers who have been granted an AFS licence will be subject to the IABA in relation to the activities of their agents who have a transition period under s1436A for each agent's transition period: see Section 1.5 of this guide.

Prescribed interests covered by pre-1998 Corporations Law

1.2.9 Prescribed interests which immediately before FSR commencement are subject to the Corporations Law as in force before 1 July 1998 will remain subject to that law, and persons advising on or dealing in such interests will not be subject to the requirement to hold an AFS licence: see s1408 of the Corporations Act and s1454 of the Corporations Law (as it applied before the commencement of the Corporations Act, ie 15 July 2001). Persons advising on or dealing in such interests will remain subject to the licensing provisions of the Corporations Law as it applied immediately before 1 July 1998 as they apply under the Corporations Act.

Current financial service providers and new activities

- 1.2.10** The new regulatory regime will apply to current financial service providers to the extent they carry on new activities after FSR commencement.

Note: These new activities may only be carried on under an AFS licence: see paragraph 1.1.4 of this guide.

- 1.2.11** Current financial service providers carrying on activities under an AFS licence and subject to the new regulatory regime will also be subject to their old regulatory regime for their other existing activities at the same time, until they obtain an AFS licence for those existing activities.
- 1.2.12** The sooner financial service providers obtain an AFS licence(s) under the new regulatory regime that cover(s) all their activities, the shorter the period will be where they must operate under two (or more) regimes.

Example

P is a securities dealer licensed under the old Corporations Act.

P decides to expand its business and obtains an AFS licence covering its proposed new commodity derivatives trading activities 6 months after FSR commencement. From this time, P is subject to the new regulatory regime in respect of its new commodity derivatives trading activities, but P remains subject to its old regulatory regime, the old Corporations Act, in respect of its securities activities.

P obtains an AFS licence covering its securities activities 12 months after FSR commencement. From this time, P is subject to the new regulatory regime in respect of the securities activities, as well as the commodity derivatives activities.

If P instead obtains an AFS licence for its securities activities at the same time as for its commodity derivatives activities, P would become subject to the new regulatory regime in respect of all its activities at the same time, that is, when it obtained the AFS licence.

Our message: **apply at one time**

We encourage entities to apply for a new AFS licence for all their existing and proposed new financial services activities at the one time. For more details: see our message under paragraph 1.3.30 of this guide.

New financial service providers

- 1.2.13** The new regulatory regime will apply to new financial service providers from FSR commencement.

Note: New financial service providers who are subject to the licensing obligation must obtain an AFS licence before they commence providing financial services: see paragraph 1.1.6 of this guide.

REPRESENTATIVES

Note 1: Paragraphs 1.2.14 to 1.2.16 describe what regulatory regime applies to representatives during the transition period. See paragraphs 1.3.31 to 1.3.32 for a description of how representatives move from the old to the new regulatory regime (including whether any new authorisations are required).

Note 2: In relation to representatives that are insurance agents, see Section 1.5

- 1.2.14** In general, under the transitional provisions, representatives of financial service providers will be subject to the same regulatory regime as their principal at all times.
- (a) representatives of current financial service providers who act for or on behalf of their principal in respect of the principal's existing activities will remain subject to their old regulatory regime for their principal's transition period: see paragraphs 1.1.1 and 1.1.6 of this guide;

Example

R is a representative of P, a securities dealer licensed under the old Corporations Act. P obtains an AFS licence under the new regulatory regime covering its existing activities 6 months after FSR commencement. P authorises R under the new regulatory regime in relation to those activities when it obtains its AFS licence.

For P's transition period, the first 6 months after FSR commencement, P, and R as P's representative, will be subject to P's old licensing regime, the old Corporations Act.

From the time P obtains its AFS licence, P and R will be subject to the new regulatory regime in respect of the activities covered by the AFS licence.

- (b) representatives of current financial service providers who act for or on behalf of their principal in respect of the principal's new activities after FSR commencement will be subject to the new regulatory regime from the

commencement of the new activities: see paragraphs 1.1.4 and 1.1.6 of this guide;

Example

R is a representative of P, a securities dealer licensed under the old Corporations Act. P has up to 2 years to obtain an AFS licence in relation to its existing securities activities. P intends to expand its business into commodity derivatives activities 10 months after FSR commencement. P, and R as its representative, is subject to the new regulatory regime in relation to its new commodity derivatives activities from the commencement of those activities. Neither P nor R as P's representative, can carry out commodity derivatives activities after FSR commencement until P obtains an AFS licence under the new regulatory regime.

P obtains an AFS licence under the new regulatory regime covering its existing activities and its new commodity derivatives activities 10 months after FSR commencement. P authorises R under the new regulatory regime in relation to those activities when it obtains its AFS licence.

For P's transition period in relation to its securities activities, the first 10 months after FSR commencement, P, and R as P's representative, will be subject to P's old licensing regime, the old Corporations Act.

From the time P obtains its AFS licence, P and R will be subject to the new regulatory regime in respect of the securities and commodity derivatives activities covered by the AFS licence.

- (c) representatives of new financial service providers after FSR commencement will be subject to the new regulatory regime from the commencement of the new activities: see paragraphs 1.1.5 and 1.1.6 of this guide.

Example

R is a representative of P, an entity incorporated 6 months after FSR commencement that plans to commence providing financial services 12 months after FSR commencement. P, and R as its representative, are subject to the new regulatory regime from FSR commencement in relation to P's financial service activities. Therefore, neither P nor R as P's representative can carry out any financial service activities after FSR commencement until P obtains an AFS licence under the new regulatory regime.

P obtains an AFS licence under the new regulatory regime covering particular financial service activities 12 months after FSR commencement. P authorises R under the new regulatory regime in relation to those activities when it obtains its AFS licence. From the time P obtains its AFS licence, P and R will

be subject to the new regulatory regime in respect of the activities covered by the AFS licence.

- 1.2.15** As a result, under the transitional provisions, after FSR commencement a representative of a current financial service provider in respect of the principal's existing and new activities will be subject to the principal's old regulatory regime and the new regulatory regime at the same time.

Note: In relation to insurance agents and insurers, see Section 1.5.

Example

R is a representative of P, a securities dealer licensed under the old Corporations Act.

P decides to expand its business and obtains an AFS licence covering its proposed new commodity derivatives trading activities 6 months after FSR commencement. P authorises R under the new regulatory regime in relation to those new activities. From this time, P and R are subject to the new regulatory regime in respect of the commodity derivatives trading activities, but P and R remain subject to their old regulatory regime, the old Corporations Act, in respect of their securities activities.

P obtains an AFS licence covering its securities activities 12 months after FSR commencement. P authorises R under the new regulatory regime in relation to those activities. From this time, P and R are subject to the new regulatory regime in respect of the securities activities, as well as the commodity derivatives trading activities.

- 1.2.16** Similarly, under the transitional provisions, after FSR commencement a representative of two or more current financial service providers who obtain an AFS licence at different times will be subject to the principals' old regulatory regime(s) and the new regulatory regime at the same time.

Note: In relation to insurance agents and insurers, see Section 1.5.

Example A

Before FSR commencement, R is an insurance multi-agent who acts on behalf of two life insurers, A and B.

A obtains an AFS licence 1 month after FSR commencement. R chooses to lodge an opt-in notice with ASIC under s1436A in respect of its authorising agreement with A, stating that it does not want the IABA to apply to it from 1 month after FSR commencement.

B obtains an AFS licence 12 months after FSR commencement. R chooses to lodge an opt-in notice with ASIC under s1436A in respect of its authorising agreement with B, stating that it does not want the IABA to apply to it from 12 months after FSR commencement.

For the first month after FSR commencement (month 1), A and B will be subject to their old regulatory regime. R, as their representative, will also be subject to A and B's old regulatory regime.

