



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 18

Licensing: Organisational capacities

April 2001

Your comments

You are invited to comment on the proposals and issues for consideration in this paper.

Comments are due by Thursday 7 June 2001 and should be sent to:

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What this policy proposal is about

1 In this paper we outline:

- (a) our general approach to the licensee obligations under the Law as amended by the *Financial Services Reform Bill 2001* (the Bill) (**Section A**); and
- (b) what we will expect of financial services licensees and applicants generally in meeting these obligations (**Section B**).

2 We also set out proposals for some specific licensee obligations in this paper; others are covered in related papers. The licensee obligations we discuss in this paper are:

- (a) what compliance measures a licensee should have in place: this relates to all the obligations (**Section C**);
- (b) what procedures a licensee should have for monitoring, supervising and training your representatives: 912A(c) and (f) (**Section D**);
- (c) what skills and knowledge (“organisational expertise”) we expect a licensee to have: 912A(e) (**Section E**); and
- (d) for non-APRA regulated licensees:
 - (i) what systems a licensee should have in place for managing risk: 912A(h) (**Section F**); and
 - (ii) what non-financial resources a licensee should have: 912A(d) (**Section G**).

Note: If you are regulated by APRA, you must also meet APRA’s requirements for non-financial resources, risk management and financial resources.

3 We also outline:

- (a) what a licensee must do when they apply for a licence to show they can meet these obligations (**Schedule 1**); and
- (b) some typical issues a licensee should think about concerning its measures, procedures and processes designed to ensure it complies with the licensee obligations (**Schedule 2**).

4 Table A shows how this paper fits in with our other papers on licensing. See also our paper *Building the FSRB Administrative Framework* (April 2001).

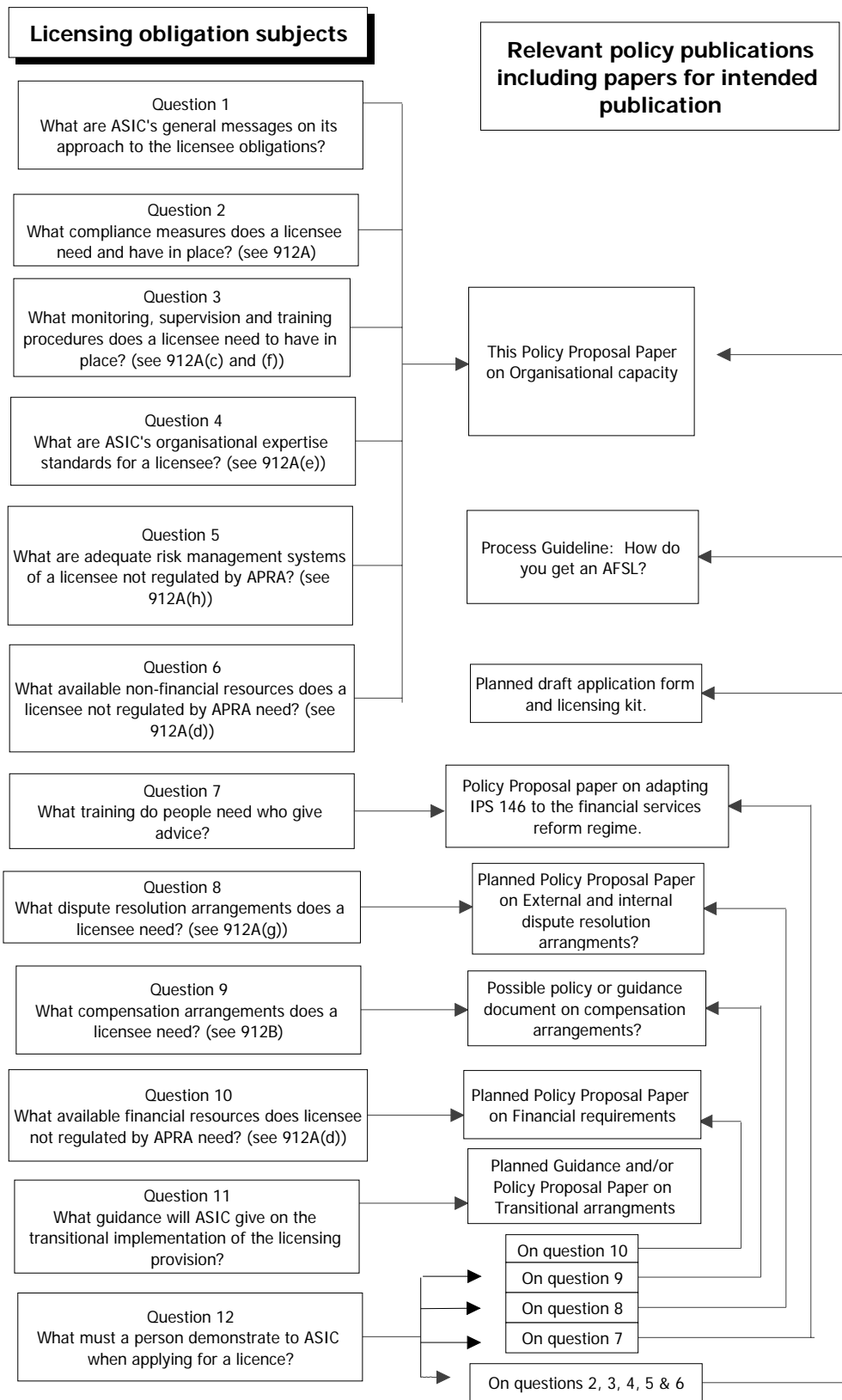
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Table A: What is covered in this paper and related licensing papers?

The table on the next page shows how this paper fits in with our other papers on licensing. See also our paper *Building the FSRB Administrative Framework* (April 2001).

Table A - What subjects does this paper and related papers deal with



Policy proposals

We have seven sections of policy proposals. For each of these proposed policies we have listed various aspects of those proposals that we are considering and have raised issues which we would like you to comment on. When necessary we have also included some explanations of our proposals.

Special note: 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 issues or have not taken into account the way the new legislation will affect specific industry situations. *We are keen to hear from you on our general approach, and what might be missing from it, as well as well as your answers to specific questions.*

A Our approach to the licensee obligations

Policy proposal	Your feedback
<p>A1 We believe the primary goals of the licensee obligations are to promote:</p> <ul style="list-style-type: none"> (a) consumer confidence in using financial services; and (b) the provision of fair, honest and professional services (by all licensees). <p>Note: See 760A of the Bill.</p>	<p>A1Q1 Are there any other primary goals of the licensee obligations that ASIC should take into account? If so, what are they and why are they important?</p>
<p>What guidance will ASIC give?</p> <p>A2 We propose to issue this paper and related papers to help:</p> <ul style="list-style-type: none"> (a) licensees develop processes and practices to meet their ongoing requirement to comply with the licensee obligations; (b) applicants for a licence understand what ASIC looks for when we assess an application for a licence; and (c) licensees understand what ASIC looks for when we review compliance by licensees with their licensee obligations. <p>Table A at the beginning of this paper shows how this policy proposal paper fits in with our other planned policy papers on licensing. For more about our planned issue of papers about the implementation of the Bill, see our paper <i>Building the FSRB Administrative Framework</i> (April 2001).</p> <p>Notes: In this paper and related papers we do not intend to give guidance on all compliance matters that might arise from the licensee obligations. We will review our guidance from time to time based on our experience to ensure that it continues to deal with what</p>	<p>A2Q1 Are there any other licensee obligation subjects that ASIC should, as a matter of priority, provide guidance on? If so, what are they, and why should they have priority? What proposed priorities would you leave out to provide resources for your alternative priorities?</p>

Policy proposal

is most important to ASIC.

We may consider issuing other relevant policy proposal papers as necessary. At the time this paper was issued, no other papers on the licensee obligations were planned for issue in May.

Use of guidance and licence conditions

A3 We propose to give guidance and impose supporting licence conditions to set minimum standards of compliance with the licensee obligations. We will also expect licensees to take into account any relevant industry practices or standards in addition to our minimum standards.

Using industry standards and Codes

A4 We will work with industry and consumer groups to develop industry standards and Codes as a means of setting best practice for compliance with the licensee obligations.

Note: See our planned FSRB policy proposal paper on *Approval of Codes* planned for issue in May 2001.

Changing nature of the Australian financial sector

A5 We are conscious of the changing nature of

Your feedback

A3Q1 If you do not agree with our proposal to use conditions on a licence to support our minimum standards of compliance with the licensee obligations, what other mechanisms are available to ASIC to ensure that minimum standards applicable to the licensee obligations are complied with on an ongoing basis? Please provide examples of alternative mechanisms.

A4Q1 What licensee obligations do you think could usefully be supported by industry standards or Codes to improve compliance with the objectives of the licensee obligations? Please briefly explain your answer.

A5Q1 We seek your views on

Policy proposal

the Australian financial sector, and in particular the extent to which globalisation, increased cross border activity by product issuers and service providers, and links with other countries has on our markets.

We are considering what if any additional issues, or extensions of our policy proposals, we need to take into account to deal with this aspect.

Your feedback

these issues in addition to the purely domestic issues raised in this paper and other policy proposal papers and process related publications.

Explanation

A Our approach to the licensee obligations

1 Under the Bill, a licensee must meet the licensee obligations to obtain an Australian Financial Services Licence (a licence). This policy is designed to help you to meet those obligations and to enhance protection for consumers and market integrity. Entities that meet our policy are less likely to cause loss to consumers or to adversely effect market integrity.

What guidance will ASIC give?

2 We consider that how a licensee complies with the licensee obligations will depend on the nature, scale and complexity of its business. It would not be possible or appropriate for ASIC to give guidance on exactly how a licensee satisfies the licensee obligations. ASIC has therefore focused on providing guidance on what matters primarily concern ASIC when we:

- (a) assess the adequacy of an application for a licence; and
- (b) review compliance by licensees with the licensee obligations.

3 We are issuing guidance on the licensee obligations in this paper first because we believe they are:

- (a) of a higher priority and therefore need to be discussed sooner; and
- (b) not fundamentally affected by details that will become clearer after:
 - (i) more opportunity to consider the terms of the recently issued Bill; and
 - (ii) consideration of any public details on the nature of key regulations that may be issued under the Bill.

Using industry standards and Codes

4 ASIC believes Codes have a useful role to play in:

- (a) dealing with issues not covered in legislation (this is the most useful role);
- (b) clarifying what needs to be done to comply with legislation; and

(c) building upon the protections provided by legislation.

5 Codes (and even industry standards) should meet certain minimum requirements in terms of broad industry coverage and support, content, transparency, accountability and enforceability if they are to benefit consumers.

6 Any Codes or industry standards should not create a regime that is inconsistent with the obligations of issuers under the Law.

7 Codes or industry standards will not be suitable to clarify or expand upon the licensee obligations in all circumstances. Where they are not suitable, regulations or policy guidance may be required.

8 We plan to release a policy proposal paper on *Approval of Codes* for comment in May 2001.

B What will we expect of licensees generally?

