



**ASIC**

Australian Securities & Investments Commission

REGULATORY GUIDE 000

## **Crowd-sourced funding: Guide for intermediaries**

June 2017

### **About this guide**

This guide is for entities providing, or looking to provide, a crowd-funding service as a crowd-sourced funding (CSF) intermediary by operating a platform for CSF offers and investments.

This guide explains the general ongoing obligations that apply to CSF intermediaries as AFS licensees and the specific obligations that apply under the CSF regime.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This draft guide was issued in June 2017 and is based on legislation and regulations as at the date of issue.

### Disclaimer

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

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Crowd-sourced funding is a form of fundraising that allows a company to access capital from a large number of investors.

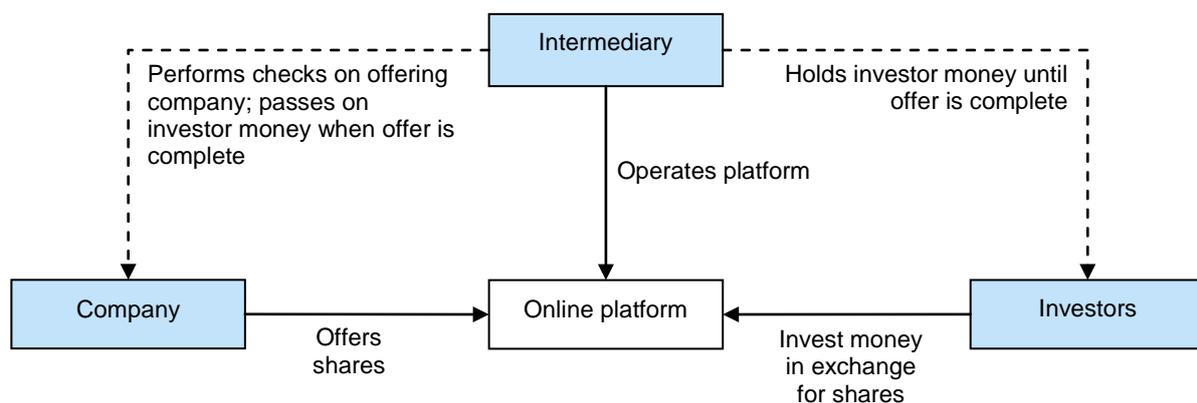
The crowd-sourced funding (CSF) regime in Pt 6D.3A of the *Corporations Act 2001* (Corporations Act) provides a regulatory framework for equity-based crowd-sourced funding by small unlisted public companies, enabling them to make offers of ordinary shares to retail clients, through a licensed intermediary's platform, using an offer document.

This guide will assist you, as a CSF intermediary, to:

- understand how to apply for authorisation to provide a crowd-funding service;
- meet your obligations and responsibilities as an Australian financial services (AFS) licensee under the law; and
- meet specific requirements under the CSF regime.

### Crowd-sourced funding in Australia

- RG 000.1 Crowd-sourced funding involves a company raising funds—usually through an online intermediary—from a large number of investors who make relatively small financial contributions to the company.
- RG 000.2 Crowd-sourced funding generally falls into two categories: non-investment and investment-based. Non-investment crowd-sourced funding allows participants to make a donation to support a cause or pre-purchase a good or a service that will be made using the funds raised. Investment-based crowd-sourced funding involves participants investing money for a financial reward or gain.
- RG 000.3 The CSF regime in Pt 6D.3A of the Corporations Act provides a regulatory framework for equity-based crowd-sourced funding, which is a type of investment-based crowd-sourced funding that involves a company offering ordinary shares in the company to investors in return for a relatively small cash investment. This guide focuses specifically on the equity-based crowd-sourced funding that is covered by the CSF regime.
- RG 000.4 Figure 1 illustrates how equity-based crowd-sourced funding works, with an intermediary performing checks on the issuing company, operating an online platform (through which the company offers shares and investors invest money in exchange for shares), holding investor money and passing investor money to the company when the offer is complete.