For months 2–12, A will be subject to the new regulatory regime and B will remain subject to its old regulatory regime. R will therefore be subject to the new regulatory regime in respect of its activities for A (including the requirements to provide a financial services guide and statement of advice to retail clients) and will remain subject to its old regulatory regime in respect of its activities for B.

From the time B obtains an AFS licence under the new regulatory regime, B will be subject to the new regulatory regime, and R will therefore also become subject to the new regulatory regime in respect of its activities for B.

Example B

Before FSR commencement, R is an insurance agent for A, a life insurer, and is also a proper authority holder for B, a licensed securities dealer under the old Corporations Act.

A obtains an AFS licence 1 month after FSR commencement. R chooses to lodge an opt-in notice with ASIC under s1436A in respect of its authorising agreement with A, stating that it does not want the IABA to apply to it from 1 month after FSR commencement. A authorises R as its authorised representative under the FSR Act, effective from 1 month after FSR commencement.

B obtains an AFS licence 12 months after FSR commencement.

For the first month after FSR commencement (month 1), A and B will be subject to their old regulatory regime. R, as their representative, will also be subject to A and B's old regulatory regimes, and will continue as an insurance agent for A and a proper authority holder for B.

For months 2–12, A will be subject to the new regulatory regime and B will remain subject to its old regulatory regime. R will therefore be subject to the new regulatory regime in respect of its activities for A as A's authorised representative, and will remain subject to B's old regulatory regime in respect of its activities for B as B's proper authority holder.

1.3 What are the processes for moving to the new regulatory regime?

PRINCIPALS

1.3.1 We will process licence applications by:

- (a) **Legislative streamlining** — a process under s1433 of the transitional provisions where ASIC must grant an AFS licence to entitled entities: see paragraph 1.3.3 below;
- (b) **ASIC licensing** — a process under s913B of the FSR Act where we will consider applications against the statutory criteria when deciding whether or not to grant an AFS licence: see paragraph 1.3.14 below.

Under the principles of administrative law, and supported by s1435 of the transitional provisions, the ASIC licensing process will be scaleable. We will decide what weight we give relevant matters and how much we focus on different types of applications.

In general, we will focus more closely on applications seeking authorisation for new activities.

We will recognise and give weight to:

- (a) the pre-FSR regulation of the activities for which an AFS licence is sought; and
- (b) past conduct and experience, where there is a satisfactory compliance history.

In general, where we give weight to these matters and there is a satisfactory compliance history, we will be more likely to give weight to your declarations, and you will be required to provide fewer documents (if any).

Note: See our process guideline *How do you get an Australian financial services (AFS) licence?* (Release 2.0 — October 2001) for further guidance about the licensing processes. We also plan to issue some additional process-related guidance as early as possible in 2002 before FSR commencement. See our Supplement to *Building the FSRB Administrative Framework* (September 2001) for further detail.

1.3.2 All licensees are subject to the same obligations under Part 7.6 of the FSR Act, irrespective of how they obtain an AFS licence.

When preparing their applications and before making their declarations, all applicants should ensure they will be able to comply with the licensing obligations that will apply when the AFS licence is granted.

Note: Qualified licensees under the transitional provisions will not be subject to the competency requirements in s912A(e) and (f) until they obtain a standard AFS licence or the end of the 2-year transitional period, whichever is sooner: see paragraph 1.3.33 of this guide and following.

Legislative streamlining — ASIC must grant an AFS licence

Who is entitled?

1.3.3 Under the transitional provisions, ASIC must grant an AFS licence to persons who are entitled to legislative streamlining.

1.3.4 To be entitled to legislative streamlining, a person must be:

- (a) a holder of a securities dealers licence;
- (b) a holder of an investment advisers licence;
- (c) a holder of a futures brokers licence;
- (d) a holder of a futures advisers licence;
- (e) a registered insurance broker; or
- (f) a person in a class of persons prescribed in the regulations under s1433(1)(b)(i).

Note: The regulations made on 8 October 2001 do not include any additional class of persons under s1433(1)(b)(i).

1.3.5 However, a person listed above will not be entitled to legislative streamlining if that person is:

- (a) an exempted participant in an existing exempt stock market or an existing exempt futures market: see s1433(1)(a)(i) and 1419; or
- (b) covered by regulations made under s1433(3).

1.3.6 In addition, under the regulations made on 8 October 2001, the following persons will not be entitled to legislative streamlining:

- (a) a person who is or has been an insolvent under administration, and a responsible officer of such a person, for 5 years after the start of the administration;

- (b) a body corporate that has been an externally-administered body corporate, and a related body corporate, for 5 years after the start of the administration;
- (c) a person who has been convicted of fraud, and an associate of this person, for 10 years after the conviction;
- (d) a person who is the subject of current legal proceedings for criminal fraud who could be convicted when the court delivers its judgment, and an associate of this person;
- (e) a person who has been found liable by a court for a contravention of a law relating to financial services activities, in proceedings brought by a regulator that related to the person's financial services activities, and an associate of this person, for 10 years after the conduct first occurred;
- (f) a person who is the subject of legal proceedings for a contravention of a law relating to financial services activities, in proceedings brought by a regulator that relate to the person's financial services activities, where the court has not delivered its judgment, and an associate of this person;
- (g) a person who has had an authorisation, registration, licence or the ability to engage in financial services activities cancelled, suspended or revoked by, or as a direct result of the actions of a regulator, and an associate of this person, for 5 years after the cancellation, suspension or revocation; and
- (h) insurance brokers who are deemed to be registered under s24(2) of the IABA (these persons will become entitled to legislative streamlining if their registration is renewed and they are no longer deemed to be registered).

Note: See regulation 10.2.36 and Schedule 10D of the regulations. For a definition of "associate" for this purpose: see regulation 10.2.35.

1.3.7 Under the transitional provisions, bodies regulated by APRA — eg insurers and ADIs (within the meaning of the *Banking Act 1959*) — are not entitled to legislative streamlining by virtue of that status: see s1430.

Note: However, bodies regulated by APRA that also fall into one of the categories in paragraph 1.3.4 above will be entitled to legislative streamlining for the relevant activities: see paragraph 1.3.9 below.

1.3.8 Under the transitional provisions, legislative streamlining is not available to related bodies corporate of entitled entities, or other persons connected with entitled entities: see s1433. Entities and corporate groups that are planning to re-structure their business activities when they move to the new regulatory regime will instead be assessed under the ASIC licensing process: see paragraph 1.3.17 of this guide.

1.3.9 Under the transitional provisions, for the entities listed at subparagraphs 1.3.4(a)–(d) above, legislative streamlining is only available for activities that the entity’s existing licence authorises them to carry on. For registered insurance brokers, legislative streamlining is only available for activities that are part of the person’s business as an insurance broker under the IABA: see s1430 and 1433(2)(a) of the transitional provisions.

Note: An applicant may apply *at the same time* for an AFS licence under legislative streamlining covering the activities for which the applicant is entitled to legislative streamlining, and for authorisation of its other existing or proposed activities: see paragraph 1.3.28 of this guide.

1.3.10 Entities will only be entitled to legislative streamlining if they have included a statement in their application form to the effect that the applicant will comply with their obligations as a financial services licensee: see s1433(2)(b).

Note: This statement will be included in the application, along with other declarations and certifications that you will be required to make when you apply for an AFS licence: see our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0 — October 2001)* for further guidance.

1.3.11 Entities will only be entitled to legislative streamlining if they have lodged a complete application, that is:

- (a) they have provided any documents that are required, for example, to establish that they hold an AFS licence or are registered; and
- (b) the application contains the required statements and declarations.

We will reject for lodgement applications that are not complete: see s1274(8). In addition, we will not process applications lodged with us until the required fee is paid: see s1355.

Note: See our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0 — October 2001)* for further guidance on the statements or declarations we will require.

- 1.3.12** We will assess applications from entities that are not entitled to legislative streamlining under the ASIC licensing process: see paragraph 1.3.14 below.