Policy proposal	Your feedback
<p>B1 A licensee must ensure that it (and its representatives) comply on an ongoing basis with the licensee obligations (including where a licensee engages agents). The standards proposed in this paper and related papers should be viewed as <i>minimum standards</i>. They are therefore only a starting point for a licensee’s own detailed processes and procedures in satisfying the licensee obligations.</p> <p>B2 We will expect that the procedures and processes a licensee implements to ensure compliance with these obligations will vary depending on the nature, scale and complexity of its financial services business, and in particular:</p> <ul style="list-style-type: none"> (a) the kind of licence the licensee hold; (b) the diversity and structure of the licensee’s operations (including geographical diversity and use of outsourcing); (c) the products and services the licensee offers; (d) the activities the licensee conducts; (e) the volume and size of the licensee’s transactions; (f) the breakdown of the licensee’s clients between wholesale and retail; and (g) whether the licensee is giving personal advice or general advice. 	<p>B2Q1 Are there any other aspects of a licensee’s business that may significantly affect the compliance measures that it implements? If so, what are they and why are they significant?</p>

Policy proposal	Your feedback
<p><i>Acting competently and honestly</i></p> <p>B3 We believe the licensee obligation to operate competently and honestly in providing financial services, applies both as:</p> <ul style="list-style-type: none"> (a) a broad obligation encompassing all the other obligations that come with a licence; and (b) a separate obligation that a licensee must independently satisfy. <p>B4 Accordingly, we may:</p> <ul style="list-style-type: none"> (a) consider that a licensee has breached its obligation to operate competently and honestly, even if it has satisfied all the other licensee obligations; or (b) refuse to grant a licence if we think that the applicant will not operate competently and honestly, even if it can meet all other licensee obligations. <p><i>Being of “good fame and character”</i></p> <p>B5 At the time it applies for a licence, the applicant (in the case of a body corporate, its responsible officers) must be of good fame and character. We expect licensees to ensure that their responsible officers continue to be of good fame and character.</p> <p>B6 We believe this requirement is closely related to a number of other licensee obligations, including the licensee’s ongoing obligation to be competent to provide its financial services.</p> <p><i>Meeting all your obligations</i></p> <p>B7 We believe that each of the licensee obligations overlap in scope with one or more of the other licensee obligations, ie that</p>	

Policy proposal	Your feedback
<p>they are an integrated whole.</p> <p>B8 Accordingly:</p> <ul style="list-style-type: none"> (a) if we find a licensee has breached one of its licensee obligations, we are likely to find that it has breached other licensee obligations (including its obligation to operate competently and honestly); or (b) if we refuse to grant a licence on the basis that the applicant will not satisfy one of licensee obligations, we are likely to consider that it is not able to satisfy other licensee obligations (including the obligation to operate competently and honestly). <p>What we will look for when granting a licence</p> <p><i>Full and complete application</i></p> <p>B9 When applying for a licence, you must provide us with a complete application (based on relevant internal and inquiries and review), ie one that is:</p> <ul style="list-style-type: none"> (a) considered; (b) coherent; (c) gives in-depth answers (ie not superficial); and (d) accompanied by all relevant supporting documentation (when required). <p>If your application is incomplete, we will reject it. We may reconsider your application if you provide more information, but only after we have processed other complete applications that have been lodged in the meantime. Applications that are not complete will be refused.</p>	

Policy proposal

Demonstrated ability to meet the obligations

B10 An applicant for a licence must be able to show us that it will satisfy each of the licensee obligations. It must also be able to show us that it can comply with the licensee obligations on a continuing basis.

Note: For more details about what you need to put in a licence application, see Schedule 1 of this paper and the related papers shown in Table A at the beginning of this paper.

B11 In general, when applying for a licence, an applicant will need to:

- (a) declare that the information supplied in and with the application form is complete and accurate to the best of their knowledge;
- (b) provide details about key personnel, outsourcing arrangements, business activities and finances;
- (c) describe the processes, procedures and resources it will have in place to ensure it complies with the licensee obligations (including monitoring arrangements);
- (d) tell us why these processes, procedures and resources will ensure that it continues to comply with the licensee obligations;
- (e) answer questions about its compliance processes, procedures and resources; and
- (f) support its application with relevant supporting documentation. In particular, internal documents that describe measures used by the applicant to ensure compliance with the licensee obligations (including monitoring arrangements).

Your feedback

B11Q1 Are there any other kinds of information that ASIC should require from an applicant? If, so please briefly explain the kind of information (including any examples) and why we should ask for this information.

Policy proposal

Note: If an applicant is eligible to be “fast tracked” under the transitional provisions of the Bill, it is intended it will not have to provide any supporting documentation (other than evidential proofs, such as proof of membership of an approved dispute resolution scheme).

At the time of issue of this paper, the precise nature of the transitional provisions under the Bill was uncertain. We will monitor developments so we can issue policy proposals or guidance when the transitional provisions become more certain.

If your business is not yet operating

B12 If your business is not yet operating, you must give enough information in your application to show that you will be able to meet and continue to meet the licensee obligations at the time you begin operating. For instance, you must prove that you have processes, procedures and resources in place to ensure compliance at the time of the application and on ongoing basis.

If you already have a licence

B13 If you are a licensee under the old Law, you will need to review your current systems in light of the licensee obligations under the Bill and this policy proposal before you apply for a new licence under the Law (as amended by the Bill).

Your feedback

Explanation

B What will we expect of licensees generally?

- 1 It is the primary responsibility of the licensee to ensure that it (and its representatives) comply on an ongoing basis with the licensee obligations. The standards proposed in this paper and related papers should be seen as broadly applicable *minimum standards*. Therefore, a licensee cannot necessarily rely solely on satisfying our minimum standards in order to satisfy the licensee obligations. The licensee must determine on an ongoing basis what measures, procedures and processes it needs to ensure it satisfies the licensee obligations, taking into account ASIC's minimum standards and the nature, scale and complexity of its business.
- 2 As discussed in the paper, these measures, procedures and processes should be documented, monitored and reported against where appropriate.

Outsourcing

- 3 If you intend to engage any agents or external service providers to do anything in connection with your business, you must demonstrate that you:
 - (a) have used due skill and care in choosing suitable persons;
 - (b) will monitor their ongoing performance; and
 - (c) will address any breaches.
- 4 Even if functions are outsourced, you remain responsible under the Law, as licensee, for complying with the licensee obligations.

Acting competently and honestly

- 5 We consider that this obligation has a broad scope and encompasses all of the other licensee obligations. If you do not meet one of the other licensee obligations, it is probable that you also will not meet the obligation to operate competently and honestly.

Example

You provide financial services to retail clients, but have failed to meet relevant financial requirements. This means you have also failed to take reasonable steps to ensure that the financial

services covered by the licence are provided competently and honestly.

6 This principle also applies to applicants for a licence. You may meet all of the other licensee obligations, but your application may have an overall flaw that results in ASIC determining that you would be unable to operate in a competent and honest way. In this case, your licence application would be refused.

Meeting all licensee obligations

7 The licensee obligations inter-relate and overlap in a number of ways, but each obligation must also be satisfied in its own right.

Example

Your application indicates that your compliance manager has no seniority or little experience in compliance activities or in providing the financial services covered in your licence application.

We may refuse your application on the basis that:

- (a) you do not have sufficient human resources to properly provide the financial services: see 912A(d); and
- (b) you are not in a position to monitor and supervise your representatives to ensure compliance with the Law: see 912A(c).

Given this scenario, you may also be unable to:

- (a) maintain the relevant competence, skills and experience to provide the financial services covered by your licence: see 912A(e);
- (b) ensure your representatives are adequately trained and are competent to provide the financial services covered by the licence: see 912A(f); and
- (c) comply with the conditions on your licence: see 912A(b).

These factors combined also may indicate that your risk identification procedures and management systems are inadequate (912A(h)) and that you are unlikely to be able to provide the financial services competently and honestly.

Notwithstanding the inter-relationship between these licensee obligations, it is possible that you may meet all of the obligations, but that we will still be concerned based on the

application as a whole, about your ability to operate competently and honestly.

This example highlights that each obligation, including the obligation to act competently and honestly, is a separate obligation that must be satisfied.

What we will look for when granting a licence

8 An applicant for a licence must provide ASIC with a range of information, which is aimed at satisfying us that it has the skills, expertise and capacity to meet its obligations under the licence given its organisation and business activities.

Examples

- A** You are applying for a licence to provide financial product advice and to deal in a financial product. However, you want to provide on-line broking services. To efficiently provide the financial services covered by this licence, you must have good IT hardware, software, personnel and risk management systems. Therefore, you should specifically address IT resourcing, both technological and other, IT risks and how you will maintain relevant competencies, skills and experience to provide these financial services.
- B** You are applying for a licence to provide financial product advice and to deal in a financial product. In this case, you want to sell a limited range of investment products and life and general insurance products. You employ two other administrative staff on a part time basis. For you, having sufficient human resources, training and expertise to competently provide these financial services and to monitor and supervise your representatives will be areas of focus in the application.

If you already have a licence

9 If you are a licensee under the old Law, you will have current systems that you rely on to meet your obligations under the old Law. You will need to review your current systems in light of the licensee obligations under the Bill and this policy proposal before you apply for a licence under the Law (as amended by the Bill).

C Compliance measures

Policy proposal	Your feedback
<p>C1 We expect all licensees to establish and maintain compliance measures that are appropriate to their business. These measures should be directed towards ensuring compliance with all of the licensee obligations (including licence conditions) and other applicable requirements of the Law.</p> <p>C2 Compliance measures should take into account the:</p> <ul style="list-style-type: none"> (a) major compliance risks which consumers face; and (b) abuses potentially associated with your business. <p>Note: These guidelines reflect the primary goals of the licensee obligations, ie to protect the interests of consumers and maintain market integrity: see policy proposal paragraph A1.</p> <p>Compliance measures will vary depending on the licensee</p> <p>C3 We recognise that the nature and extent of compliance measures a licensee will need to establish and maintain will vary depending on the nature, scale and complexity of its business.</p> <p>Using the Australian Standard on Compliance Programs</p> <p>C4 We expect as minimum practice that in establishing and maintaining your compliance measures, a licensee will follow the Australian Standard on Compliance Programs AS 3806-1998 or any</p>	<p>C4Q1 How could a licensee demonstrate to ASIC that it has satisfactory compliance measures when they are not consistent with AS 3806?</p>

Policy proposal	Your feedback
<p>subsequent replacement standard.</p> <p><i>Documenting and updating compliance measures</i></p> <p>C5 As a condition of the licence, we will expect a licensee to document and update its compliance measures as necessary from time to time, eg through a compliance manual, compliance system or compliance plan.</p> <p>C6 When documenting and updating compliance measures, we will expect a licensee to take into account:</p> <ul style="list-style-type: none"> (a) its obligations under the Law, including any conditions under its licence; (b) any risks that may affect its compliance with these obligations, both at the time it is applying for a licence and in the future; (c) measures it has established and/or implemented to address those risks. 	<p>Please briefly explain your response.</p>
<p><i>Reviewing compliance measures</i></p> <p>C7 We will expect a licensee to regularly review its compliance measures. This review should be as frequent as the licensee considers necessary, given its changing circumstances, and taking into account any compliance breaches, to ensure that its compliance measures are adequate on an ongoing basis.</p> <p>C8 As part of this regular review, we believe a licensee should do an external and/or internal audit of its compliance measures to evaluate their appropriateness and effectiveness.</p>	<p>C7Q1 Should a licensee review its compliance measures at least annually? If not, how often should they be reviewed? Please briefly explain your response.</p> <p>C8Q1 Should a licensee do a thorough external audit of its compliance measures at least once every 3 to 5 years? If not, how often should an external audit be done? Please briefly explain your response.</p>

Policy proposal	Your feedback
<p><i>Does a licensee need to have a separate compliance function?</i></p> <p>C9 Depending on the nature, scale and complexity of the licensee’s business, it may be appropriate for the licensee to have a separate compliance function. In this case, it should document the responsibilities of the compliance function and how it is organised as part of its compliance measures.</p> <p>C10 We consider a compliance function should:</p> <ul style="list-style-type: none"> (a) be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively; (b) be adequately resourced; (c) have access to relevant records; and (d) have ultimate recourse to the licensee’s governing body, eg its board or relevant sub-committee. 	<p>C9Q1 When is it reasonable to not to have a separate compliance function? Please briefly explain your response.</p>
<p><i>Does a licensee need to have a compliance manager?</i></p> <p>C11 Whether or not a licensee has a separate compliance function, we expect that it will allocate to a director or senior manager responsibility for:</p> <ul style="list-style-type: none"> (a) overseeing compliance measures; (b) reporting to its governing body (including having ready access to the governing body). <p>We consider that these are minimum responsibilities for the “compliance manager role”. A licensee may choose to add extra responsibilities to this role.</p>	<p>C11Q1 Are there any other key responsibilities of the compliance manager role? If so, what are they and why are they important?</p>

Policy proposal**Your feedback****Issues to consider**

C12 In Schedule 2, we set out a number of typical questions a licensee may wish to consider when developing and reviewing its compliance measures. These questions are not intended to be complete and relevant to the circumstances of all licensees. Each licensee is responsible for establishing and maintaining appropriate and effective compliance measures.