**Figure 1: A basic illustration of how equity-based crowd-sourced funding works**

Note: The process shown in Figure 1 is described in RG 000.4 (accessible version).

- RG 000.5 Under the CSF regime, unlisted public companies with less than \$25 million in assets and annual revenue can make offers of ordinary shares to retail clients, through an AFS licensed CSF intermediary's platform, using a CSF offer document. Eligible companies can raise up to \$5 million in any 12-month period under the CSF regime.
- RG 000.6 Crowd-sourced funding provides an additional funding option for entrepreneurs and small companies to grow their businesses, and provides an additional investment option for people wishing to invest in start-ups and small businesses.
- RG 000.7 However, crowd-sourced funding is a risky form of investment. According to the International Organization of Securities Commissions (IOSCO), risks of crowd-sourced funding include:
- (a) heightened risk of default or failure associated with start-up businesses;
  - (b) higher risk of fraud and money laundering/terrorist financing with online offerings;
  - (c) platform failure or closure of crowd-sourced funding portals;
  - (d) illiquidity where there is no secondary market for CSF securities (which may limit investors' ability to sell or liquidate these securities);
  - (e) investors' lack of experience with these types of offerings, including a lack of skills and information to carry out sufficient due diligence.
- RG 000.8 The development of Australia's CSF regime has followed a global trend towards law reform facilitating investment-based crowd-sourced funding, including in the United States, Canada, United Kingdom and New Zealand.
- RG 000.9 In its [Crowdfunding: 2015 survey responses report](#) (0.5 MB, released December 2015), IOSCO observed that the regulatory approaches of each jurisdiction it surveyed aim to balance the need for appropriate investor

protection with facilitating a new form of fundraising by companies.

Common key elements include:

- (a) appropriate regulation of intermediaries (i.e. licensing or registration);
- (b) investor protections proportionate to the high risk and low liquidity of the investments; and
- (c) some disclosure and other requirements for companies raising funds.

### **The role of a CSF intermediary**

RG 000.10 A CSF intermediary plays a significant role under the CSF regime, operating the platform through which investors invest and companies offer their shares. This role includes managing some of the risks identified by IOSCO in relation to crowd-sourced funding, to help ensure that investors and offering companies can be confident in using the CSF regime.

### **ASIC's role in regulating crowd-sourced funding**

RG 000.11 ASIC is Australia's corporate, markets and financial services regulator. We administer the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act). Our role includes the regulation of fundraising and licensing of financial service providers.

RG 000.12 Crowd-sourced funding under the CSF regime involves offering shares in the company that is raising funds. Providing a crowd-funding service to offering companies and investors is a financial service. A CSF intermediary must hold an Australian financial services (AFS) licence authorising it to provide this service. A CSF intermediary might require an Australian market licence if the operation of a platform involves operating a financial market; however, this guide does not address this requirement.

Note: See [Regulatory Guide 172](#) *Australian market licences: Australian operators* (RG 172).

RG 000.13 As well as issuing your AFS licence, we also oversee your compliance with the Corporations Act and the ASIC Act. To do this, we may conduct surveillance to check your compliance with the law including in response to reports of misconduct from investors or companies using your services. We have a range of powers to check compliance and investigate suspected breaches.

Note: A CSF intermediary has an obligation to report significant breaches of the law to ASIC (see [Regulatory Guide 78](#) *Breach reporting by AFS licensees* (RG 78)).

## Purpose and scope of this guide

- RG 000.14 This guide aims to assist you, as a CSF intermediary, to understand and comply with your obligations when providing a crowd-funding service to offering companies and investors. In particular, it will help you:
- (a) understand how to apply for an AFS licence authorisation to provide a crowd-funding service;
  - (b) meet your obligations and responsibilities as an AFS licensee; and
  - (c) meet specific requirements under the CSF regime.
- RG 000.15 This guide covers the key features of the CSF regime in the Corporations Act for CSF intermediaries, as set out in Table 1 below.