ASIC requirement to grant an AFS licence

- 1.3.13** If an applicant is entitled to legislative streamlining, ASIC must grant an AFS licence to that applicant: see s1433.
- 1.3.14** Whenever we grant an AFS licence, we must impose an AFS licence condition that specifies the financial services that the licensee is authorised to provide. When we grant an AFS licence under legislative streamlining, we are required to impose a condition that specifies financial services that equate as closely as possible to the regulated activities in respect of which the application was made: see s1433(2)(d).

Note: See our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0 — October 2001)* for further guidance on the authorisations that we will give. If necessary, we may provide further guidance on the conditions that we will impose under s1433(2)(d) in one of our future licensing process publications issued before 11 March 2002 (eg *AFS Licensing Kit*).

- 1.3.15** When we grant an AFS licence under legislative streamlining, we will impose standard AFS licence conditions on all licensees or particular classes of licensees: see Section C of our FSRB Policy Proposal Paper No 8 *Licensing: Discretionary powers*, and our forthcoming *AFS Licensing Kit* which will detail the standard AFS licence conditions we will impose. We may also impose special licence conditions that are tailored to individual licensees or groups of licensees when we grant an AFS licence.

Note: We aim to publish the *AFS Licensing Kit* in February 2002.

- 1.3.16** The legislative streamlining process is only available during the 2-year transitional period. We expect applicants to plan for an early and timely transition and to complete the transition within the statutory timeframe. We will be able to give you more help with your application if you apply early, making your transition to the new regulatory regime easier. We may not be able to process applications before the end of the 2-year transitional

period that are received **after 11 December 2003** (that is, less than 3 months before the end of the 2-year transitional period): see Section 1.1 of this guide.

ASIC licensing

1.3.17 Unlike legislative streamlining, under ASIC licensing, in deciding whether or not to grant an AFS licence, we will assess applications against the statutory criteria in s913B.

1.3.18 Under s913B(1), ASIC must grant an AFS licence if:

- (a) the person lodges an application with ASIC that includes the required information and documents;
- (b) ASIC has no reason to believe that the applicant will not comply with the obligations that will apply if the AFS licence is granted: see s912A;
- (c) the applicable good fame and character requirements are met: see s913B(2)–(4); and
- (d) the applicant has provided ASIC with any relevant additional information requested by ASIC: see s913B(1)(ca).

Note 1: The applicant must also meet any other requirements prescribed by regulations: see s913B(1)(d). The regulations made on 8 October 2001 do not include any additional requirements.

Note 2: In addition, under s1355, we will not process an application until the applicable fee has been paid.

Note 3: See our forthcoming FSR policy, which we aim to publish before 1 December 2001, for guidance on the requirements that you must meet to obtain an AFS licence:

- (a) *Licensing: Organisational capacities;*
- (b) *Licensing: Training of financial product advisers;*
- (c) *Licensing: External and internal dispute resolution procedures; and*
- (d) *Licensing: Financial requirements.*

1.3.19 ASIC must not grant an AFS licence if these requirements are not met: see s913B(1). When we consider your application under the ASIC licensing process, you should not expect that you will be granted an AFS licence unless you meet these requirements.

1.3.20 Under the principles of administrative law, and supported by s1435 of the transitional provisions, the ASIC licensing process will be scaleable. We will decide what weight we give relevant matters and how much we focus on different types, and aspects, of applications.

1.3.21 In applying our scaleable licensing process, we will ordinarily focus on applications seeking authorisations for new activities. For example, we will be likely to require additional information and documents from:

- (a) new industry participants proposing to provide new services; and
- (b) existing participants proposing to carry out activities not previously carried out by the applicant or a related entity, particularly where those new activities are of a different type.

1.3.22 In applying our scaleable licensing process, we will recognise and give weight to:

- (a) the pre-FSR regulation of the activities for which an AFS licence is sought; and
- (b) the past conduct and experience of an applicant or related entity in providing financial services, where the applicant or related entity has an unblemished compliance history.

Note: “Pre-FSR regulation” of activities refers to activities carried on by an entity before FSR commencement that the entity is licensed, registered or authorised by ASIC or APRA to carry on.

1.3.23 Where we give recognition to pre-FSR regulation, or past conduct and experience, we will generally:

- (a) be more likely to give weight to your declarations;
- (b) be less likely to ask for further information when assessing your application; and
- (c) ask for fewer documents supporting your application.

Note 1: In considering applications under the ASIC licensing process, we may require applicants to provide additional information: see s913B(1)(ca).

Note 2: See our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0 — October 2001)* for further guidance about the documents and declarations you will be required to give under the ASIC licensing process.

Example A

A life insurer currently registered under the *Life Insurance Act 1995* is seeking an AFS licence for their existing life insurance activities. We will generally require *fewer* supporting documents.

Example B

A related body corporate of the life insurer applies for an AFS licence authorising activities previously carried on by the registered life insurer. We will generally require *fewer* supporting documents.

Example C

A securities dealer is currently licensed under the old Corporations Act to advise on and deal in securities other than managed investments. It seeks an AFS licence authorising it to advise and deal in relation to managed investments. We will generally require *fewer* supporting documents.

Example D

A responsible entity for a managed investments scheme holds a dealers licence under the old Corporations Act and wishes to provide a new service (eg advice). We will generally require *more* supporting documents.

Example E

A life or general insurer wishes to expand its business into dealing in or advising on derivatives. We will generally require *more* supporting documents.

- 1.3.24** In addition, we consider that we should focus more closely on applications, and may seek additional information and documents, from entities that, as a result of regulations made under s1433(3), are not covered by legislative streamlining.

Note: See paragraph 1.3.6 of this guide, which sets out the persons that would not be covered by legislative streamlining under the regulations made on 8 October 2001.

- 1.3.25** We may also focus more closely on applications, and may seek additional information and documents, from:

- (a) persons that have entered into an enforceable undertaking with ASIC that is still in force and that contains undertakings that are still being performed or complied with; and
- (b) persons whose responsible officers or related bodies corporate have entered into such an enforceable undertaking.

1.3.26 As with applicants under legislative streamlining, applicants under the ASIC licensing process must ensure that their application is complete, that is:

- (a) they have provided the required documents; and
- (b) it contains the required declarations.

We will reject applications that are not complete: see s1274(8). In addition, we will not process applications lodged with us until the required fee is paid: see s1355.

Note: See our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0 — October 2001)* for further guidance on the declarations we will require.

1.3.27 When we grant an AFS licence under the ASIC licensing process, we will impose standard AFS licence conditions on all licensees or particular classes of licensees: see Section C of our FSRB Policy Proposal Paper No 8 *Licensing: Discretionary powers*, and our forthcoming *AFS Licensing Kit* which will detail the standard AFS licence conditions we will impose. We may also impose special licence conditions that are tailored to individual licensees or groups of licensees when we grant an AFS licence.

Note: We aim to publish the *AFS Licensing Kit* in February 2002.

Applying at one time — legislative streamlining and ASIC licensing

1.3.28 As stated at paragraph 1.3.9 above, under the transitional provisions, legislative streamlining is only available for activities that the entity's existing licence authorises them to carry on, or for registered insurance brokers, for activities that are part of the person's business as an insurance broker under the IABA.

1.3.29 However, under the regulations made on 8 October 2001, persons that apply for an AFS licence under legislative streamlining may, at the same time, lodge with ASIC an application under s914A(2)(b) to vary the AFS licence conditions to extend the financial services that the AFS licence, if granted, would authorise: see regulation 10.2.37. This regulation will allow applicants who are entitled to legislative streamlining for some, but not all, of their activities, to apply to

ASIC once only for authorisation under the new licensing regime for all their activities.

1.3.30 We will process particular aspects of an application made under this regulation as follows:

- (a) under legislative streamlining — those aspects of the application that seek authorisation for the activities for which the applicant is entitled to legislative streamlining: see paragraph 1.3.9 of this guide, and s1430 and 1433; and
- (b) under the ASIC licensing process — the remaining aspects of the application, including other existing activities and proposed new activities. You should not expect that you will be granted these further authorisations unless you meet the requirements in s913B for the grant of an AFS licence.