Explanation

C Compliance measures

1 In order for a licensee to comply with all the licensing obligations, we consider it must establish and maintain such compliance measures as are appropriate to its business. These measures should describe how the licensee will make sure it is complying with all the licensee obligations (including licence conditions) and other applicable requirements of the Law.

2 We therefore consider that a licensee's compliance measures (typically called either a compliance manual or compliance plan) should list the key processes, systems and structures the licensee will apply. For example, the compliance measures should set out the processes, systems and structures by which the licensee will continuously review how it is complying with its obligations under the Law. We propose to use conditions on a license to support our minimum standards for compliance measures under the licensee obligations.

3 The primary focus of the licensing obligations is the protection of the interests of consumers and the maintenance of market integrity: see policy proposal paragraph A1. Accordingly, we expect that a licensee's compliance measures should reflect:

- (a) the major compliance risks which consumers face; and
- (b) the abuses potentially associated with the licensee's business.

Compliance measures will vary

4 Our approach to compliance measures does not mean that every requirement of the Law (including licence conditions) should be dealt with exhaustively or in the same level of detail. The focus of the licensee obligations and the nature, scale and complexity of the licensee's business will affect what is the appropriate kind and extent of a licensee's compliance measures.

Using the Australian Standard on Compliance Programs

5 We believe it is not appropriate to set out a mandatory approach to the establishment and maintenance of a licensee's compliance measures. However, we do expect as a matter of *minimum* practice that when establishing and maintaining its compliance measures, a

licensee will follow the Australian Standard on Compliance Programs AS 3806-1998 or any subsequent replacement standard.

6 The Australian Standard on Compliance Programs outlines an approach that as a minimum will help a licensee establish and maintain effective compliance measures, in particular:

- (a) compliance measures should be documented;
- (b) compliance measures must be updated as necessary from time to time based on a regular review of their effectiveness. This review may include either an external and internal audit, or at least a regular internal audit. This review process should also be built into the compliance reporting processes;
- (c) compliance measures should take into account:
 - (i) an entity's obligations under the Law;
 - (ii) what are the risks of non-compliance at the time it applies for a licence and in the future; and
 - (iii) what it has done to address those risks;
- (d) there needs to be an appropriate compliance function within the entity (whether separate or not from other functions) and a senior person (such as a director or senior manager) who is responsible for the oversight and operation of the entity's compliance measures;
- (e) compliance measures should include regular reporting of the effectiveness of the compliance measures to the governing body (including reporting of compliance breaches); and
- (f) compliance measures should include documented procedures to address breaches (including the monitoring of any systemic breaches).

Issues to consider

7 Your compliance measures will vary depending on the nature, scale and complexity of your business. For this reason, we will not give detailed checklists of what should be included in a licensee's compliance measures.

However, in Schedule 2 of this paper, we list some typical questions you may wish to consider when establishing and maintaining your compliance measures. These questions are not intended to be complete and relevant to the circumstances of all licensees. You are

responsible for establishing and maintaining appropriate and effective compliance measures.

D Monitoring, supervising and training representatives

Policy proposal	Your feedback
<p>D1 As part of its overall compliance measures, we expect that a licensee will have adequate, documented procedures in place to monitor, supervise and train its authorised representatives.</p> <p>These procedures should allow a licensee to:</p> <ul style="list-style-type: none"> (a) ensure all its representatives are appropriately authorised (as applicable); (b) determine whether its representatives are complying with all the obligations applying to licensees under the Law; (c) implement appropriate responses to compliance failures (or breaches); and (d) ensure that its representatives are (and remain at all times) appropriately trained to provide the financial services which they have authority to provide. <p>Note: As defined in 910A, “representatives” includes authorised representatives, employees, directors, partners and any other person acting on behalf of the licensee.</p> <p>D2 Appropriate training applies to all financial services. We plan to outline more specific and detailed training obligations applying to representatives who provide retail financial product advice: see FSRB Policy Proposal Paper No 3 <i>Licensing: Adapting IPS 146 to the Financial Services Reform regime</i> (April 2001). We consider the proposals in the adapted [IPS 146] may be used as a guide for licensees in developing training programs for representatives providing financial services</p>	

Policy proposal	Your feedback
<p>other than retail financial product advice.</p> <p>What activities must a licensee monitor?</p> <p>D3 A licensee must monitor and supervise the activities of its representatives that are within the scope of its authority.</p> <p>D4 To protect consumers from loss (and to protect itself from potential liability in relation to such loss) a licensee should have a strategy in place to monitor and supervise its representatives to prevent them from providing financial services outside the licensee's authority (unless the conduct is within the authority of another licensee).</p> <p>Note: Under the Law, if one of a licensee's representatives provides financial services outside the scope of its authority, the licensee may nevertheless be liable for that conduct. This is likely to be the case where the financial services are provided outside the scope of any authority provided by any other licensee.</p>	<p>D4Q1 What are typical effective strategies that a licensee might adopt to prevent its representatives providing financial services outside the licensee's authority unless the conduct is within the authority of another licensee? Please briefly explain your response.</p>
<p>Minimum requirements</p> <p>D5 We consider that a licensee should implement and maintain procedures for monitoring, supervising and training representatives that:</p> <p>(a) are documented and set out a clear reporting and supervisory structure for all its representatives;</p> <p>Note: These procedures are part of the licensee's compliance measures and should be included in its overall compliance manual and/or plan.</p> <p>(b) provide for material involvement of appropriately skilled and knowledgeable senior technical officers to supervise the activities of its representatives;</p> <p>(c) ensure there is a system in place to supervise the activities of</p>	<p>D5Q1 Are there any other key procedures that a licensee should consider when implementing and maintaining its approach to monitoring, supervising and training representatives? If so, what are they and why are they important?</p>

Policy proposal	Your feedback
<p>representatives. This system should identify compliance failures, and patterns of compliance failures;</p> <ul style="list-style-type: none"> (d) ensure that compliance failures by its representatives will be appropriately reported, both internally and (if necessary) to ASIC; (e) provide for appropriate action to be taken to correct compliance failures by its representatives and to prevent further such breaches; (f) provide for appropriate disciplinary action to be taken in response to compliance failures by representatives; (g) determine the appropriate knowledge and skills requirements that its representatives require to perform their tasks and functions competently; and (h) provide for the continuous training of its representatives. <p>D6 We propose to use conditions on a licence to support our minimum requirements for monitoring, supervising and training representatives under the licensee obligations.</p> <p>Issues to consider</p> <p>D7 In the Explanation to this section, we include some examples of typical outcomes that a licensee should consider when preparing its procedures for monitoring, supervising and training representatives.</p> <p>D8 In Schedule 2, we also set out some typical questions a licensee may wish to consider when establishing and maintaining these procedures. These questions are not intended to be exhaustive nor relevant to the circumstances of all licensees. Each licensee responsible for establishing and maintaining</p>	

Policy proposal

appropriate and effective compliance measures.

Your feedback

Explanation

D Monitoring, supervising and training representatives

1 Under the Bill, a licensee must monitor and supervise the activities of representatives to ensure they are complying with the Law: see 912A(c).

2 Licensees must also ensure that their representatives are adequately trained: see 912A(f). Your policies and procedures on training should address how your representatives will:

- (a) maintain the necessary knowledge and skills that are appropriate to their activities and responsibilities;
- (b) update their knowledge and skills, especially in areas where there is frequent change; and
- (c) develop new knowledge and skills to assist with their current role or roles contemplated in the near future.

Note: See our FSRB Policy Proposal Paper No 3 *Licensing: Adapting IPS 146 to the Financial Services Reform regime* (April 2001).

3 We do not consider that a licensee must scrutinise each and every activity of all of its representatives. We consider that a licensee must have adequate monitoring and supervision systems to allow it to determine whether its representatives are complying with the Law, and to implement appropriate responses in response to breaches.

4 Given the diversity of industries and industry participants that are subject to the licensing regime, no single set of procedures for monitoring, supervising and training will be suitable for all licensees. Therefore, each licensee must ensure that the particular procedures it adopts are appropriate to the individual characteristics of its business.

5 The guidance in this paper aims to set out some of the matters that should be taken into account in order to meet the monitoring, supervising and training requirements.

6 The implementation of effective monitoring, supervision and training arrangements will not only ensure that licensees are meeting the requirements of the Law, but will also assist licensees to manage their risks and enhance protection for consumers.

What activities must a licensee monitor?

7 Licensees are responsible, as between licensees and clients, for the conduct of their representatives, often irrespective of whether or not the representatives are acting within the licensee's authority: see Division 6 of Part 7.6 of the Bill. We therefore consider it appropriate, in order to protect consumers, that each licensee monitor and supervise the activities of their representatives to ensure the representatives are not acting outside the authority of that licensee or another licensee.

Issues to consider: outcomes

8 The following discussion outlines examples of some typical outcomes that a licensee should consider when preparing its monitoring, supervising and training procedures. These examples are provided for guidance, and are not intended to be exhaustive.

Note: See also Schedule 2 where we set out a number of typical questions a licensee may wish to consider when deciding how to establish and maintain its monitoring, supervising and training procedures.

9 A licensee should be able to identify all its representatives, not just its *authorised representatives*. In particular, a licensee must be able to identify all its agents, that is, persons acting on its behalf, as distinct from other persons it does business with.

10 A licensee should have a clear reporting and supervisory structure for all its representatives, to ensure that each representative is supervised, and that supervisors clearly identify which representatives they are responsible for supervising. Similarly, a licensee's procedures should clearly state who is responsible for the various monitoring functions.

11 Where a licensee and its representatives are geographically separated or dispersed, there is a greater risk that representatives will not be properly monitored and supervised. A licensee's procedures should provide for an appropriate number of representatives for each supervisor, and should provide for supervisors to have appropriate access to representatives.

12 A licensee's procedures should ensure that representatives' activities are assessed and compliance failures are identified. For example, a licensee's procedures may provide for internal and external compliance reviews of the activities of representatives, with a special focus on identified risks. Compliance reviews may include one or more of the following:

- (a) analysis of regular reports;
- (b) inspections of representatives (including, for example, inspections of representatives' files and assessment of representatives' skills and knowledge);
- (c) independent customer checks; and
- (d) checks undertaken as a client without disclosing that the inspector is merely checking.

13 A licensee's procedures should ensure that trends or patterns of compliance failures are identified. For example, the procedures may provide for:

- (a) the analysis of identified compliance failures; and
- (b) the analysis under your complaints handling system of complaints received.

14 A licensee's procedures should ensure that appropriate action is taken in response to each compliance failure. For example, the procedures may:

- (a) provide for appropriate remedial, disciplinary and preventative action; and
- (b) set out who is responsible for reporting breaches to ASIC, and to whom breaches must be reported internally.

15 A licensee's procedures should ensure that appropriate action is taken in response to trends or patterns of compliance failures. For example, the procedures should provide for appropriate preventative action to be taken, such as:

- (a) adjusting your training programs; and
- (b) enhancing your controls, including those provided for in your monitoring and supervising procedures.

16 A licensee should include information in its monitoring and supervision procedures as to *how often* each of the various monitoring and supervising activities will be carried out.

17 A licensee's procedures should determine the appropriate knowledge and skills requirements for its representatives to competently perform their tasks and functions.

18 A licensee's procedures should ensure that its representatives undertake continuing training programs to maintain and update the knowledge and skills needed for their functions and tasks.