**Table 1: Key features of the CSF regime for CSF intermediaries**

Key feature	Summary	Guidance
AFS licence obligations	<p>A CSF intermediary needs to hold an AFS licence with an authorisation to provide a crowd-funding service.</p> <p>As an AFS licensee, you must comply with the general obligations in s912A and other obligations in the Corporations Act. For example, you must have adequate resources and in particular you must meet requirements to demonstrate you will maintain an adequate cash buffer through preparing projections and arranging a report by an auditor on the projections annually.</p>	Section B of this guide
Specific obligations under the CSF regime	<p>A CSF intermediary must meet gatekeeper obligations, including:</p> <ul style="list-style-type: none"> <li>• performing checks on a prospective offering company, CSF offer and CSF offer document; and</li> <li>• not publishing, or not continuing to publish, a CSF offer document on your platform in certain circumstances.</li> </ul> <p>Under the CSF regime, you must also:</p> <ul style="list-style-type: none"> <li>• display certain information prominently on your platform;</li> <li>• provide an application facility for all applications under a CSF offer;</li> <li>• provide a communication facility for investors to ask questions about a CSF offer, and monitor posts on this facility;</li> <li>• deal with application money compliantly;</li> <li>• comply with timing rules for CSF offers;</li> <li>• appropriately deal with defective CSF offer documents; and</li> <li>• ensure advertising is not misleading or deceptive, and advertising of CSF offers directs investors to the general risk warning and CSF offer document.</li> </ul>	<p>Section C of this guide</p> <p>See also Regulatory Guide XXX <i>Crowd-sourced funding: Guide for public companies</i> (RG XXX)</p>

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Key feature	Summary	Guidance
Additional obligations for retail clients	<p>A CSF intermediary has additional obligations in relation to retail clients, to help ensure that they can be confident to invest. You must ensure that, for all CSF offers made on your platform:</p> <ul style="list-style-type: none"> <li>• retail clients complete a risk acknowledgement before applying for shares under a CSF offer;</li> <li>• retail clients do not invest more than the investor cap (\$10,000) per company in any 12-month period; and</li> <li>• retail clients are informed of and able to exercise their cooling-off rights to withdraw from a CSF offer within five days of applying.</li> </ul>	Section C of this guide
Data reporting	A CSF intermediary will have obligations to provide information to ASIC about its activities on an annual basis.	Section D of this guide

## What is not covered by this guide?

### Companies seeking to make CSF offers

- RG 000.16 To raise funds under the CSF regime, a company must meet certain requirements, including being eligible to make a CSF offer and providing the prescribed disclosure to investors. We provide guidance for companies seeking to raise funds under the CSF regime in Regulatory Guide XXX *Crowd-sourced funding: Guide for public companies* (RG XXX).

### Other forms of crowd-sourced funding

- RG 000.17 This guide does not provide guidance about non-investment crowd-sourced funding, including donation-based crowd-sourced funding and funding based on the pre-purchase of goods and services. This type of crowd-sourced funding is not regulated by ASIC.
- RG 000.18 ASIC is the regulator responsible for investment-based crowd-sourced funding, specifically the equity-based crowd-sourced funding covered by the CSF regime. Other forms of investment-based crowd-sourced funding include business introduction services, personal offers under s708 of the Corporations Act, use of nominee services and fundraising activities arranged as managed investment schemes—these types of fundraising are not covered by this guide.

### Business introduction services

- RG 000.19 Some entities provide a service of introducing potential investors to companies looking to raise funds, to enable the companies to make personal offers to those investors. The investors introduced to the companies can be retail and wholesale investors who have registered their interest in investing and receiving personal offers from the type of companies that they are introduced to. This is generally known as a business introduction service,

and might be promoted as a form of crowd-sourced funding. The business introduction service may be provided in reliance on Class Order [CO 02/273] *Business introduction or matching services* and the personal offers made under s708 of the Corporations Act.

Note: [ASIC Corporations \(Repeal and Transitional\) Instrument 2017/186](#) extends the relief in [CO 02/273] in the same form for two years so that ASIC can review and consult on the policy settings of the relief by 1 April 2019.