Our message: apply at one time

While entities may decide to move to the new licensing regime at different times for different activities, and entities within corporate groups may decide to move to the new licensing regime in stages, we encourage entities and corporate groups to apply under legislative streamlining and s914A at the one time.

We will adopt procedures in accordance with regulation 10.2.37 that will allow entities, including entities that are planning to re-structure their business activities when they move to the new regulatory regime, to apply under legislative streamlining and s914A at the same time.

This will make your transition to the new regulatory regime easier by:

- (a) requiring you to go through the licensing procedure once only, and avoiding extra application fees and associated costs; and
- (b) allowing you, and the other entities in your group, to become subject to the new licensing regime at the same time for all your activities.

We will have to process many thousands of applications in the 2-year transitional period. Our licensing processes must be efficient to help us make your transition to the new regulatory regime easier. We will be able to provide more assistance to entities, and entities in corporate groups, that apply at one time only.

Applying for a new AFS licence all at one time may also make your compliance with the law easier as you and your representatives will

not have to comply with the new and old regulatory regimes at the same time for a period during the transition.

Before you lodge an application under legislative streamlining, the ASIC licensing process, or in accordance with regulation 10.2.37, we ask you to consider:

- (a) whether you have applied for authorisations covering all your existing activities that you wish to continue providing under your AFS licence under the new regulatory regime; and
- (b) if your entity is in a corporate group — whether the other entities in your group are applying at the same time.

Note: See our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0 — October 2001)* for further guidance about how to apply for an AFS licence.

Example

P is a licensed securities dealer under the old Corporations Act and is also advising and dealing in life insurance products. P obtains an AFS licence under legislative streamlining in respect of its securities activities shortly after FSR commencement. From this time, P is subject to the new regulatory regime in respect of its securities activities.

P may decide to apply for a variation to its AFS licence, in respect of its life insurance activities 12 months later. This would involve completing another application, and submitting it to ASIC with the appropriate supporting documents and fees. After assessment of its application, P is granted an authorisation for its life insurance. From this time, P is subject to the new regulatory regime in respect of its life insurance activities, as well as its securities activities.

However, if P applied for an AFS licence under the new regulatory regime that covered all its existing activities (its securities activities and its life insurance activities):

- (a) it would only have to go through the licensing process once, and is likely to receive more help from us; and
- (b) it would become subject to the new regulatory regime in respect of all its activities at the same time.

REPRESENTATIVES

1.3.31 In general, under the transitional provisions, representatives of financial service providers move to the new regulatory regime when their principal moves to the new regulatory regime by obtaining an AFS licence:

- (a) representatives of current financial service providers who act for or on behalf of their principal in respect of the principal's existing activities will move to the new regulatory regime when their principal obtains an AFS licence under the new regulatory regime, during the 2-year transitional period: see paragraphs 1.1.1 and 1.1.6 of this guide;
- (b) representatives of current financial service providers who act for or on behalf of their principal in respect of the principal's new activities after FSR commencement will move to the new regulatory regime when those activities commence: see paragraphs 1.1.4 and 1.1.6 of this guide; and
- (c) representatives of new financial service providers after FSR commencement will move to the new regulatory regime when those activities commence: see paragraphs 1.1.5 and 1.1.6 of this guide.

Note 1: In relation to insurance agents, see Section 1.5.

Note 2: Representatives may decide to apply for an AFS licence themselves, and to operate as a principal if they are granted an AFS licence.

1.3.32 Representatives who must be authorised as an authorised representative under the new regulatory regime will require new authorisations from their principal(s). These may be made before FSR commencement, but will only take effect when the principal is granted an AFS licence under the new regulatory regime: see s1431(2) of the transitional provisions. Each principal will also need to communicate with its representatives to ensure that they act on the principal's behalf in compliance with the new regulatory regime.

Insurance multi-agents and qualified AFS licences

Who may apply for a qualified AFS licence?

1.3.33 Under s1434 of the transitional provisions, entities that satisfy the following criteria are eligible to apply for a qualified AFS licence:

- (a) they are insurance agents who represent more than one insurer (insurance multi-agents) immediately before FSR commencement;
- (b) the application is made during the 2 year transitional period:
 - (i) when the entity is still an agent for at least one of the insurers who it represented at FSR commencement;
or
 - (ii) no more than 6 months after the agent stopped representing any one of the insurers who it represented at FSR commencement.

Note: See our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0)* for further guidance about how to apply for a qualified AFS licence.

What requirements must eligible applicants meet to obtain a qualified AFS licence?

1.3.34 To obtain a qualified AFS licence, eligible applicants must meet the requirements in s913B that apply to applicants for a standard AFS licence under the new regulatory regime. However, under the transitional provisions, applicants are not required to meet the licensee requirements in s12A(e) (licensee's competency) and s912A(f) (training and competency of representatives) in order to obtain a qualified AFS licence.

Note: See our forthcoming FSR policy, which we aim to publish before 1 December 2001, for guidance on the requirements in s912A:

- (a) *Licensing: Organisational capacities;*
- (b) *Licensing: Training of financial product advisers;*
- (c) *Licensing: External and internal dispute resolution procedures; and*
- (d) *Licensing: Financial requirements.*

1.3.35 Only insurance multi-agents wishing to hold an AFS licence who cannot meet the competency requirements in s912A(e) and

(f) should apply for a qualified AFS licence. Insurance multi-agents who can meet the competency requirements should instead apply for a standard AFS licence.

How will we assess applications for qualified AFS licences?

1.3.36 Applicants for qualified AFS licences are not eligible for legislative streamlining under the transitional provisions. We will assess applications for qualified AFS licences under the ASIC licensing process: see paragraph 1.3.17 of this guide.

What requirements apply to qualified licensees?

1.3.37 Under the transitional provisions, a qualified AFS licence can only authorise the qualified licensee to provide financial product advice and deal in relation to risk insurance products and investment life insurance products: see s1434(2)(e). ASIC cannot vary the qualified AFS licence to extend the authorised activities. Insurance multi-agents who wish to act as a principal and provide additional services will need to meet the competency standards and apply for a standard AFS licence.

1.3.38 When we grant a qualified AFS licence, we will impose standard AFS licence conditions on all qualified licensees or particular classes of qualified licensees: see Section C of our FSRB Policy Proposal Paper No 8 *Licensing: Discretionary powers*, and our forthcoming *AFS Licensing Kit* which will detail the standard AFS licence conditions we will impose. We may also impose special licence conditions that are tailored to individual licensees or groups of licensees when we grant a qualified AFS licence.

Note: We aim to publish the *AFS Licensing Kit* in February 2002.

1.3.39 While qualified licensees hold their qualified AFS licence, they must comply with all the obligations that apply to other holders of AFS licences, except for the requirements in s912A(e) (licensee's competency) and s912A(f) (training and competency of representatives).

1.3.40 Under the transitional provisions, qualified licensees and their representatives will be required to include a statement in their financial services guide that the licensee is not bound by the obligations in s912A(e) and (f), and that sets out what those obligations are: see s1434(3)(a)(ii).

What must qualified licensees do by the end of the 2-year transitional period?

- 1.3.41** Qualified licensees will be required to demonstrate to ASIC that they have met the competency requirements that apply to other licensees by the end of the 2-year transitional period. We encourage qualified licensees to meet the competency standards as soon as possible. Those who have not taken significant steps, such as enrolling in courses, by 30 June 2002 are unlikely to meet the competency standards by the end of the 2-year transitional period.

Note 1: Ordinarily, we will not extend the special period under the transitional provisions that qualified licensees are given to meet the competency standards: see our forthcoming FSR policy statement on *Licensing: Discretionary powers and transition*. We aim to publish this document before 1 December 2001.