E Organisational expertise

Policy proposal	Your feedback
<p>The “organisational expertise standard”</p> <p>E1 All “responsible officers” of a licensee (see policy proposal paragraphs E4 to E9) must have and continue to meet relevant standards of knowledge and skills to perform their particular roles within the licensee’s organisation. We call this standard the “organisational expertise standard”.</p> <p style="padding-left: 40px;">Note: Under s9, a “responsible officer” is defined to mean an officer who would perform duties of the licensee.</p> <p>E2 The licensee is responsible for ensuring that at all times it satisfies our organisational expertise standard as set out in this section.</p> <p>E3 Consistent with our general approach, we set out <i>minimum standards</i> for meeting the organisational expertise requirements under the licensee obligations. Depending on the nature, scale and complexity of a licensee’s business, it must consider whether it, ie (its responsible officers) needs to meet higher standards of organisational expertise. We propose to use conditions on a licence to support our minimum requirements for organisational expertise under the licensee obligations.</p> <p>Who is a “responsible officer”?</p> <p><i>A senior manager responsible for the financial service</i></p> <p>E4 We recognise that the definition of a</p>	<p>E4Q1 Is this definition of a</p>

Policy proposal

responsible officer under the Law is a broad definition. We consider that the directors and key senior staff of the licensee or its agents who are responsible for making significant day-to-day business decisions about the ongoing provision of financial services by the licensee should be nominated as responsible officers.

- E5** The appropriate number of responsible officers depends on the nature, size and complexity of the licensee’s business. The licensee is responsible for nominating who are its responsible officers and ensuring that it has the appropriate number of responsible officers at any given time.

Note: In the case of a large business, we expect that there will be several responsible officers (however, only in exceptional cases would we expect more than 10 responsible officers, even in the largest of businesses). In the case of a small business, we recognise that there may be only one or two responsible officers.

The “key person condition”

- E6** Where a licensee only has one or two responsible officers, we will impose a condition on its licence designed to ensure that the licensee must engage another responsible officer if a nominated responsible officer leaves the business. We will refer to this condition as the “key person condition”.

Technical and business management decisions

- E7** For the purposes of the organisational expertise standard, a responsible officer may be responsible for:

Your feedback

responsible officer sufficiently precise to be applied in practice? If not, what alternative definition could be applied more effectively (taking into account the policy proposals in this section)? Please briefly explain your response.

- E7Q1** Is this distinction of two kinds of decision making sufficiently precise to be

Policy proposal	Your feedback
<p>(a) technical decisions, ie decisions related more particularly to the provision of technical guidance and content concerning the financial services of the licensee; and/or</p> <p>(b) business management decisions, ie decisions related more particularly to the management of the licensee’s business.</p> <p>Minimum number of responsible officers</p> <p>E8 A licensee will need to have at least one responsible officer with the expertise to make technical decisions and at least one person with expertise to make business management decisions. In exceptional cases, we recognise it may be appropriate for both expertise requirements to be satisfied by the one person.</p> <p>Responsible entities</p> <p>E9 Policy Statement 130 <i>Managed investments: licensing</i> [PS 130] outlines our organisational expertise standard for an operator of a managed investment scheme: see [PS 130.34] and [PS 130.43]–[PS 130.52]. The proposed organisational expertise standard in this section does not apply to operators of managed investment schemes unless they provide other financial services, eg financial product advice.</p> <p>Status of Policy Statement 138</p> <p>E10 This organisational expertise standard in its final form will replace the education and experience requirements in Policy Statement 138 <i>Personal competencies for licensees</i> [PS 138] at [PS 138.15]–[PS 138.28].</p>	<p>applied in practice? If not, how should the terms be amended to apply more effectively (taking into account the policy proposals in this section)? Please briefly explain your response.</p>

Policy proposal	Your feedback
<p>What are the expertise requirements for responsible officers?</p> <p><i>Different requirements for business management or technical decisions</i></p> <p>E11 We propose different expertise requirements for a responsible officer who is responsible for:</p> <ul style="list-style-type: none"> (a) business management decisions, ie decisions about the management of the business of the licensee; and (b) technical decisions, ie decisions about the provision of financial services by the licensee. <p>Note: In policy proposal paragraphs E12 to E21, we describe the expertise requirements for responsible officers.</p> <p>See Table B after policy proposal paragraph E21 for a more detailed outline of how the organisational expertise requirements apply to a licensee.</p> <p>E12 A responsible officer who makes <i>both</i> technical decisions business management decisions must comply with both requirements.</p> <p><i>The business management expertise requirement</i></p> <p>E13 A responsible officer who is responsible for business management decisions must have relevant skills to perform the function. In general, this will mean having at least 3 years experience over the immediate 5 years in managing a business or an operational management position in an entity that is similar to or the same as that proposed to be covered by the licence, ie being in a past role that enables the person to understand the</p>	

Policy proposal	Your feedback
<p>responsibilities and requirements of the current role. A formal qualification in this area is preferred but not mandatory.</p> <p><i>The technical expertise requirement</i></p> <p>E14 A responsible officer who is responsible for technical decisions must have relevant knowledge and skills to perform the function.</p> <p>Knowledge</p> <p>E15 Normally, the relevant knowledge requirement will depend on the relevant expertise option selected to meet the expertise requirement as set out in Table B after policy proposal paragraph E21. Depending on the selected option, a responsible officer will need to meet at least one of the following requirements:</p> <ul style="list-style-type: none"> (a) holding a relevant industry qualification at a minimum of a full Diploma; (b) holding a relevant university degree and completing a relevant short industry course; (c) successful completion of an individual assessment at an equivalent level relevant to the particular industry; or (d) satisfaction of relevant approved industry standards. <p>E16 For the purposes of policy proposal subparagraphs E15(a), (b) and (d) we will maintain a register on our website of approved qualifications, relevant industry short courses and approved industry standards. The criteria for assessing the relevance of an industry short course will be based on that set out in Interim Policy Statement 146 <i>Training of authorised</i></p>	

Policy proposal	Your feedback
<p><i>representatives</i> [IPS 146] at [PS 146.91]–[PS 146.96]. In consultation with relevant industry bodies and associations, we will recognise acceptable industry standards being guided by the criteria set out in [PS 146.91]–[PS 146.96].</p> <p>E17 For the purposes of policy proposal subparagraph E15(c), we will authorise assessors in accordance with the process set out in [PS 146.86]–[PS 146.90].</p> <p>Skills</p> <p>E18 In general, the relevant skills requirement is satisfied by either:</p> <ul style="list-style-type: none"> (a) having at least 3 years relevant industry experience over the immediate 5 years; or (b) having at least 5 years relevant industry experience over the immediate 8 years, ie being in a past role that enables the person to understand the responsibilities and requirements of the current role. <p>E19 The relevant number of years of experience set out in policy proposal paragraph E18 will depend on the relevant expertise option selected to meet the expertise requirements as set out in Table B after policy proposal paragraph E21.</p> <p>E20 In the case of a responsible officer making decisions for a licensee that provides financial advice, we consider that the relevant technical expertise requirements should be of a higher standard. We hold this view given the range of risks to consumers involved in giving financial product advice.</p>	<p>E20Q1 Why should all licensees not be required to meet the technical expertise requirements applicable to a licensee that provides financial product advice? Please briefly explain your response.</p>

Policy proposal

Foreign qualifications

E21 We will consider accepting foreign qualifications and courses that set a similar standard to Australian qualifications and courses recognised under our policy.

Your feedback

E21Q1 What if any issues will recognition of foreign qualifications and courses raise? How might we deal with these issues?

Table B: The organisational expertise standard requirements

Licence kind	Financial service expertise	Business management expertise
Financial product advice	<p>Option 1</p> <p>An approved qualification specifically relevant to the particular industry and/or product at a minimum of a full diploma and recognised under the Australian Qualifications Framework or by a university or institution of higher education, eg: Diploma of Financial Planning, Diploma of Insurance Broking;</p> <p>AND</p> <p>The equivalent of at least 3 years relevant industry experience over the immediate 5 years</p> <hr/> <p>Option 2</p> <p>(a) A university degree in a discipline relevant to the activities being carried out eg economics, commerce, business, accounting, information technology, geology or other technical qualification; AND</p> <p>(b) an approved relevant short industry course listed in the Register of ASIC Compliant Training. The course must cover generic and relevant specialist knowledge;</p> <p>AND</p> <p>The equivalent of at least 3 years relevant industry experience over the immediate 5 years</p> <hr/> <p>Option 3</p> <p>Individual assessment (or recognition of current competency), at the equivalent of Diploma level, relevant to the particular industry and/or product through formal assessment;</p> <p>AND</p> <p>The equivalent of at least 5 years relevant industry experience over the immediate 8 years</p>	<p><i>For all kinds of licence:</i></p> <p>At least 3 years experience over the immediate past 5 years in managing a business or in a management position in an entity that is similar to or the same as that proposed to be covered by the licence.</p> <p>(As a qualification in this area is not mandatory, formal management qualifications will not be prescribed. They will therefore neither be approved nor listed on ASIC's web site).</p>

Licence kind	Financial service expertise	Business management expertise
Deal in a financial product	Either option 1, 2 or 3 above; OR Meeting relevant approved industry standards, eg AFMA, ASX, SFE; AND The equivalent of at least 3 years relevant industry experience over the immediate 5 years	As above
Make a market	Either option 1, 2 or 3 above; OR Meeting relevant approved industry standards eg AFMA, ASX, SFE; AND The equivalent of at least 3 years relevant industry experience over the immediate 5 years	As above
Provide a custodial or depository service	Either option 1, 2 or 3 above; OR Meeting relevant approved industry standards; or a university degree in a financial or legal discipline; AND The equivalent of at least 3 years relevant industry experience over the immediate 5 years	As above
Operate a registered scheme	See the requirements in [PS 130]	See the requirements in [PS 130]

Explanation

E Organisational expertise

The “organisational expertise standard”

1 The obligation for licensees to meet and maintain a standard of expertise is reflected in the obligations outlined at 912A(e) which states that a financial services licensee must maintain the competence to provide those financial services. In this paper, this obligation will be referred to as the “organisational expertise standard”.

2 We consider setting standards for expertise to be demonstrated by licensees will contribute to supporting the primary goals of the licensee obligations, namely, to promote:

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

3 ASIC has already provided guidance about appropriate standards for expertise in Policy Statement 138 *Personal competencies for licensees* [PS 138]. Under the policy proposals in the paper, we will continue to accept satisfaction of the standards outlined in that policy as evidence of expertise. However, we acknowledge that various industry sectors have established industry and professional expertise standards. To acknowledge this fact, ASIC will also accept appropriate satisfaction of certain industry standards as evidence of expertise for some licence types.

4 We have proposed a range of options for demonstrating organisational expertise that relate to the kind of licence that an application can apply for, ie based on the definition of financial services in 766A.

5 Given the range of risk to consumers involved with the giving of financial product advice, we consider that an applicant for a licence to provide financial product advice should generally demonstrate their expertise by gaining an appropriate qualification.

6 Paragraph 912A(e) requires that a licensee maintain its competence. Applicants should demonstrate that they have policies in place to ensure that they and their responsible officers maintain and update their expertise.

Who must meet the expertise requirement?

7 All licensees must meet the relevant expertise criteria. When the applicant is a body corporate or non-corporate trustee, the responsible officers within the entity (as described in policy proposal paragraphs E4 to E5) must meet the expertise requirements.

8 When the applicant is a partnership, partners who are not directly involved in providing the financial service regulated under the licence do not have to meet the expertise requirement. Nonetheless, as stated in the Bill (see 761F), obligations that would be imposed on the partnership are imposed instead on each partner.

Minimum number of responsible officers

9 We consider that each individual responsible officer should meet the financial service knowledge and skills elements in *each* area for which they will be responsible. For example, a person responsible for areas advising on both general and life insurance must meet the criteria for both areas. You will not meet the technical expertise requirement by combining the qualifications of more than one responsible officer.

10 However, an individual who has advised on general and life products concurrently over at least three years may meet the skills criteria of the technical expertise requirement.

11 We consider that you cannot aggregate the number of years of experience of more than one responsible officer to meet the experience requirement, ie the technical expertise or the business management expertise skills requirements. The benefits of experience are gained over an accumulation of time. Aggregating short terms of experience of a number of people is not an adequate substitute.