- RG 000.20 This guide does not apply to entities operating a business introduction service. In light of the CSF regime, these entities must take care in referring to their services as a form of crowd-funding, and make clear to investors that they do not hold an AFS licence to provide a crowd-funding service under the CSF regime and are not subject to the gatekeeping obligations that apply to CSF intermediaries. Retail clients in particular may be misled, or confuse business introduction services with a crowd-funding service provided by a CSF intermediary holding an AFS licence.

#### **Fundraising involving managed investment schemes**

- RG 000.21 Fundraising involving managed investment schemes is another type of investment-based funding, which typically involves the operator of the scheme raising funds for investments that it makes on behalf of investors in the scheme. The fundraising activity may be promoted through a website. In return for making an investment in the scheme, the investors acquire an interest in the scheme that gives them a return based on the performance of the investments chosen and made by the operator of the scheme. The investors may not acquire any specific interest in the investments made by the operator on their behalf.
- RG 000.22 Operating a registered managed investment scheme is a financial service that requires the operator to hold an AFS licence issued by ASIC. Where the scheme is offered to retail clients, it will generally need to be a registered managed investment scheme unless certain exclusions apply. This guide for CSF intermediaries is not directed at operators of managed investment schemes. Operators of managed investment schemes should refer to our dedicated regulatory guides for managed investments schemes.
- RG 000.23 Operators of such managed investment schemes will also need to take care in promoting their products as a form of crowd-funding, to ensure that investors do not confuse their product with CSF offers under the CSF regime. It is important to ensure that investors understand the nature of the investment that is being offered to them and, where applicable, that by investing in the scheme they are not acquiring a specific interest in the investments made on their behalf.

### Custodial arrangements

- RG 000.24 The CSF regime does not apply to offers of interests in shares that are held through a nominee as a result of a CSF offer, whether the nominee is the CSF intermediary or another person. A nominee may apply for shares under a CSF offer but will need to comply with applicable laws, including:
- (a) when carrying on a business of providing a custodial or depository service—holding an AFS licence authorising that service, and meeting the relevant requirements under [Regulatory Guide 133](#) *Managed investments and custodial or depository services: Holding assets* RG 133 and [Regulatory Guide 148](#) *Platforms that are managed investment schemes and nominee and custody services* (RG 148) and associated legislative instruments. This includes ensuring that, if the client would be acquiring as a retail client if they had acquired directly, the client has access to the CSF offer document, cooling-off rights, and the communication facility; and
  - (b) when carrying on a business of acquiring shares on behalf of the clients of the nominee—holding an AFS licence authorising those dealings.

### Marketplace lending

- RG 000.25 Marketplace lending can involve fundraising by small and medium sized businesses through an online platform in the form of a loan (or another credit facility) from the marketplace lending provider, or in some cases by issuing debentures. The funding may be provided by wholesale and retail clients through a managed investment scheme structure. Marketplace lending may be viewed as a form of investment-based crowd-sourced funding, where it involves many small investors providing funds to a business. This guide does not apply to marketplace lending.

Note: [Information Sheet 213](#) *Marketplace lending (peer-to-peer lending) products* (INFO 213) provides guidance for marketplace lending providers.

## B AFS licensee obligations

### Key points

A CSF intermediary must hold an AFS licence authorising the licensee to provide a crowd-funding service (see RG 000.26–RG 000.30).

As a CSF intermediary, you must meet the general obligations that apply to AFS licensees about:

- conflicts of interest (see RG 000.31–RG 000.34);
- adequacy of financial resources (see RG 000.35–RG 000.42);
- adequacy of other resources, such as human and technological resources (see RG 000.43–RG 000.54);
- organisational competence (see RG 000.55–RG 000.72);
- dispute resolution (see RG 000.73–RG 000.79);
- risk management (see RG 000.80–RG 000.93);
- compensation arrangements (see RG 000.94–RG 000.97);
- client money handling (see RG 000.98–RG 000.99); and
- providing clients with a Financial Services Guide (see RG 000.100–RG 000.104).