Note 2: See our forthcoming FSR policy statements *Licensing: Training of financial product advisers* and *Licensing: Organisational capacities* for further guidance on the requirements in s912A(e) and 912A(f), including the dates for compliance for persons other than qualified licensees. We aim to publish these documents before 1 December 2001.

- 1.3.42** Under the transitional provisions, qualified licensees who intend to continue carrying on business as a principal after the 2-year transitional period will be required to re-apply for a standard AFS licence before the end of the 2-year transitional period (ie before 11 March 2004). We are asking qualified licensees to lodge their completed applications with us by 3 months before the end of the 2-year transitional period (ie before by 11 December 2003).
- 1.3.43** If you delay lodging your complete application until less than 3 months before the end of the 2-year transitional period, we may not be able to process it before the end of the 2-year transitional period. We will give priority to applications that are received at least 3 months before the end of the 2-year transitional period. For entities that delay their applications, the risk that we will not be able to process your application before the end of the 2-year transitional period will increase the longer you take to lodge your complete application.
- 1.3.44** If you delay your application until less than 3 months before the end of the 2-year transitional period, and we do not process it before the end of the 2-year transitional period, you will be unlicensed from the end of the 2-year transitional period. As a

result, you will not be able to provide financial services as a principal lawfully until we process your application and decide to grant you an AFS licence.

- 1.3.45** We consider that the onus is on qualified licensees to start preparing early and to comply with the competency standards within the statutory timeframe.

1.4 What law applies after the transition period?

- 1.4.1 In general, the new licensing regime and all its requirements will apply to financial service providers, and their representatives, after the financial service provider's transition period. In particular, all licensees will be subject to the same obligations under Part 7.6 of the FSR Act, irrespective of the process by which they obtained an AFS licence.

Note 1: In accordance with the proclamation under s1442A, s992A (hawking) will apply to all persons from FSR commencement on 11 March 2002: see s1442A of the transitional provisions.

Note 2: For special arrangements during the 2-year transitional period, see paragraph 1.4.7 below.

- 1.4.2 As a result, in general, by the end of the 2-year transitional period, the new licensing regime will apply to *all* financial service providers and their representatives.

Note: There is an important exception to this rule. If a person advises on or deals in prescribed interests which immediately, before FSR commencement, are subject to the licensing provisions of the Corporations Law as in force before 1 July 1998 as they apply under the Corporations Act, they will remain subject to that law and will not be subject to the requirement to hold an AFS licence: see paragraph 1.2.9 of this guide.

- 1.4.3 At the end of a financial service provider's transition period, any:

- (a) licence it held under the old Corporations Act; or
- (b) registration of the entity as a broker or registered foreign insurance agent under the IABA;

ceases to have effect: see s1432. The licensee should no longer display its previous licence or certificate of registration from that time.

- 1.4.4 Proper authorities given under licences under the old Corporations Act will cease to have effect from the time the licence under the old Corporations Act ceases to have effect: see s1432.

Example

An entity holds a securities dealers licence under the old Corporations Act.

When the entity is granted an AFS licence, and the entity and its representatives are covered by the new licensing regime, its securities dealers licence and the proper authorities given under that licence will cease to have effect.

- 1.4.5** Accordingly, licensees under the old Corporations Act who are granted an AFS licence will need to ensure that those of its representatives who must be authorised as an authorised representative under the new regulatory regime are authorised before they provide financial services on behalf of the licensee. You will also need to communicate with your representatives to ensure that they act on your behalf in compliance with the new regulatory regime.

Note: New authorisations may be given before 11 March 2002, or between 11 March 2002 and when an AFS licence is granted, but will only take effect when the principal is granted an AFS licence: see s1431(2).

- 1.4.6** Similarly, if for your own business reasons, you will not be authorising as an authorised representative one or more of your existing proper authority holders under the new regulatory regime, you will need to communicate with them to ensure that they will not be purporting to act on your behalf after your transition period.

Our message: plan and prepare early for your licensing transition

Entities should plan for an early and timely transition to the new licensing regime. We consider that entities that do not start preparing early but leave all preparation until towards the end of the 2-year transitional period will have difficulties meeting the requirements.

In particular, financial service providers and their representatives will be subject to the competency standards under s912A(e) (licensee's competency) and s912A(f) (training and competency of representatives) by the end of the 2-year transitional period.

We encourage licensees to meet the competency standards as soon as possible. For example, life or general insurance advisers who have not taken significant steps, such as enrolling in courses, by 30 June 2002 are unlikely to meet the competency standards by the end of the 2-year transitional period. We will not give relief on the basis of lack of preparation.

Note: See our forthcoming FSR policy statements *Licensing: Training of financial product advisers* and *Licensing: Organisational capacities* for further

guidance on the requirements in s912A(e) and (f), including the dates for compliance for persons other than qualified licensees. We aim to publish these documents before 1 December 2001.

Special arrangements during the 2-year transitional period

- 1.4.7 As stated at paragraph 1.4.1 above, the new licensing regime and all its requirements will generally apply to financial service providers and their representatives after the financial service provider's transition period. However, under the transitional provisions and the regulations, there are special arrangements during the 2-year transitional period in relation to:
- (a) **insurance agents and insurers** — insurers who have been granted an AFS licence and their insurance agents will continue to be subject to the IABA for the insurance agent's transition period: see Section 1.5 of this guide;
 - (b) **compensation arrangements** — regulations 10.2.44 and 10.2.45 provide for the continuation of existing compensation arrangements under the IABA and Chapter 7.3 of the old Corporations Act during the 2-year transitional period: see those regulations and our forthcoming FSR policy statement on *Licensing: Discretionary powers and transition* (planned for issue by December 2001);
 - (c) **dispute resolution procedures** — under regulation 10.2.47, the requirement for licensees to be a member of an approved external dispute resolution scheme will only apply during the 2-year transitional period after there has been at least one such relevant scheme in existence for at least 3 months: see regulation 10.2.47 for further detail, and also see our forthcoming FSR policy statement on *Licensing: External and internal dispute resolution procedures* (planned for issue by December 2001);
 - (d) **some other significant matters** including:
 - (i) liability of financial service licensees and other persons: see regulations 10.2.100–10.2.104; and
 - (ii) the requirement to provide a financial services guide during the 2-year transitional period: see Division 14 of Part 10.2 of the regulations.

Note: See Part 10.2 of the regulations for further regulations that may affect your transition to the new regulatory regime.

1.5 Special transitional arrangements for insurance agents and insurers

What is the transition period?

- 1.5.1** As stated at paragraph 1.1.6 of this guide, under the transitional provisions, the transition period for current financial service providers will also apply to their representatives, including insurance agents.
- 1.5.2** In addition, under s1436A of the transitional provisions, the transition period for an insurance agent in relation to its activities as an agent for an insurer continues until:
- (a) the agent lodges with ASIC a notice in writing, stating that the agent no longer wishes to be covered by the IABA from a specified date or period (an opt-in notice);
 - (b) the authorising agreement under s10 of the IABA between the insurer and the agent is no longer in force;
 - (c) the agent is granted an AFS licence (that is, a qualified AFS licence or a standard AFS licence) covering the range of activities that the agent previously carried out under the authorising agreement; or
 - (d) 11 March 2004;

whichever occurs first (the insurance agent's transition period).

Note: For this purpose, an insurance agent is a person who is an insurance intermediary (but not an insurance broker) within the meaning of the IABA because of an agreement they have with the insurer under s10 of the IABA: see s1436A(2).

Example

An insurance agent has an agreement with an insurer under the IABA. The insurer obtains an AFS licence on 11 March 2003, 12 months after FSR commencement. Under the transitional provisions, the insurance agent's transition period will continue after the insurer obtains its AFS licence, and will end when one of the events at subparagraphs 1.5.2 (a)–(d) above occurs.

What law applies during the transition period?

- 1.5.3** Insurance agents will continue to be subject to the IABA after the insurer's transition period, for the insurance agent's transition period. An insurer will also continue to be subject to the IABA for an insurance agent's transition period, in relation to the agent's activities for that insurer.