Responsible entities

12 Part D “Capacity and expertise” of Policy Statement 130 *Managed investments: licensing* [PS 130] outlines the expertise requirements for applicants intending to become a responsible entity to operate a managed investment scheme or schemes. However, if you wish to give financial product advice in addition to operating a registered scheme, you must also meet the relevant criteria for a licensee providing financial product advice.

What are the expertise requirements for responsible officers

Requisite knowledge and skills

13 We consider that licence applicants should demonstrate knowledge and skills for the particular kind of financial service and/or product to be offered under the licence and the management of the business. This will give licensees and ASIC greater confidence in not only in the quality of service provided but that the business will be operated in an efficient manner.

14 We consider that licensees and their responsible officers should demonstrate their expertise at a higher level than that required for representatives and agents as set out currently in Interim Policy Statement 146 *Training of authorised representatives* [IPS 146]. Licensees and responsible officers must have sufficient expertise to adequately monitor and supervise their representatives.

Individual assessment (recognition of current expertise)

15 A person with considerable years of relevant experience but no formal qualifications can demonstrate their expertise by undergoing an individual assessment. This is a process where a person's capability to undertake their current duties is assessed, taking into consideration their previous work experience. It is also known by other names including recognition of current competency, workplace assessment and recognition of prior learning.

16 This type of assessment does not necessarily include formal written assessments. Applicants may be assessed via this technique using a variety of methodologies including on the job, oral or practical tests. Responsible officers can only use this method with at least 5 years relevant experience out of the past 8 years. Before arranging an individual assessment, responsible officers should identify the functions and tasks they will be performing and determine what expertise requirements are relevant and then liaise with the assessor to agree on the appropriate form of assessment. If the responsible officer does pass the assessment process, appropriate gap training must be undertaken.

What type of qualification is needed to advise on a range of services or products

17 If you propose to advise on a range of financial services in different sectors, eg general and life insurance products, you should

have qualifications and experience relevant to each sector. In these circumstances, ASIC would consider combinations of qualifications and experience to demonstrate appropriate expertise. For example, an applicant undertaking both general insurance and life broking could meet the knowledge requirement through a full diploma in general insurance plus an approved short course or additional modules in life broking.

Technical expertise requirement – how will qualifications and industry standards be approved?

18 By requiring all qualifications to meet a common benchmark, we will ensure that licensees and responsible officers across all industry sectors undertake qualifications of a consistently high standard. ASIC is not a training provider or assessor and therefore will not be directly involved in the assessment of qualifications and courses.

19 We propose that qualifications be assessed in the following manner.

Knowledge qualifications

Diploma or higher qualification

20 For a qualification to be accepted as evidence of expertise, it must be relevant to the financial services industry and/or the activities being carried out under the licence. The qualification must be at a minimum, a full Diploma recognised under the Australian Qualifications Framework or by a university.

21 The Australian Qualifications Framework, which incorporates qualification levels and titles, is a government initiative which provides a nationally consistent framework for all qualifications in post compulsory education.

22 For a qualification to be accepted under this Framework, it must be assessed as meeting certain standards by a Registered Training Organisation or university.

23 A Registered Training Organisation (RTO) is an organisation that has been registered by a state or territory training authority to conduct training and/or assessment leading to a nationally recognised qualification. Any organisation can become an RTO, provided that it meets the quality criteria.

Short industry course

24 We will recognise a short financial services industry course that has been formally assessed by an RTO, university or approved professional and industry body. These organisations are defined as ASIC Authorised Assessors in Interim Policy Statement 146 *Training of authorised representatives* [IPS 146].

Industry standards

25 Various industry sectors have already developed standards which are recognised by participants in that sector as pre requisites for certain activities or as preferred entry standards. There is already a number of standards recognised within industry, eg ASX and SFE Business Rules.

26 To be acceptable, industry standards must:

- (a) be endorsed by the industry body;
- (b) developed with industry;
- (c) address the competencies required in that sector/financial service/product; and
- (d) represent the views of a significant number of industry participants.

27 Professional and industry bodies will need to submit evidence to ASIC on how their standards address these issues. Note that this option is not available for financial product advice licence applicants.

List of recognised qualifications and standards

28 Qualifications and standards that are recognised for the purposes of this policy will be listed on a Register of qualifications and standards which will be available on the ASIC website. By establishing a Register containing recognised courses and standards, we will give greater certainty to applicants and reduce the time required to process an application.

Foreign qualifications

29 We are aware of increases in cross-border provision of financial services and emerging discussions about recognition of one another's standards. We are prepared to accept relevant recognised foreign qualifications which are broadly comparable in standard to those recognised in Australia under our policy. This includes relevant foreign University qualifications and Industry courses recognised by a relevant overseas regulatory body. We are

examining options for how this recognition of overseas industry courses can best be achieved. In the case of relevant foreign university qualifications, there is an existing process whereby these can be verified by the National Office of Overseas Skills Recognition in Canberra.

30 Foreign qualifications will not have addressed Australian regulatory requirements, therefore we expect responsible officers of applicants for financial product advice licences to undertake an approved short industry course to become familiar with Australian requirements.

F Non-financial resources

Note: This section applies to licensees that are not a body regulated by APRA (as defined in 761: see “Key terms” in this paper). However, licensees regulated by APRA will need to meet APRA’s requirements for non-financial and financial resources.

Policy proposal	Your feedback
<p>F1 A licensee that is not a body regulated by APRA must have sufficient non-financial resources so that it can properly carry on its business, given the nature, size and complexity of its business.</p> <p>Note: “Non-financial resources” includes human and technological resources.</p> <p>F2 A licensee’s non-financial resources must be sufficient for it to satisfy the licensee obligations. A licensee must have a strategy for ensuring will have sufficient non-financial resources on an ongoing basis. A licensee must have a process to ensure it can monitor and report on the sufficiency of its non-financial resources.</p> <p>F3 The level of non-financial resources required must be sufficient to:</p> <p>(a) enable a licensee to effectively implement its compliance measures (as discussed in this paper) and risk management systems (if required); and</p> <p>Note: A licensee regulated by APRA as well as ASIC must have adequate risk management systems as required by APRA.</p> <p>(b) meet current and anticipated future operational needs.</p> <p>F4 We propose to use conditions on a licence to support our minimum requirements for non-financial resources under the licensee obligations.</p>	<p>F3Q1 Are there any other key outcomes that ASIC should be concerned with when assessing the adequacy of a licensee’s non-financial resources? If so, what are they and why do they warrant specific reference?</p>

Policy proposal

Your feedback

What technological resources does a licensee need?

F5 We consider a licensee will need such technological resources as are necessary to adequately and effectively satisfy our standards as set out policy proposal paragraphs F1 to F3.

Note: For the purposes of this paper, “technological resources” covers all levels of technological sophistication, from simple manual recording and filing systems through to complex IT systems and communications systems.

F6 We recognise that the quantity, quality and availability of technological resources necessary to properly carry on a licensee’s business will depend on the role IT systems and other technological resources have in its operations.

F7 We recognise that licensees may have different monitoring arrangements to determine whether its technological resources are sufficient.

What human resources does a licensee need?

F8 A licensee must ensure that it has and it will maintain sufficient human resources to enable it to adequately and effectively satisfy our standards as set out policy proposal paragraphs F1 to F3.

Note: For the purposes of this paper, “human resources” includes directors, employees, partners, agents and outsourced entities who provide services to the licensee.

F9 We expect that a licensee will ensure that people that provide financial services on its behalf are authorised (where required under

Policy proposal	Your feedback
<p>911B and 912A(c)), monitored, supervised and trained (see Section D of this paper) and are of good fame and character (see policy proposal paragraphs B5 and B6).</p> <p>F10 We expect that a licensee will have documented measures that describe how it will monitor and test whether it has sufficient human resources.</p> <p>Issues to consider</p> <p>F11 In Schedule 2, we set out a number of typical questions a licensee may wish consider when evaluating whether it has sufficient non-financial resources. These questions are not intended to be complete and relevant to the circumstances of all licensees. Each licensee is responsible for ensuring it has sufficient non-financial resources.</p>	

Explanation

F Non-financial resources

Note: Licensees that are also regulated by APRA will need to meet APRA's requirements for non-financial and financial resources.

1 A licensee that is not regulated by APRA must have sufficient resources (including financial, technological and human resources) to properly provide the financial services covered by the licence and carry out supervisory arrangements: see 912A(d).

2 Having enough resources goes to the heart of an applicant's ability to demonstrate it has the capacity to carry on the business authorised by the licence.

3 This obligation includes financial, technological and human resources. This paper considers only non-financial resource requirements.

Note: We plan to issue an FSRB policy proposal paper on *Licensing: Financial requirements* for licensees not regulated by APRA, in May 2001.

What technological resources does a licensee need?

4 The technological resources a licensee needs depend on the nature, scale and complexity of a licensee's business. In particular, what technological resources does a licensee need to properly carry on its business? This will depend on the efficiency and adequacy of its systems.

5 If a licensee does not currently use technology it should review its present system taking into account, amongst other things:

- (a) whether an IT system would better maintain client records and data integrity; and
- (b) whether its present systems are sufficient to ensure that it will continue to satisfy the licensee obligations.

6 Some small business licensees may not use IT systems to operate their businesses, and do not consider IT systems to be necessary. We do not intend to impose unnecessary requirements on such licensees where their current manual systems are sufficient to properly conduct the full range of their business activities. Accordingly, this policy covers the appropriate use of the full

breadth of technological resources, from simple manual systems to sophisticated IT systems.

Example

It may not be necessary for a sole financial planner or a small financial planning business to use IT systems (ie computer systems) to conduct their business, when manual records are adequate for the purposes of the particular business carried on.

If you are an online broker, however, you will rely heavily on information technology resources, including server capacity, Internet Service Providers, order routing systems and the communication links between them. You will need to be able to demonstrate that your technological resources are sufficient to meet these requirements.

Are my current IT systems sufficient?

7 If a licensee currently uses IT systems, in order to ensure it continues to meet the licensee obligations it should regularly review, amongst other things:

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

Note: See also Schedule 2 where we set out a number of typical questions a licensee may wish to consider when considering the adequacy of its technological resources.

What human resources does a licensee need?

8 We consider that a licensee will need sufficient human resources to ensure that (amongst other things):

- (a) appropriate internal control procedures are implemented and that staff are trained in their use;
- (b) when staff are absent, client accounts and interests continue to be monitored;
- (c) consumer complaints or queries can be responded to quickly and accurately;
- (d) staff are monitored and supervised and, particularly where your operations are diverse, that supervisors have sufficient capacity to supervise staff adequately; and
- (e) future operational demands are assessed continuously to ensure there are sufficient resources to meet demands.

9 The level of human resources required should take into account how many clients and representatives a licensee has. Resource requirements should also take into account the number of transactions a licensee is likely to enter into, the likely size of the transactions and the nature of the products transacted.

10 The question of whether a licensee's level of human resources is sufficient will be influenced by its organisational structure and the necessary monitoring and supervision of representatives.

11 In considering the adequacy of a licensee's human resources, we consider a licence should take into account a number of factors, including:

- (a) recruitment process:
 - (i) whether police checks, reliable referee reports and statements of employment are obtained prior to engagement; and
 - (ii) whether compliance and/or legal staff are involved in the recruitment of staff;
- (b) succession or recruitment planning, to ensure that you continually assess whether you have the right mix and range of skills;
- (c) performance management system; and
- (d) process for staff retrenchment and redundancy; and
- (e) Systems for induction and training of new staff.

Note: See also Schedule 2 where we set out a number of typical questions a licensee may wish to consider when evaluating whether it has adequate human resources.

12 In documenting the measures for monitoring adequacy of human resources, the licensee should identify the key indicators to the customer or business that may highlight insufficient human resources including:

- (a) high level of customer complaints about quality of customer service;
- (b) high incidence of customer complaints about poor advice;
- (c) high level of persons with a short service time (ie less than 6 months); and
- (d) high number of vacant positions.

G Risk management

Note: This section applies to licensees that are not a body regulated by APRA (as defined in 761: see “Key terms” in this paper). However, a licensee that is a body regulated by APRA must have adequate risk management systems as required by APRA.