You must also comply with advertising restrictions and be authorised to provide financial product advice, if necessary (see RG 000.105–RG 000.117).

### AFS licence and authorisation to provide a crowd-funding service

RG 000.26 To be a CSF intermediary, you must have an AFS licence that expressly authorises you to provide a crowd-funding service.

RG 000.27 You do not need an authorisation to deal in the securities offered on your CSF platform (see s766C(2A) of the Corporations Act). However, if you provide financial product advice you will need to have an AFS licence authorisation to do so. See RG 000.114–RG 000.117 for guidance about financial product advice provided by CSF intermediaries.

Note: Providing the CSF offer document, or a statement contained in or drawn from the document which is attributed to the document, is not financial product advice—see reg 7.1.08 of the Corporations Regulations 2001 (Corporations Regulations).

RG 000.28 In deciding whether to grant an AFS licence authorisation to provide a crowd-funding service, we will assess your capacity and expertise to act as a CSF intermediary in accordance with your obligations as an AFS licensee. For example, we will consider whether you are likely to do all things

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necessary to carry on the business efficiently, honestly and fairly. Relevant guidance can be found in:

- (a) [Regulatory Guide 1](#) *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence* (RG 1);
- (b) [Regulatory Guide 2](#) *AFS Licensing Kit: Part 2—Preparing your AFS licence application* (RG 2);
- (c) [Regulatory Guide 3](#) *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3);
- (d) [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104);
- (e) [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105);
- (f) [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126);
- (g) [Regulatory Guide 165](#) *Licensing: Internal and external dispute resolution* (RG 165);
- (h) [Regulatory Guide 166](#) *Licensing: Financial requirements* (RG 166);
- (i) [Regulatory Guide 167](#) *Licensing: Discretionary powers* (RG 167); and
- (j) [Regulatory Guide 181](#) *Licensing: Managing conflicts of interest* (RG 181).

### Single CSF platform

- RG 000.29 Generally, we expect that your application for authorisation to provide a crowd-funding service will relate to a single platform, on a particular website. If granted, the authorisation will be tailored to specify the platform that we have assessed.
- RG 000.30 It must be your platform and should not be, or appear to be, made available by anyone else. A CSF intermediary cannot appoint an authorised representative to operate its platform for dealing with applications under its authorisation to provide crowd-funding services. However, you may have an authorised representative to provide other aspects of the crowd-funding service, such as operating the communication facility on your platform or performing certain checks for your gatekeeper functions (see RG 000.53–RG 000.54). You may also contract for the provision of IT or other services relating to your platform that are not financial services.

## Conflicts of interest

- RG 000.31 An AFS licensee must have adequate arrangements for managing conflicts of interest that may arise wholly, or partially, in relation to the provision of financial services by the licensee or a representative of the licensee as part of the financial services business of the licensee or the representative, under s912A(1)(aa) of the Corporations Act.
- RG 000.32 This obligation will apply in relation to the crowd-funding service provided by you as a CSF intermediary. You should have regard to our general guidance for AFS licensees in RG 181 on conflicts of interest, including our expectations about controlling, avoiding and disclosing conflicts of interest.
- RG 000.33 You should have a written conflicts of interest policy with appropriate measures to identify, document and manage conflicts, and follow that policy in running your business as a CSF intermediary. Disclosure can be a way of managing conflicts, but on its own is not adequate unless it gives sufficient assurance that you are not at risk of not meeting your obligations. The measures need to be adequate to provide confidence that, despite any conflicting interest or duty you may have, you will comply with your obligations as an AFS licensee.
- RG 000.34 There are no restrictions under the CSF regime on the fee arrangements that may be agreed between a CSF intermediary and a company making a CSF offer, including fees based on the amount of funds raised or on providing an interest in the offering company. You may enter an underwriting arrangement or expect to derive benefits from facilitating secondary trading of shares offered in a CSF offer. However, with such arrangements, conflicts may arise between your interest in earning fees, including by acquiring an interest in the offering company, and your responsibilities as a CSF intermediary—for example, your responsibility in certain circumstances to:
- (a) not publish, or not continue to publish, a CSF offer document;
  - (b) suspend or close a CSF offer;
  - (c) where relevant, provide compliant financial product advice to investors about products offered through your crowd-funding service or to a prospective offering company about the prospects of raising funds; and
  - (d) deal with (e.g. remove) comments on the communication facility.