Example

R is a life agent who acts on behalf of a life insurer, P. P obtains an AFS licence 1 month after FSR commencement.

- (a) R may decide to lodge an opt-in notice with ASIC under 1436A in respect of its authorising agreement with P, stating that it does not want the IABA to apply to it from, for example, 1 month after FSR commencement. If so, both P and R will be subject to the new licensing regime from the time P is granted an AFS licence.
- (b) R may decide to remain covered by the IABA until 11 March 2004. If so, both P and R will be covered by the IABA until that date in respect of R's activities under its authorising agreement under s10 of the IABA.
- (c) R may decide to apply for an AFS licence (including a qualified AFS licence). If R is granted an AFS licence, both P and R will be covered by the new licensing regime.

What are the processes for moving to the new regulatory regime for insurance agents?

- 1.5.4** Insurance agents may move to the new regulatory regime in one or more of the following ways:
- (a) during the agent's transition period, lodging an opt-in notice with ASIC for one or more of their authorising agreements with insurers under the IABA, and becoming an authorised representative of one or more principals under the new regulatory regime: see paragraph 1.5.5 below;
 - (b) continuing to operate under the IABA on behalf of one or more of their principals for 2 years after FSR commencement, and becoming an authorised representative of one or more principals at the end of the 2-year transitional period;

- (c) applying for a standard AFS licence under the new regulatory regime: see paragraph 1.3.17 of this guide;
- (d) if the insurance agent is a multi-agent — applying for a qualified AFS licence: see paragraph 1.3.35 of this guide.

Note: See our process guideline *How do you get an Australian financial services (AFS) licence? (Release 2.0 — October 2001)* for guidance on how to apply for an AFS licence.

- 1.5.5** Under the transitional provisions, the insurance agent may lodge with ASIC an opt-in notice covering one or more of its authorising agreements with insurers.
- 1.5.6** An opt-in notice must be lodged with ASIC by the insurance agent and must identify the insurance agent and the relevant insurer(s) clearly.
- 1.5.7** An opt-in notice must indicate that the insurance agent no longer wants to be covered by the IABA from a specified date or from the end of a specified period. An opt-in notice may contain different specified dates or periods for each of the authorising agreements it covers.
- 1.5.8** The date(s) specified in the notice must be after the date on which the notice is lodged with ASIC. Similarly, if the notice specifies a period, the period must end after the date the notice is lodged with ASIC.

Note: If necessary, we will provide further guidance in a future licensing process-related publication on how to lodge your opt-in notice and the form of the notice.

- 1.5.9** When an insurance agent lodges an opt-in notice covering an authorising agreement with an insurer, and the notice is not varied or revoked before it takes effect, the IABA will no longer apply to:

- (a) that agent; or
- (b) the insurer in respect of the agent's activities on behalf of that insurer;

from the date specified in the notice, or from the end of the period specified in the notice. From that time, the insurance agent and the relevant insurer will be covered by the new licensing regime.

1.5.10 During the 2-year transitional period, ASIC will make available information at our offices and on the internet through our website about:

- (a) opt-in notices that have been lodged with ASIC; and
- (b) variations and revocations of those notices.

What law applies after the transition period?

1.5.11 After an insurance agent's transition period, the insurer and the agent will be covered by the new licensing regime.

Section

2

Product disclosure

This section of the guide covers aspects of the transitional provisions as they relate to the new financial product disclosure regime under Part 7.9 of the FSR Act.

Contents

- 2.1** What is the transition period?
- 2.2** What law operates during the transition period?
- 2.3** What are the processes for moving to the new regulatory regime?
- 2.4** What law applies after the transition period?

2.1 What is the transition period?

Existing financial products

2.1.1 Under the transitional provisions, the transition period for existing financial products begins on 11 March 2002 and ends:

- (a) when the product issuer opts in to the new financial product disclosure regime; or
- (b) 11 March 2004;

whichever occurs first. “Existing financial products” are financial products that are not in a class of products where the issuer first offered to issue the product after 11 March 2002: see s1438 and regulations 10.2.74 and 10.2.77.

Note: See paragraph 2.1.3 below and regulation 10.2.74 for the meaning of “class of products”.

New financial product classes

2.1.2 Under the transitional provisions, there is no transition period for financial products in a class of products that are first issued by a person after 11 March 2002 (new financial product classes): see s1438(1). In general, the new financial product disclosure regime under Part 7.9 of the FSR Act will apply from 11 March 2002 to new financial product classes.

2.1.3 The regulations made on 8 October 2001 identify what is a class of products for the purposes of s1438. The following types of products will be in the same class as another financial product only if the other product is the same type of product:

- (a) a life risk insurance product;
- (b) an investment life insurance product;
- (c) a superannuation interest;
- (d) a retirement savings account (RSA) product;
- (e) a deposit product; and
- (f) a financial product mentioned in s764A(1)(a) — that is, certain foreign exchange contracts.

2.1.4 To determine what is a class of product for managed investment products, derivatives and general insurance products, see regulation 10.2.74.

Example A

Before 11 March 2002, A is a life insurer who issues life risk insurance products. After that date, A wishes to issue a new offer document which refers to those life risk insurance products which it has offered to issue before 11 March 2002. The transition period for those products will begin on 11 March 2002 and end when A opts in to the new regulatory regime, or after 2 years, whichever occurs first. During the transition period for those products, A may issue an offer document under its old product disclosure regime. If A wishes to issue the offer document for a product under the new regulatory regime, it can opt into the new regulatory regime in relation to that product: see Section 2.3 of this guide.

After 11 March 2002, A wishes to offer superannuation interests for the first time. There is no transition period for those products, so Part 7.9 will apply in respect of those products and A must prepare a product disclosure statement (PDS) under the new regulatory regime.

Example B

Product issuer A issues financial products before 11 March 2002. A is part of a group of companies that re-structures its operations, so that after 11 March 2002, B, a related entity that came into existence after FSR commencement, carries on A's former business of issuing life insurance investment products. Under the transitional provisions, B will have no transition period, as it will be offering to issue life insurance investment products for the first time on or after 11 March 2002: see s1438(1).

Some Part 7.9 obligations apply from FSR commencement on 11 March 2002

2.1.5 However, some obligations under Part 7.9 of the FSR Act will apply to all financial products, whether new or existing, from 11 March 2002: see s1438(2) of the transitional provisions.

These are:

- (a) s1017C (information for existing holders of superannuation products and RSA products);
- (b) s1017DA (regulations made under that section may specify additional obligations on trustees of superannuation entities to provide information);
- (c) s1017E (dealing with money received for financial products before the product is issued);
- (d) s1017F (confirming transactions);

- (e) s1019A and 1019B (cooling-off period for return of financial product);
- (d) s1020B and 1020C (short selling of securities, managed investment products and certain other financial products); and
- (e) s1020D (Part 7.9 cannot be contracted out of).

Note 1: By proclamation under s1442B of the transitional provisions, 11 March 2002 was fixed as the date for the purposes of that section, so that the obligations in s1017F (confirming transactions) and s1019A and 1019B (cooling-off period for return of financial product) will commence on 11 March 2002.

Note 2: You will need to refer to relevant regulations that apply for the purposes of Part 7.9 obligations, including regulations that modify the effect of Part 7.9 provisions.

A product issuer may have more than one transition period

2.1.6 A product issuer may have different transition periods for different products.

Example

Product issuer A issues products 1 and 2 before 11 March 2002. For products 1 and 2, A decides to opt into the new product disclosure regime 12 months later, by lodging a notice with ASIC that states A intends new Part 7.9 to apply to products 1 and 2 from 11 March 2003: see Section 2.3 of this guide for guidance on the opt-in mechanism) A plans to issue a product in a new class of products, product 3, for the first time on 11 September 2002, 6 months after FSR commencement.