Policy proposal	Your feedback
<p>G1 A licensee that is not a body regulated by APRA must establish and maintain adequate risk management systems.</p> <p>Risk management systems will vary depending on the licensee</p> <p>G2 We recognise that the nature and extent of the risk management systems that a licensee will need to establish and maintain will vary taking into account the nature, scale and complexity of its business.</p> <p>What will we focus on?</p> <p>G3 Typically, risk management systems are directed to all risks associated with the establishment and operation of a business, eg economic circumstances and natural events.</p> <p>G4 However, we will focus on what are adequate risk management systems of a licensee will be on systems that identify, analyse, evaluate and treat risks related to the business of the licensee with the purpose of promoting:</p> <ul style="list-style-type: none"> (a) consumer confidence in using financial services; and (b) the provision of fair, honest and professional services. <p>Note: See 760A of the Bill.</p> <p>G5 We expect that a licensee will establish and maintain risk management systems that</p>	<p>G4Q1 Are there any other key features of risk managements systems that ASIC should be concerned with when assessing the adequacy of a licensee’s risk management systems? If so, what are they and why are they key?</p>

Policy proposal	Your feedback
<p>include:</p> <ul style="list-style-type: none"> (a) undertaking a structured and systematic process which takes into account its obligations under the Law; (b) identifying risks of non-compliance with its obligations under the Law; (c) considering the consequences of possible breaches of its obligations under the Law that may detrimentally affect consumers or the integrity of the financial markets; and (d) establishing and maintaining measures (including compliance measures) designed to address those risks. <p>G6 We propose to use conditions on a licence to support our minimum requirements for risk management under the licensee obligations.</p> <p>Using the Australian and New Zealand Standard on Risk Management Systems</p> <p>G7 We expect as minimum practice that in establishing and maintaining its risk management systems, a licensee must have regard to the Australian and New Zealand Standard on Risk Management Systems AS/NZS 4360:1999.</p> <p>Where do compliance measures fit in?</p> <p>G8 Risk management systems may include, but are not limited to, compliance measures. Compliance measures might be one of the measures adopted under a risk management</p>	<p>G7Q1 On what basis could a licensee demonstrate to ASIC that it has adequate risk management systems when they are not consistent with the Australian and New Zealand Standard on Risk Management Systems? Please briefly explain your response.</p>

Policy proposal	Your feedback
<p>system to minimise risk to its operations (including the risk of non-compliance with its obligations under the Law).</p> <p>G9 We consider that the compliance measure requirements set out in Section C of this paper apply to all licensees, including licensees regulated by APRA as well as ASIC. This is the case because:</p> <ul style="list-style-type: none"> (a) all licensees are required to comply with a range of the licensee obligations of which the obligation to have an adequate risk management system is only one such possible obligation; and (b) risk management systems are not limited to compliance measures and may not necessarily result in compliance measures aimed at minimising the risk of non-compliance with the Law. <p>Issues to consider</p> <p>G10 In Schedule 2, we set out a number of typical issues a licensee may wish consider when deciding how to establish and maintain its risk management systems. These issues are not intended to be complete and relevant to the circumstances of all licensees. Each licensee is responsible for establishing and maintaining an appropriate and effective risk management system.</p> <p>G11 We do not intend to issue checklists of risks that you should be assessing, or detailed measures to address risks. However, the Schedule provides general guidance as to some issues a licensee may need to consider.</p> <p>Financial risks</p> <p>G12 We also consider that a licensee’s risk management system should address the risk that its financial resources will not be adequate, for example, the risk that the</p>	

Policy proposal

licensee may not have sufficient financial resources to carry on its business.

Note: For more detailed discussion on this subject, see our planned FSRB policy proposal paper on *Licensing: Financial requirements* for issue in May 2001.

Your feedback

Explanation

G Risk management

Note: A licensee that is regulated by APRA must have adequate risk management systems as required by APRA.

1 The following explanation applies to a licensee that is not also regulated by APRA: see 912A(h).

2 The nature and scope of a licensee's risk management systems are dictated by the nature, scale and complexity of its business and that organisation's appetite for risk. What is required will be different in the case of each organisation and therefore cannot be detailed in a checklist.

3 We consider adequate risk management systems required under the Law should ensure the promotion of:

- (a) consumer confidence in using financial services; and
- (b) the provision of fair, honest and professional services.

To ensure these objectives are met a licensee should plan and implement a process which:

- (a) considers the obligations under the Law applying to the licensee;
- (b) identifies risks, including the risks of non-compliance with the obligations under the Law and the consequences that would arise for consumers and markets; and
- (c) establishes measures designed to address these risks.

Using the Australian and New Zealand Standard on Risk Management Systems

4 We expect as minimum practice that in establishing and maintaining its risk management systems, a licensee must have regard to the Australian and New Zealand Standard on Risk Management Systems AS/NZS 4360:1999.

5 Consistent with the Australian and New Zealand standard, we consider that as a minimum a licensee should use the following methodology (or something substantially similar to it in terms of relevant processes).

Establish the context in which you are addressing risk

6 A licensee is guided by the parameters set in our policy and will need to also consider its own corporate policy, management structures and strategy and the level of management commitment to risk.

Identify the risks to be managed in your business

7 A licensee may draw on a wide range of resources including previous experience, workflow analysis, records, checklists, systems analysis, industry consultation and industry intelligence to do this. A licensee should analyse the business activities it conducts and the risk of these activities to its organization, and identify how and when risk circumstances or events may arise.

Example

A licensee might ask itself the following questions as part of the identification process:

Commercial risks:

- (a) Does it have supervision processes in place to monitor employees' activities?
- (b) Has it separated front and back office functions?
- (c) Has it separated trading and support functions, such as accounting?
- (d) Does it maintain adequate books and records?

Consumer risks:

- (a) Is there any mismatch between the level of customer sophistication and the products it sells?
- (a) Does its marketing, advice and selling practices accord with its compliance culture?
- (c) Does it have appropriate and effective processes in place to monitor its representatives' activity?

Compliance risks:

- (a) What are its obligations under the legislation, regulations and licence conditions?
- (b) Is it able to identify, and has it identified, the risks of non-compliance with these obligations?

- (c) Can it establish, or has it established, measures designed to meet these risks.

Assess the risks identified by considering the likelihood and consequences of the identified sources of risk occurring

8 A licensee should combine the identified consequences and likelihood of a risk occurring to indicate a level of risk and set a benchmark against which to measure the adequacy of its existing systems and to implement new systems.

Evaluate and prioritise risk

9 This step may assist management to prioritise the risks identified so that the organisation can accept or simply monitor low risk, while setting in place risk management systems to reduce or prevent other risks.

Treat the risk

10 Use a combination of risk management systems that both:

- (a) avoid or reduce the likelihood that a risk event will occur; and
- (b) reduce the consequences if a risk event does occur.

Examples

A licensee may prevent or reduce the likelihood of a risk event occurring using compliance programmes, inspection and process controls, preventive maintenance, training and education.

A licensee may reduce the consequences of a risk activity by implementing disaster/contingency plans, arranging for off-site data and information storage and fraud control planning.

A licence may choose to avoid risks by ceasing the risk activity or selling the business.

A licensee may consider an approach that means the residual risks will be retained by the business and may comprise tolerable or minimised risks. Ensure that residual risk is not retained as a result of failure to identify.

Implement procedures for the ongoing monitoring and review of the risks identified and the processes to manage these risks

11 Reviews should be conducted at regular intervals and at any time where there has been a change in business or in the larger operational environment.

Some benefits of this methodology

12 This methodology will assist a licensee to establish appropriate risk management systems by accurately identifying, assessing and prioritising your risks. If these steps are not conducted properly, significant risk areas may not be identified.

13 We expect that a licensee would have considered some or all of the following risk management systems, in addition to any systems specific to your business:

- (a) internal control systems, including accounting controls, reliable reporting systems and control procedures to ensure data integrity;
- (b) internal audit systems;
- (c) a contingency plan that is up to date and promoted internally;
- (d) prescribed limits or procedures to reduce or risks;
- (e) provisions to mitigate risks; and
- (f) risk review processes.

14 The risk management disciplines a licensee establishes to address the risks identified should be dynamic enough to adapt to developments in its business and any changes in its business risk profile over time. If a licensee makes material changes to the business structure that may affect its risk profile it needs to ensure that it has also adapted the risk management systems to address these changes.

15 If a licensee has existing risk management systems in place, it must assess its existing systems against our policy to determine their adequacy. In these circumstances the licensee will still need to identify how the risk management system meets our policy.

Documenting the process

16 We expect that a licensee's risk identification and risk management processes will be documented, as this not only

demonstrates that the processes have been conducted properly but it also:

- (a) provides a record of risks;
- (b) provides decision makers with plans for approval and implementation;
- (c) provides a tool for accountability;
- (d) facilitates monitoring and review;
- (e) provides an audit trail; and
- (f) enables sharing and communication of information.

Governing body commitment

17 We consider governing body commitment (or a sub-committee of it) to the processes should be obtained to ensure risks are managed effectively, both at commencement and on an ongoing basis, and that the risk management processes are integrated into the culture of the organisation.

18 The level of governing board commitment may extend to:

- (a) communicating the risk management process to those responsible for implementing it and to those with a vested interest;
- (b) ensuring staff education and awareness of the processes; and
- (c) implementing clear reporting lines for the risk manager.

Schedule 1: What must an applicant demonstrate to get a licence?

This Schedule describes what you will need to demonstrate when you apply for a licence to show ASIC that you can meet the licensee obligations.

The proposals in this Schedule only relate to those licensee obligations discussed in this paper: see Table A at the beginning of the paper for details of our papers on other licensee obligations.

Question

S1Q1 As asked at question A14Q1 in Section A, are there any other kinds of information that ASIC should require from an applicant for a licence? If, so please briefly explain the kind of information (including any examples of the kind of information) and why such information should be requested. Please disregard this question if you have already answered it in Section A.

Persons eligible to “fast track”

1 An applicant that is eligible to “fast track” under the eventual transitional provisions of the Bill will not be required to provide any supporting documentation as described in the policy proposal paragraphs contained in this Section. However, they may be required to answer a series of yes or no and multiple choice questions.

Note: At the time of issue of this paper, the precise nature of the transitional provisions under the Bill was uncertain. We will monitor developments so we can issue policy proposals or guidance when the transitional provisions become more certain.

If an applicant’s business is not yet operating

2 As stated in policy proposal paragraph A3, if an applicant’s business is not yet operating, we expect that the applicant must give enough information in its application to demonstrate that it will have, at the time it begins operating, the necessary capacity to meet the licensee obligations.

Good fame and character

3 An applicant will be asked to:

- (a) certify that to the best of its knowledge all its responsible officers are of good fame and character;
- (b) answer questions about how the applicant has satisfied itself that all its responsible officers are of good fame and character, eg what processes are in place at recruitment aimed at assessing an individual's good fame and character;
- (c) answer a series of questions directed to the good fame and character of the applicant (including police and bankruptcy checks); and
- (d) provide supporting documentation of third party checks of the good fame and character of the responsible officers of the applicant.

Compliance measures

4 An applicant will be asked to:

- (a) certify that to the best of its knowledge that it has established and will maintain compliance measures as are appropriate to its business;
- (b) answer a series of questions about its compliance measures (including answering some questions) and how the applicant has satisfied itself that all its compliance measures are appropriate to its business (including on what basis it is of the view its measures will be appropriate on an ongoing basis);
- (c) answer a series of questions related to the compliance manager role and any applicable compliance function within its organization (including questions related to the role, seniority and capability of the person in the compliance manager role); and
- (d) provide supporting documentation related to the nature of its compliance measures, eg duty statements of the compliance manager role; an organization chart; and extracts from the compliance manual.