## Financial resource requirements

- RG 000.35 As an AFS licensee, generally a CSF intermediary must have adequate financial resources: s912A(1)(d) of the Corporations Act. We also consider that your risk management arrangements must be adequate for the risks relating to maintaining any required financial resources.

- RG 000.36 Some of the financial resource requirements apply to AFS licensees generally, while others apply to particular classes of AFS licensee (such as CSF intermediaries) as set out in RG 166.
- RG 000.37 The specific minimum requirements for CSF intermediaries are provided under modified provisions of Pt 7.6 of the Corporations Act in ASIC Corporations (Financial Requirements for Crowd-Sourced Funding Intermediaries) Instrument 2017/XX.

### **Surplus liquid funds**

- RG 000.38 One of the general financial resource requirements is for an AFS licensee to maintain surplus liquid funds (SLF) of \$50,000 if it holds client assets of at least \$100,000. As a CSF intermediary, you may hold at least \$100,000 of client assets (such as application money) from time to time, and you will need to meet the SLF requirement at those times.

Note: See Section C of RG 166.

### **Cash needs requirement**

- RG 000.39 As an AFS licensee, a CSF intermediary needs to demonstrate that it expects to have sufficient cash to meet its expenses, including the costs involved in ensuring compliance with its AFS licensee obligations.
- RG 000.40 This is done for a CSF intermediary through cash flow projections that cover at least 12 months ahead, based on reasonable assumptions about what is most likely, and approved by your directors or governing body (or you, if the CSF intermediary is a natural person) at least every three months.

Note: For further information see Appendix 9 to RG 166.

- RG 000.41 The cash flow projections need to show that you held, at all times covered by the projection, a cash buffer of at least 5% of projected 12-month cash outflows or, if higher, the cash outflows in a previous full financial year.

Note: Cash and cash flow are explained in RG 166.137–RG 166.39.

### **Audit**

- RG 000.42 As an AFS licensee, you must lodge annual financial statements with ASIC under s989A of the Corporations Act, and an audit report on those statements. The auditor is also required to audit compliance with any SLF and other financial requirements, and express certain opinions on compliance with the requirements about trust accounts.

Note: For further information see Appendix 9 to RG 166.

## Adequacy of other resources

- RG 000.43 Demonstrating adequate human and technological resources is crucial to show that you have the capacity to carry on your financial services business in full compliance with the Corporations Act, including the requirement to comply with the financial services laws and to supervise your representatives.

Note: See the *AFS Licensing Kit* (RG 1, RG 2 and RG 3), RG 104 (particularly Section E) and RG 105.

### Human resources

- RG 000.44 Whether your human resources are adequate will depend on the nature, scale and complexity of your business. You need to have enough people to:
- (a) comply with all of your obligations under the law;
  - (b) carry out monitoring and supervision; and
  - (c) meet your current and anticipated future operational needs.
- RG 000.45 You need to regularly review the adequacy of your human resources. We expect that you will identify key indicators of inadequate human resources.
- RG 000.46 As a CSF intermediary, you should have people within your business who:
- (a) sufficiently understand the platform and underlying technology to ensure it operates as expected and, to the extent possible, without system issues (we expect you to have at least one person in your business with this understanding);
  - (b) provide or monitor any authorised representatives;
  - (c) provide and maintain the application and communication facilities; and
  - (d) meet all of the CSF intermediary gatekeeper obligations, including:
    - (i) performing the required checks (see RG 000.119–RG 000.129);
    - (ii) complying with restrictions on publication of CSF offer documents (see RG 000.130); and
    - (iii) meeting the requirements for dealing with application money (see RG 000.148–RG 000.149).
- RG 000.47 As the CSF intermediary, you must provide an application facility for CSF offers made through your platform, although you may use technology provided by others in doing so. If you choose to outsource other functions relating to your crowd-funding services, we expect you to have people within the business who understand these functions to appropriately monitor and assess the outsourced service provider's performance, to help ensure that you meet your general obligations: see RG 000.54.