A will have a 12 month transition period for products 1 and 2, and no transition period for product 3. A will be subject to the obligations in 2.1.3 from 11 March 2002 in relation to products 1 and 2, and it will also be subject to those obligations at all times in relation to product 3.

2.1.7 Product issuers will need to plan their transition to the new regulatory regime with care, to ensure that they and other relevant persons can comply with all the requirements that will apply to them during and after the transition period: see Section 2.2 of this guide.

2.2 What law operates during the transition period?

Existing financial products

- 2.2.1 Under the transitional provisions, the old product disclosure regulatory regime (if any) for an existing financial product continues to apply during the transition period for that product.
- 2.2.2 The old product disclosure regulatory regime that applies, together with any associated provisions, during the transition period despite its repeal or amendment by the FSR legislation is:
- (a) for managed investment products — all the provisions of Chapter 6D of the old Corporations Act (other than s722 of that Act);
 - (b) for derivatives — s1210 of the old Corporations Act will apply to futures contracts as defined under that Act;
 - (c) for superannuation products — s153, 153A and 157–167 of the *Superannuation Industry (Supervision) Act 1993* as in force immediately before FSR commencement on 11 March 2002;
 - (d) for RSA products — s51, and 53–60 of the *Retirement Savings Accounts Act 1997* as in force immediately before FSR commencement on 11 March 2002;
 - (e) for insurance products — s71A and 73 of the *Insurance Contracts Act 1984* as in force immediately before FSR commencement on 11 March 2002.

Note 1: “Associated provisions” under the transitional provisions includes regulations, instruments (including the class orders set out in our forthcoming FSR policy statement *Disclosure: Discretionary powers and transition*), any relevant interpretative provisions or other provisions affecting the operation of the core provisions, and provisions relating to civil and criminal liability.

Under the transitional provisions, ASIC may vary or revoke the existing class orders that will apply during the 2-year transitional period. We may revoke existing class orders where the relief will no longer be necessary (eg when we give new relief under the FSR Act that will operate during and after the 2-year transitional period).

Note 2: For guidance on:

- (a) how existing class orders will be affected by the FSR Act; and
- (b) the application of our existing published policies and published guidance during the transition period;

see our forthcoming FSR policy statements on *Disclosure: Discretionary powers and transition* and *Licensing: Discretionary powers and transition*. We aim to publish these policy statements before 1 December 2001.

- 2.2.3** In addition some obligations under Part 7.9 of the FSR Act will apply from 11 March 2002 to existing financial products: see paragraph 2.1.5 of this guide.

Example

For an existing managed investment product, during the transition period for that product:

- (a) Part 6D of the old Corporations Act (but not s722) will continue to apply; and
- (b) the Part 7.9 obligations listed at paragraph 2.1.5 will apply from FSR commencement.

New financial product classes

- 2.2.4** In general, the new financial product disclosure regime under Part 7.9 of the FSR Act will apply to new financial product classes from 11 March 2002: see paragraph 2.1.2 of this guide.

2.3 What are the processes for moving to the new regulatory regime?

Existing financial products

- 2.3.1** Under the transitional provisions, product issuers may move to the new product disclosure regime under Part 7.9 in relation to an existing financial product by lodging a notice with ASIC (an opt-in notice), opting in to the new financial product disclosure regulatory regime in relation to that existing product or a class of financial products that includes the product.
- 2.3.2** If a product issuer does not lodge an opt-in notice in relation to an existing financial product with ASIC within the 2-year transitional period, Part 7.9 will apply in relation to that existing product from 11 March 2004.

Example

Product issuer A lodges an opt-in notice with ASIC stating that it wants Part 7.9 to apply to product 1 on 11 March 2002 (FSR commencement). A does not opt in at any time for products 2 and 3. Part 7.9 will apply to product 1 on 11 March 2002, and to products 2 and 3 from 11 March 2004.

- 2.3.3** An opt-in notice in relation to a product must be lodged with ASIC by the product issuer. The notice must identify the product issuer clearly.
- 2.3.4** An opt-in notice may relate to a single product or to a class of products. The notice must identify the product or the class of products clearly.
- 2.3.5** An opt-in notice must indicate that the product issuer wants Part 7.9 to apply to the product, or class of products, from a specified date.
- 2.3.6** The date specified in an opt-in notice may be 11 March 2002 or a later date, but not an earlier date.
- 2.3.7** The date specified in an opt-in notice must be at least 28 days after the notice is lodged with ASIC.
- 2.3.8** Product issuers who want Part 7.9 to apply in relation to one or more financial products from 11 March 2002 must therefore lodge an opt-in notice with ASIC at least 28 days before

11 March 2002. (An opt-in notice may be lodged with ASIC before 11 March 2002.)

Our message: lodge opt-in notices after 31 January 2002

We will provide further guidance if necessary on how to lodge your opt-in notice and the form of the notice. Until then, in general we ask product issuers not to lodge opt-in notices with us until after 31 January 2002.

2.3.9 When a product issuer lodges an opt-in notice, and the notice is not varied or revoked, all of Part 7.9 will apply to the products covered by the notice from the specified date.

2.3.10 Therefore, product issuers and all other regulated persons under s1011B of the FSR Act who are subject to Part 7.9 will have to comply with Part 7.9 by the specified date. This applies even if those persons will be required to move to the new licensing regime under Part 7.6 of the FSR Act as a principal or representative, but have not yet done so.

Note 1: See s1441 of the transitional provisions.

Note 2: This will mean an issuer will also need to communicate to its sellers and distributors to ensure that they comply with the new product disclosure regulatory regime. These communications will need to comply with any relevant s1438(6) determination requirements: see paragraph 2.3.14 below.

Example

Before 11 March 2002, B is a seller of financial products issued by A. A lodges an opt-in notice with ASIC that states that A wishes Part 7.9 to apply in relation to products 1 and 2 from 11 June 2002. From that date, Part 7.9 will apply to those products, not only in relation to the issuer, but also to other regulated persons, such as a seller of the product.

- 2.3.11** An opt-in notice may only be varied if:
- (a) the variation is to specify a new date from which the product issuer wants all of Part 7.9 to apply to the product(s) in the notice;
 - (b) a further notice is lodged with ASIC at least 28 days before the date specified in the first notice; and
 - (c) the new date is at least 28 days after the further notice is lodged with ASIC.

- 2.3.12** An opt-in notice may only be revoked if a further notice is lodged with ASIC at least 28 days before the date specified in the first notice.
- 2.3.13** Under the transitional provisions, an opt-in notice cannot be varied or revoked within 28 days or less of the date specified in the opt-in notice. Product issuers should therefore carefully select the date they elect for Part 7.9 to apply. When product issuers specify a date in an opt-in notice, they should ensure that they, and other relevant persons, will be ready to comply with Part 7.9 by that date.

Note: See our forthcoming FSR policy statement on *Disclosure: Discretionary powers and transition* for guidance on how we will exercise our transitional discretionary powers. We plan to publish this document before 1 December 2001.

- 2.3.14** Product issuers who lodge an opt-in notice, or vary or revoke an opt-in notice, will be required to comply with ASIC's determination under s1438(6). We will determine requirements for informing people about:

- (a) the notice, and its significance; and
- (b) any later variation or revocation of the notice.

Note: See our forthcoming FSR policy statement on *Disclosure: Discretionary powers and transition* for our requirements for the determination under s1438(6). We plan to publish this document before 1 December 2001.

- 2.3.15** During the 2-year transitional period, ASIC will make information available at our offices and on our website at www.asic.gov.au about:
- (a) opt-in notices that have been lodged with ASIC; and
 - (b) variations and revocations of those notices.

New financial product classes

- 2.3.16** Part 7.9 will apply to new financial product classes on FSR commencement: see paragraph 2.1.2 of this guide.

2.4 What law applies after the transition period?

- 2.4.1** In general terms, Part 7.9, including its civil and criminal liability provisions, will apply to all persons in relation to a financial product after the transition period for that product.