Monitoring, supervising and training

5 An applicant will be asked to:

- (a) certify that to the best of its knowledge that it has established and will maintain adequate monitoring, supervision and training procedures to ensure that its representatives:
 - (i) will comply with the requirements of the Law (including any relevant licence conditions);
 - (ii) are properly trained to undertake their role when they first join the business and on an ongoing basis;
- (b) answer a series of questions about its procedures and how the applicant has satisfied itself that all its procedures are adequate to ensure that its representatives:
 - (i) will comply with the requirements of the Law (including any relevant licence conditions);
 - (ii) are properly trained to undertake their role when they first join the business and on an ongoing basis;
- (c) answer a series of questions related to its procedures including:
 - (i) the number, type, location and activities of its representatives;
 - (ii) who is responsible for monitoring and supervising its representatives (including details about that person or persons);
 - (iii) what reporting structures are in place to ensure that persons responsible for monitoring and supervision report to the compliance manager role;
 - (iv) the nature and frequency of reviews of its representatives;
 - (v) the maintenance of a register of representatives;
 - (vi) the maintenance of a list of all relevant training undertaken by its representatives;
 - (vii) the nature of training courses offered to its representatives (including whether external/internal and how often);
- (d) answer some questions on the indicators they have identified which should be monitored, to determine whether, the monitoring, supervision and training is adequate; and
- (e) provide supporting documentation related to the nature of its procedures, eg duty statements of persons responsible

for monitoring and supervising its representatives; duty statements of persons responsible for the training of its representatives; and a chart of relevant reporting structures.

Organisational expertise

6 An applicant will be asked to:

- (a) certify that to the best of its knowledge all its responsible officers meet the relevant standard of knowledge and/or skills to perform their particular roles within the organization of the business;
- (b) answer a series of questions about how the applicant has satisfied itself that all its responsible officers meet the relevant standard of knowledge and/or skills to perform their particular roles within the organization of the business (including on what basis it is of the view its this status will continue on an ongoing basis, in particular when the applicant is likely to be subject to a key person condition);
- (c) answer a series of questions directed to the knowledge and skills of its responsible officers including details of their qualifications and experience;
- (d) answer some questions in relation to the procedures it has in place to ensure any new responsible officers are identified and properly skilled and knowledgeable; and
- (e) provide supporting documentation related to the knowledge and skills of the responsible officers (including supporting documentation of qualifications and descriptions of experience).

Risk management systems

7 An applicant that is not regulated by APRA will be asked to:

- (a) certify that to the best of its knowledge that it has established and will maintain adequate risk managements that include a focus on its obligations under the Law;
- (b) answer a series of questions about its risk management systems and how the applicant has satisfied itself that all its risk management systems are adequate to its business and appropriately include a focus on its obligations under the Law (including on what basis it is of the view its systems will be appropriate on an ongoing basis);
- (c) answer a series of questions related to the adequacy of its risk management systems (including how it has taken into

account the relevant Australian and New Zealand standard); who is responsible for the adequacy on an ongoing basis of the risk management system; details of the person responsible for the ongoing adequacy of its risk management systems); and

- (d) provide supporting documentation related to the nature of its risk management systems, eg duty statements of the person responsible for the ongoing adequacy of the risk management systems; an organization chart; and extracts from the documented nature of the risk management system.

Non-financial resources

8 An applicant will be asked to:

- (a) certify that to the best of its knowledge that it both has and will have on an ongoing basis non-financial resources as are appropriate to its business;
- (b) answer a series of questions about its non-financial resources and how the applicant has satisfied itself that all its non-financial resources are appropriate to its business (including on what basis it is of the view its non-financial resources will be appropriate on an ongoing basis);
- (c) answer a series of questions related to its non-financial resources, including the indicators it has identified, that it will need to monitor to determine whether or not its non-financial resources are adequate, eg does it outsource its IT needs; how often is its IT system unavailable for use; is there a person responsible for its IT systems; the number of its employees and their location; are staff functions are outsourced – if so, what areas; and
- (d) provide supporting documentation related to the nature of its non-financial resources, eg detailed organization charts; IT plans for future needs; IT service agreements.

Schedule 2: Issues to think about before you apply for a licence

This Schedule sets out a number of specific questions you may consider when addressing the licensee obligations.

It is not suggested that the matters in this Schedule are relevant to any particular applicant or licensee or that they are exhaustive. You should read them in the context of the policy proposal to see which matters are relevant to your particular business.

This Schedule will however guide you on our current thinking about these issues, and the types of matters which we will consider in assessing licence applications and carrying out surveillance. We will review this Schedule in light of our experience in administering the Law.

Question

S2Q1 Are there any other key typical questions that should be added to the list of this Schedule? Please briefly explain them and why they should be included.

1 Compliance measures

Requirement	Issues
Documented compliance measures	<p>Have you documented you compliance measures?</p> <p>Are those compliance measures monitored?</p> <p>How are your compliance measures communicated to your directors, employees and representatives? Do you make use of facilitative communication tools (such as electronic manuals)?</p> <p>Are the compliance measures integrated into relevant operational manuals?</p> <p>Can you identify who in your business is responsible for monitoring compliance with the measures?</p>
Clear and convincing measures	<p>Are your compliance measures clear and convincing?</p> <p>Do your compliance measures promote a culture of compliance?</p> <p>What testing of comprehension of your compliance measures do you undertake?</p>
Updating of measures	<p>On what basis and how often are your compliance measures updated?</p> <p>On what basis and how often are your compliance measures reviewed? On what basis is the monitoring of the measures reviewed? Do you undertake regular external and internal audit reviews of your measures and their monitoring?</p> <p>How do you communicate changes to your compliance measures so your directors, employees and representatives understand them?</p>
Compliance function	<p>Have you set up a separate compliance function within your organization?</p> <p>Have you a person in the compliance manager role?</p> <p>Is the allocation of responsibilities for the compliance function clear and understood by your directors, employees and representatives?</p> <p>Does the compliance manager have reporting access to the governing body (or its delegate)?</p> <p>Do the staff of the compliance function have access to relevant information held by the organization to effectively perform their compliance responsibilities?</p>

Requirement	Issues
	<p>Do you have measures to quickly fill vacancies in the staff of the compliance function?</p> <p>Are the staff of the compliance function adequately trained and qualified in compliance responsibilities?</p>
Reporting breaches	<p>Is there a clear and well understood documented process for reporting breaches of the Law (including licence conditions) and for escalating reported breaches (including to the governing body or its delegates)?</p> <p>Is there a review of the compliance measures to take into account breaches of the Law and licence conditions by the organization?</p> <p>Is there a method to identify and address systemic breaches?</p> <p>Is it clear within the organization when you should report breaches of the Law and licence conditions to ASIC?</p>
Delegation and outsourcing of tasks	<p>What arrangements do you have in place to supervise delegation of tasks and functions (including by the use of outsourced agents) and to monitor the discharge of the delegate's functions or tasks?</p> <p>What arrangements do you have in place to assess the initial and ongoing suitability of a delegate to undertake the function or task?</p> <p>Do you obtain sufficient information from your agents and employees to enable you to assess the impact of outsourcing on your compliance measures?</p>
Segregation of duties	<p>What arrangements do you have in place (where possible and appropriate) to segregate the duties of individuals and departments in such a way as to reduce opportunities for misappropriation or contraventions of the Law, eg back office and front office functions?</p>
Managing information	<p>What arrangements do you have in place to provide your governing body (or its delegates) with the information it needs to play its role in identifying, measuring, managing and controlling risks of non-compliance with the Law (including licence conditions)?</p>
Safeguarding client money and assets	<p>What controls do you have to ensure that client monies and assets are separated from those of the licensee as required under the Law?</p> <p>What arrangements are in place to ensure that any person (other than the licensee) holding client money or assets on behalf of the licensee meet the requirements under the Law for holding client money or assets?</p>

Requirement	Issues
Accounts and record keeping	<p>What arrangements are in place to ensure that accounting records and other evidence about the licensee's business will be adequate to allow the licensee and ASIC to conduct reviews of the licensee's business activities?</p> <p>What procedures ensure that appropriate taxation and accounting requirements are adhered to?</p> <p>What procedures ensure that all statutory deadlines for reporting are complied with?</p> <p>What measures are in place to ensure that records are maintained for the statutory period? What measures ensure that records for compliance monitoring are kept?</p>
Conduct of business obligations	<p>What measures are in place to ensure that applicable "conduct of business" requirements under the Law are complied with on an ongoing basis, eg trading requirements for best execution and fair allocation; conflicts of interests are managed; all applicable financial product advice disclosures and warnings are provided?</p>
Disclosures and reporting	<p>What procedures are in place to ensure that all publications of the licensee, eg advertising; product disclosure statements; financial services guides etc, comply with the requirements of the Law, eg timing, content, not misleading etc?</p> <p>What arrangements are in place to ensure that the financial statements of the licensee and any of its products are true and fair and when relevant, appropriate continuous disclosure/significant event disclosures are made?</p>
Related party issues	<p>What controls are in place to ensure that information flows between the licensee and its related bodies corporate are appropriately protected, eg to minimise inside information and to manage conflicts of interests?</p> <p>What are the measures used to ensure that the use of a related third party service provider is in the best interests of the licensee and its clients?</p>
Fees and expenses	<p>What procedures are used to ensure that only authorised fees and expenses are charged to a client and that the fees and expenses are calculated correctly?</p>

2 Monitoring, supervising and training

Requirement	Issues
Representatives	<p>Have you identified all your representatives - in particular, persons or entities other than employees, directors and authorised representatives who are acting on your behalf?</p> <p>Have you established a clear reporting and supervisory structure that is applicable to all your representatives?</p>
Compliance arrangements	<p>Are your representatives aware of relevant compliance arrangements, and do they understand them?</p> <p>Have you ensured that these arrangements are updated as necessary, eg to deal with new products?</p>
Assessing representatives' compliance	<p>What monitoring and supervision systems have you adopted to determine whether representatives are complying with the Law?</p> <p>How do you ensure that you are not receiving inaccurate information, eg reports that are based on "guess work" or that are sanitised?</p> <p>Who carries out these measures? How often?</p> <p>How are breaches rated?</p>
Remedial action – correction, prevention and disciplinary action	<p>What arrangements are in place to ensure you take effective remedial action in response to compliance failures?</p> <p>What arrangements are in place to ensure you take appropriate action to correct compliance failures?</p> <p>What arrangements are in place to ensure you take appropriate action to prevent further breaches, such as:</p> <ul style="list-style-type: none"> (a) feedback and further training; (b) special supervision; and (c) addressing trends or patterns of compliance failures, eg by adjusting procedural controls, or by adjusting induction and continuous education training programs? <p>Have you provided your representatives with your disciplinary policy for breaches? Is this policy applied? Does this policy ensure that representatives are not rewarded, particularly financially, as a result of breaches occurring?</p>

Requirement	Issues
Reporting	<p data-bbox="667 275 1295 380">What are the controls to ensure that all breaches of the Law by representatives are reported to the appropriate level of management?</p> <p data-bbox="667 407 1336 474">How do you ensure that breaches are reported to ASIC as required by 912D? Who is responsible for reporting to ASIC?</p>
Training responsibilities	<p data-bbox="667 506 1312 573">Have you identified the tasks and functions your representatives perform?</p> <p data-bbox="667 600 1323 705">Have you ensured that your representatives' training programs or individual assessment methods address the relevant ASIC requirements at the appropriate education level?</p> <p data-bbox="667 732 1317 800">Have you implemented procedures for the continuing training of your representatives?</p>
Continuing training	<p data-bbox="667 846 1308 913">Have you nominated a person who is responsible for continuing training?</p> <p data-bbox="667 940 1248 1008">Have you established an annual training program for each representative?</p> <p data-bbox="667 1035 1138 1068">Are you keeping records of training programs?</p> <p data-bbox="667 1096 1341 1163">Have you determined how much training each representative needs each year?</p>