## Technological resources

- RG 000.48 As an AFS licensee authorised to provide a crowd-funding service, you should have sufficient technological resources, including resources to:
- (a) provide and maintain the platform technology, and ensure an appropriate level of system availability to comply with your day-to-day gatekeeper obligations and rules, for example:
    - (i) for the application facility—caps on investment rules (see RG 000.167–RG 000.168) and timing rules related to a CSF offer (see RG 000.150–RG 000.153); and
    - (ii) for the communication facility—ensuring appropriate oversight of posts to identify and promptly remove any information that is misleading or not in good faith (see RG 000.142–RG 000.145);
  - (b) maintain client records and data integrity, and meet annual reporting requirements, for ASIC to monitor your ongoing capability to effectively perform the crowd-funding service and ensure confidence in the market for shares offered under the CSF regime (see RG 000.172);
  - (c) protect confidential and other information, taking into account cyber risks and events that may occur;
  - (d) meet current and anticipated future operational needs, including in relation to system capacity; and
  - (e) comply with all obligations as an AFS licensee.
- RG 000.49 You should also have adequate business continuity, backup and disaster recovery plans for any systems that support the platform.

## Reviewing your information technology (IT) systems

- RG 000.50 You need to regularly review the adequacy of your technological resources to manage your risk of non-compliance.
- RG 000.51 When reviewing your IT systems, you need to consider:
- (a) your IT system security;
  - (b) the currency of your hardware and software;
  - (c) the quality and relevance of the applications you use, including as demonstrated by user testing;
  - (d) your disaster recovery systems and business resumption capacity;
  - (e) the number of users;
  - (f) the ongoing viability of software and other service providers;
  - (g) the response times of your IT systems;
  - (h) the down times of your IT systems;
  - (i) your use of legacy IT systems; and

- (j) complaints (e.g. from staff, clients or service providers) about your IT systems.

RG 000.52 We may ask you to provide evidence of your process for overseeing and monitoring the relevant systems—including the platform, application facility and communication facility—regardless of whether aspects of these functions are performed in-house or outsourced (see also RG 000.30).

## Outsourcing functions that relate to your licence

RG 000.53 If an outsourced function is required to be provided by a CSF intermediary, including all aspects of the role of a CSF intermediary under Pt 6D.3A of the Corporations Act, the person to whom it is outsourced must be an officer or employee of the CSF intermediary or its related body corporate, or an authorised representative. This would apply, for example, to conducting checks required of the CSF intermediary as a gatekeeper, provision of the communication facility or provision of the application facility.

RG 000.54 If you outsource functions that relate to your AFS licence, you remain responsible for complying with your obligations as a licensee (see s769B of the Corporations Act). If the outsourced service provider is providing a crowd-funding service by performing any of your obligations on your behalf, or providing other financial services on your behalf, then they are your representative. You are required to take reasonable steps to ensure that your representatives comply with the financial services laws (s912A(1)(ca)) and are adequately trained and competent to provide those financial services (s912A(1)(e)). For any outsourced service, we expect that you will:

- (a) have measures in place to ensure that due skill and care is taken in choosing suitable service providers;
- (b) monitor the ongoing performance of service providers; and
- (c) appropriately deal with any actions by service providers that breach service level agreements or your obligations as a licensee.

## Organisational competence

RG 000.55 You need to be able to show that you can comply with the organisational competence obligation from the time you are granted an AFS licence, and on an ongoing basis. We cannot grant you a licence if we have reason to believe you will be likely to contravene this obligation: s913B(1)(b) of the Corporations Act.