Note 1: Some obligations under Part 7.9 of the FSR Act will apply to all financial products, whether new or existing, from FSR commencement: see paragraph 2.1.5 of this guide.

Note 2: See Part 10.2 of the regulations for further regulations that may affect your transition to the new regulatory regime.

Section

3

Licensing and product disclosure

This section of the guide covers some aspects about how an entity's transition to the new licensing regime relates to its transition to the new product disclosure regime.

Contents

- 3.1** How does the transition to the new licensing regime relate to the transition to the new product disclosure regime?

3.1 How does the transition to the new licensing regime relate to the transition to the new product disclosure regime?

- 3.1.1 A product issuer may have different transition periods in relation to licensing and product disclosure. A product issuer may move to the new financial product disclosure regime by opting in to Part 7.9 before, at the same time, or after, it moves to the new licensing and conduct regime under Part 7.6 by obtaining an AFS licence.

Example

A is a licensed securities dealer under the old Corporations Act. A opts in to the new financial product disclosure regulatory regime in relation to product 1 (a managed investment product) on FSR commencement. A may decide to apply to ASIC for an AFS licence that takes effect one year after FSR commencement, and may also decide to opt into the new financial product disclosure regime 18 months after FSR commencement in relation to products 2 and 3.

In relation to licensing, A will have a 1 year transition period. During A's licensing transition period, A will be subject to its old licensing regime under the old Corporations Act, and will be required to provide an Advisory Services Guide to retail clients where required by regulation 7.3.02B under the old Corporations Act.

In relation to product disclosure, A will have no transition period for product 1, and an 18 month transition period for products 2 and 3. During the transition period for products 2 and 3, A will be subject to:

- (a) its old disclosure regime; and
- (b) some of the provisions in Part 7.9: see paragraphs 2.1.5 and 2.1.6 of this guide.

From FSR commencement, A and its representatives will be required to provide a PDS under the new regulatory regime to retail clients for product 1. For products 2 and 3, A and its representatives will be required to provide a PDS in accordance with the new regulatory regime from 18 months after FSR commencement.

Key terms

In this guide:

“AFS licence” means an Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services;

Note: This is a definition contained in s761A of the FSR Act.

“APRA” means the Australian Prudential Regulation Authority;

“ASIC” means the Australian Securities and Investments Commission;

“authorised representative” of a licensee means a person authorised by the licensee, in accordance with s916A or 916B to provide a financial service or services on behalf of the licensee;

Note: This is a definition contained in s761A of the FSR Act.

“Corporations Act” means the *Corporations Act 2001* and includes regulations made for the purposes of the Act;

“current financial service provider” means a person as defined in paragraph 1.1.2 of this guide;

“financial product” has the meaning given in Division 3 of Part 7.1 of the FSR Act;

Note: This is a definition contained in s761A of the FSR Act.

“financial services guide” means a financial services guide required by s941A or 941B to be given in accordance with Division 2 of Part 7.7 of the FSR Act;

Note: This is a definition contained in s761A of the FSR Act.

“FSR Act” means the *Financial Services Reform Act 2001* or the *Corporations Act 2001* as amended by the FSR Act, as applicable, and includes regulations made for the purposes of the FSR Act;

Note: The provisions contained in Schedule 1 to the FSR Act will form part of the Corporations Act from 11 March 2002. Schedule 1 contains the financial services licensing provisions under Parts 7.6–7.8 and the financial product disclosure provisions under Part 7.9.

“FSR commencement” means 11 March 2002, the date fixed by Proclamation under s2(2) of the FSR Act on which Schedule 1 of the FSR Act is to commence;

Note: Schedule 1 contains the financial services licensing provisions under Parts 7.6–7.8 and the financial product disclosure provisions under Part 7.9.

“IABA” means the *Insurance (Agents and Brokers) Act 1984* and includes regulations made for the purposes of the Act;

“licensee” means a person who holds an AFS licence;

“new financial product disclosure regime” means the obligations under Part 7.9 of the FSR Act;

“new regulatory regime” means the financial services licensing and product disclosure regime under the Corporations Act as amended by the FSR Act;

“old Corporations Act” means the *Corporations Act 2001* as in force immediately before FSR commencement;

“old regulatory regime” means (as applicable) the relevant old legislation and relevant industry codes, standard or practices (however enforceable at law) related to the provision of financial services and applying immediately before FSR commencement;

“PDS” means a product disclosure statement that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Part 7.9 Division 2 of the FSR Act;

“regulation 10.2.37”, for example, means regulation 10.2.37 of the *Corporations Regulations 2001*;

“regulator” means ASIC, the Australian Prudential Regulation Authority, and the Australian Competition and Consumer Commission, and their predecessors;

“relevant old legislation” means the law applying immediately before FSR commencement related to the provision of financial services as defined for the purposes of s1430;

“representative” of a licensee means:

- (a) an authorised representative of the licensee; or
- (b) an employee or director of the licensee; or
- (c) an employee or director of a related body corporate of the licensee; or

- (d) any other person acting on behalf of the licensee;

Note: This is a definition contained in s910A of the FSR Act.

“s912A”, for example, refers to a provision of the Corporations Act after FSR commencement, unless a contrary intention appears;

“transition period” means the relevant transition period as described in this guide at:

- (a) paragraph 1.1.1 (in general, for a current financial services provider);
- (b) paragraph 1.1.8 (in general, for representatives);
- (c) paragraph 1.5.2 (for insurance agents); and
- (d) paragraph 2.1.1 (for existing financial products);

“transitional provisions” means Part 10.2 of the Corporations Act, as amended by the *Financial Services Reform (Consequential Provisions) Act 2001* and includes regulations made for the purposes of that Part;

“2-year transitional period” means a period of 2 years starting from FSR commencement (ie from 11 March 2002 to 11 March 2004).

Related papers

This guide is one of a set of two publications issued together in October 2001 on the implementation of the *Financial Services Reform Act 2001*.

As outlined in our paper *Building the FSRB Administrative Framework*, we issued an earlier set of policy proposal papers in April, June and September 2001.

We plan to issue further publications in the coming months related to the implementation of the FSR Act — see our September 2001 *Supplement* to the April 2001 *Framework* document.

The publications issued together in October are:

Licensing and disclosure: Making the transition to the FSR regime — An ASIC guide

Process guideline *How do you get an Australian financial services (AFS) licence?* (Release 2.0)

The related documents issued together in April are:

Building the FSRB Administrative Framework — Policy to implement the Financial Services Reform Bill 2001 (April 2001 *Framework* document)

Licensing: The scope of the licensing regime: Financial product advice and dealing

FSRB Policy Proposal Paper No 1

Licensing: Organisational capacities

FSRB Policy Proposal Paper No 2

Licensing: Adapting IPS 146 to the Financial Services Reform regime

FSRB Policy Proposal Paper No 3

Disclosure: Product Disclosure Statements (and other disclosure obligations)

FSRB Policy Proposal Paper No 4

Disclosure: Discretionary powers and transition

FSRB Policy Proposal Paper No 5

Process guideline *How do you get an AFS licence?* (Release 1.0)

The related documents issued together in June are:

Licensing: Principals and representatives

FSRB Policy Proposal Paper No 6

Licensing: External and internal dispute resolution procedures

FSRB Policy Proposal Paper No 7

Licensing: Discretionary powers

FSRB Policy Proposal Paper No 8

Approval of codes

FSRB Policy Proposal Paper No 9

In September, we issued a *Supplement* updating the April 2001 *Framework* document.

You can download copies of these documents

from the ASIC home page at www.asic.gov.au.

(Follow the link from "Financial services reform" on the top right of our home page.)

You can also get copies of these documents from

ASIC Infoline on 1300 300 630.

To find out more about FSR

Visit the FSR page on our website at www.asic.gov.au:

- (a) click “Financial Services Reform” on the top right of our home page
- (b) register for our free update email service which alerts you to the latest developments.