3 Risk management

Requirement	Issues
Identifying risks	<p>Have you focused on the identification of risks to the promotion of:</p> <ul style="list-style-type: none"> (a) consumer confidence in using financial services; and (b) the provision of fair, honest and professional services? <p>Have you considered all of your obligations under the Law (including the regulations and licence conditions)?</p> <p>Have you identified the risks of non-compliance with these?</p> <p>What systems and controls do you currently have to address risk?</p> <p>Are these systems and controls adequate to meet the Law and our policy?</p> <p>Are your board, management and staff skilled, competent and fit to carry out the responsibilities they are delegated?</p> <p>Do you have a “compliance culture” within your organisation? If so, have you recently assessed whether it is working? If not, what education and information distribution processes are in place to build one?</p> <p>Is the sophistication level of your consumers matched to the products we offer?</p>
Assessing risks	<p>Have you established the probability of the risk event occurring and the impact of the problem if the risk occurs?</p> <p>Have you combined the probability and impact factors to determine the overall risk?</p>
Evaluating risks	<p>Have you prioritised the assessed risks and established which risks need to be treated?</p>
Treating risks	<p>Have you treated those risks with appropriate measures?</p>
Documenting risk management systems to control risk	<p>Have you documented the risks you have assessed and how you arrived at this assessment?</p> <p>Have you documented the risk management processes that you have determined will address these risks and how you arrived at this determination?</p> <p>Have you in place a documented organisational structure that clearly specifies where the risk management responsibilities lie?</p>
Adapting to change in risk dynamics	<p>Are your systems able to keep pace with new products and industry technology?</p>

Requirement	Issues
Board commitment	<p data-bbox="667 275 1308 338">Has your Board signed off on the risk management systems and made a commitment to ongoing risk management processes?</p> <p data-bbox="667 369 1260 432">Have you appointed senior management to oversee the risk management process?</p> <p data-bbox="667 464 1268 527">Do you have procedures in place to educate staff on the risk management processes?</p>
Audit and review procedures	<p data-bbox="667 558 1287 621">Have you integrated annual reviews of your risk management processes into your business plan?</p> <p data-bbox="667 653 1133 684">Are independent evaluations being conducted?</p>
Reporting procedures	<p data-bbox="667 711 1333 774">Do your representatives know whom they are to report to and who will report to them?</p> <p data-bbox="667 806 1344 869">Do your representatives understand what they are required to report on, and when?</p>

4 Non-financial resources

Requirement	Issues
Human resources	<p>What human resources do you have for each of your business activities, including matters such as complaints handling, monitoring and supervising etc?</p> <p>Are extra resources made available for supervising staff or other representatives who have been involved in compliance failures?</p> <p>What are your recruitment processes? Do you check the prior history of key personnel before you hire them?</p> <p>What are your systems for inducting and training new staff?</p> <p>What are your performance management procedures?</p> <p>Do you have succession planning in place, for absences (long or short) to ensure client accounts continue to be managed appropriately?</p> <p>Are your legal advisers and compliance staff independent?</p> <p>Do you have appropriate human resources to meet your IT needs?</p> <p>What indicators have been identified which need to be monitored to assess adequacy of your human resources?</p>
Technological resources	<p>Do you have sufficient IT and communications systems?</p> <p>Do you have an early warning system, such as a system that provides automated exception reports?</p> <p>Do you have sufficient technological resources to retain, store, access and keep secure your records?</p> <p>Do you have sufficient technological resources to protect confidential or other sensitive information you possess?</p> <p>How regularly do you back-up your data?</p> <p>If data is backed-up, is your back-up adequately stored?</p> <p>Do you have a reliable reporting system?</p> <p>Have you contractual agreements with third parties for the development and maintenance of your IT system?</p> <p>Is there an IT strategy to support business operational and strategic imperatives?</p>

Requirement	Issues
Technological resources (cont.)	<p data-bbox="667 275 1341 380">Do you have dedicated in-house organisational structure to provide and/or manage the delivery of IT services? If no, how are IT services are managed and delivered.</p> <p data-bbox="667 411 1135 436">Do you have data back-up and recovery plans?</p> <p data-bbox="667 468 1170 493">Is data back-up executed daily and stored off-site?</p> <p data-bbox="667 525 1333 550">Do you have disaster recovery plans and are they regularly tested?</p> <p data-bbox="667 581 1341 644">Do you have contractual relationships with third party IT suppliers? If so, are there measurable service levels targets in these contracts?</p> <p data-bbox="667 676 1341 739">Is access to physical IT infrastructure restricted (access to IT floors sabotage issues)?</p> <p data-bbox="667 770 1341 833">Are operational service levels agreements established and reported against for key performance indicators)?</p> <p data-bbox="667 865 1325 970">Do you have Network (Internet, WAN, LAN) security controls in place? (Viruses, eg 'I love you' virus) How do you keep them out of your system, eg ASIC security system?</p>

Regulatory and financial impact

We have considered the likely regulatory and financial impact of the policy proposals in this paper. Based on the information that we currently have, we believe that our proposals strike an appropriate balance between facilitating financial services activity and investor protection. To ensure that we have achieved an appropriate balance, we are also developing a Regulatory and Financial Impact Statement (RIS).

The RIS will address the following seven key elements:

1 Issue / problem

This will discuss the nature and magnitude of the problem.

2 Objective(s) / analysis of the problem

The objective(s), or the outcome sought in relation to the identified issue / problem, will be addressed.

3 Options / solutions

This will identify all the alternative options that could achieve the objective(s) stated above for dealing with the issue being considered (eg no specific action; ASIC policy proposal; media release; information statement; self regulation/quasi regulation; codes of conduct; and co-regulation, compliance and enforcement strategies).

4 Impact analysis (costs and benefits) of each option

Impact analysis will include:

- (a) analysis of the benefits and costs of the options, including any restriction on competition for different persons affected;
- (b) identification of persons or bodies affected by the problem; and those that will be affected by the solutions or options identified (ie applicant/proponent of issue; other interested parties, consumers, business and government);
- (c) a consideration of how each of the proposed options will affect existing law, regulations or policies;

- (d) identification and categorization of the expected impacts of the proposed options as likely benefits or likely costs against each of the persons/bodies identified as likely to be affected;

We will try to quantify these effects where possible (for example, will there be any restriction on competition as a result of the proposed regulation?)

Costs to business affected by a regulatory initiative might include: administrative costs; complying with new regulatory standards; licence fees; delays etc.

Costs to consumers affected could also include higher prices for goods and services; reduced utility of goods and services; delays and more difficult or expensive options for seeking redress.

- (e) benefits of the options will also be identified (even where they are not quantifiable); and
- (f) the data sources used and assumptions made in making these assessments will be identified.

5 Consultation

The consultation undertaken in the policy process will be detailed.

6 Conclusions and recommended option

The preferred option(s) will be given, and reasons why.

7 Implementation and review

This will discuss how the proposed option will be administered, implemented, or enforced (eg instrument of relief; policy statement; practice note; no action letter).

In order for us to fully assess the financial and regulatory impact of our proposals, we invite you to consider possible options that would achieve our objectives, comment on the impact that these policy proposals might have, and in particular, give consideration to the costs and benefits of these proposals. Where possible, we are seeking both quantitative and qualitative data.

Any comments that we receive will be taken into account when preparing our final RIS.

Development of policy proposal

Generally

We have developed this policy proposal paper by considering:

- (a) the intention of the Bill as indicated in the Explanatory Memorandum to the Bill and the Second Reading Speech in the House of Representatives on the introduction of the Bill into Federal Parliament;
- (b) the Report on the Bill by the Parliamentary Joint Committee on Corporations and Securities issued in August 2000;
- (c) the Government's response to the Report, issued on 29 March 2001;
- (d) relevant comparisons with current legislative requirements for the regulation of financial services activity under the law;
- (e) a review of existing ASIC policies and practices relevant to the regulation of financial services activity under the law; and
- (f) a review of public submissions on the Exposure Draft Bill issued by the Government in February 2000.

Compliance measures

In developing the policy and guidance on monitoring and supervision, we have drawn on our experience in licensing and compliance across a range of industries and industry participants. We have also had regard to Australian Standard 3806–1998, “Compliance programs”, which sets out the essential structural, operational and maintenance elements of an effective compliance program.

Risk

We have considered numerous domestic and international approaches to risk when developing these policy propositions, including:

- (a) the Australian/New Zealand Standard on Risk Management;

- (b) the Financial Services Authority (UK) approach;
- (c) the International Organisation of Securities Commissions approach; and
- (d) processes developed as part of the Managed Investment implementation program.

Key terms

In this policy proposal:

“ASIC” means the Australian Securities and Investments Commission;

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

Note: This is a definition contained in 761A

“Bill” means the *Financial Services Reform Bill 2001*, the Law as amended by the Bill or that bill as enacted as applicable and includes and regulations made for the purposes of the Bill;

“body regulated by APRA” for the purposes of the Bill means

- (a) an ADI, within the meaning of the *Banking Act 1959*;
- (b) an authorised NOHC, within the meaning of the *Banking Act 1959*;
- (c) a body corporate that is authorised to carry on an insurance business under the *Insurance Act 1973*;
- (d) Lloyd’s, or a Lloyd’s underwriter, as defined in s3 of the *Insurance Act 1973*;
- (e) a life company that is registered under the *Life Insurance Act 1995*;
- (f) the trustee of a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- (g) an RSA provider, within the meaning of the *Retirement Savings Accounts Act 1997*;

Note: ADI is short for authorised deposit-taking institution, NOHC is short for non-operating holding company and RSA is short for retirement savings account.

Note: This is a definition contained in 761A

“financial product” means a facility through which, or through the acquisition of which, a person does one or more of the following:

- (a) makes a financial investment (see 763B);
- (b) manages financial risk (see 763C);

(c) makes non-cash payments (see 763D);

Note: This is a definition contained in 763A

“financial product advice” means a recommendation, a statement of opinion or an interpretation of information, or a report of any of those things, that:

- (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
- (b) could reasonably be regarded as being intended to have such an influence;

but does not include anything in an exempt document

Note: This is a definition contained in 766B

“governing body” means the board of directors, committee of management or other governing body of the entity, including in relation to an individual, that individual;

“Law” means the Corporations Law (including as intended to be replaced by the *Corporations Bill 2001*);

“licence” means an Australian Financial Services Licence under 913B that authorises a person who carries on a financial services business to provide financial services;

Note: This is a definition contained in 761A

“licensee” means a person who holds an Australian financial services licence;

Note: This is a definition is contained in 761A

“licensee obligations” means the obligations of a licensee as set out in 912A, 912B and the requirement to be of good, fame and character as included in 913B;

“old Law” means the Law before amendment by the Bill;

“representative” of a financial services 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 910A

“retail client” means a client defined as such under 761G;

“PS 136” (for example) means an ASIC Policy Statement (in this example numbered 136);

“982A” (for example) means a clause of the Bill; and

“s782” (for example) means a section of the Law.

What will happen next?

Stage 1

26 April 2001 ASIC policy proposal paper released

Stage 2

May/early June 2001 Consultation period on the contents of this policy proposal paper

7 June 2001 Comments due on the policy proposal

15 June to September 2001 Drafting of policy statement

Stage 3

Mid to late September 2001 Policy statement released

Your comments

You are invited to comment on the proposals and issues for consideration in this paper.

Comments are due by Thursday 7 June 2001 and should be sent to:

Roxanna Irvin
FSR Project Office
Regulatory Policy Branch
Australian Securities & Investments Commission
GPO Box 4866
Sydney NSW 1042
email: FSRProjectOffice@asic.gov.au

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

Related policy proposal papers

This policy proposal paper is part of a set of seven documents issued together in April 2001 on the implementation of the *Financial Services Reform Bill 2001*. As outlined in our paper *Building the FSRB Administrative Framework*, we intend to issue further proposal papers in the coming months all related to the implementation of the Bill.

The names of the related documents issued together in April are as follows:

Building the FSRB Administrative Framework – Policy to implement the Financial Services Reform Bill 2001

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

Licensing Process Guideline: How do you get an Australian Financial Services Licence?

Copies of policy proposal papers

Download them from the ASIC home page:

<http://www.asic.gov.au>

(follow the links from “Financial services reform” that is on the top right of our home page)

You can also get copies of ASIC policy proposal papers from: ASIC Infoline: 1300 300 630

To find out more about FSRB

Visit the FSRB 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 our latest developments.