Note: You should read the *AFS Licensing Kit* (RG 1, RG 2 and RG 3), which explains the licence application process and the ‘proof’ documents you may need to provide to

support your application. You will need to submit a C11 CSF intermediary non-core proof, in addition to other proofs.

RG 000.56 You must have and maintain the competence to provide the financial services covered by your AFS licence: s912A(1)(e) of the Corporations Act. We refer to this obligation as the ‘organisational competence obligation’, because it requires you to be competent at the organisational level.

Note: There is a separate obligation under s912A(1)(f) to ensure the representatives who provide financial services on your behalf are trained and competent to do so (see RG 105.20).

## Responsible managers

RG 000.57 We assess your compliance with the organisational competence obligation by looking at the knowledge and skills of the people who manage your financial services business (referred to as your ‘responsible managers’).

RG 000.58 In assessing the competency of your nominated responsible managers, we will look at a combination of their relevant experience, training and qualifications. The different options for demonstrating the competency of your responsible managers are set out in Section C of RG 105. These options provide flexibility for responsible managers with a range of different educational and occupational backgrounds.

RG 000.59 Who you nominate as your responsible managers will depend on the nature, scale and complexity of your business: see RG 105.42. Usually, people with direct responsibility for significant day-to-day decisions about your financial services will be people who decide how your financial services are provided and supervise the provision of those services. They do not need to actually provide financial services on your behalf, although they might do so.

RG 000.60 At a minimum, you need to nominate one or more responsible managers who:

- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of your financial services (see RG 105.21–RG 105.25);
- (b) together, have appropriate knowledge and skills for all of your financial services—this includes providing the platform and performing all other aspects of the role of a CSF intermediary under the CSF regime; and
- (c) individually, meet one of the five options for demonstrating appropriate knowledge and skills relevant to their role, having regard to the functions required to provide your financial services compliantly.

RG 000.61 When nominating your responsible managers, you also need to ensure they are of ‘good fame and character’, as we consider this when we assess an application for an AFS licence.

Note: For more information on the good fame and character requirement, see the *AFS Licensing Kit* (RG 1, RG 2 and RG 3).

- RG 000.62 Our general policy for AFS licensees about competency assessment will apply to CSF intermediaries. As a crowd-funding service is a new financial service, you may look to rely on Option 5 in RG 105 to demonstrate the competency requirements. Experience that may be relevant to demonstrating your responsible managers' competence might include:
- (a) experience as an investor directed portfolio service (IDPS) platform operator, managed discretionary accounts (MDA) operator or conducting due diligence on investments to be offered to retail clients as part of admission to an approved product list for advisers;
  - (b) experience dealing in securities, for example as a stockbroker;
  - (c) experience as a corporate adviser in mergers and acquisitions, listing, takeovers and rights offers, initial public offers, corporate actions, underwriting and placements of securities;
  - (d) fund management experience (including registered and unregistered managed investment schemes);
  - (e) experience operating a crowd-sourced funding platform, including non-investment or investment-based, using a wholesale or registered scheme arrangement or small-offers exemption under s708 of the Corporations Act;
  - (f) experience as an operator of an investment-based crowd-sourced funding platform, including overseas (such as in New Zealand);
  - (g) experience as a financial market operator in Australia or overseas; and
  - (h) experience operating a platform-based financial services business, such as marketplace lending.

### **Key persons**

- RG 000.63 If we are satisfied with your organisational competence, but we consider you are heavily dependent on the knowledge and skills of one or two responsible managers, we will generally include a 'key person condition' in your AFS licence. The key person condition will name those responsible managers whose competence we consider you heavily depend on, and you will need to inform us if that person leaves the business: see RG 105.83.

### **Measures for maintaining organisational competence**

- RG 000.64 Once you have an AFS licence, you must maintain your organisational competence at all times. We expect a licensee to stop providing financial services for which a key person was appointed, where that person leaves and has not been replaced with someone else who meets the competence standards required under RG 105 (see RG 000.62). This does not affect the

obligations of a CSF intermediary under the Corporations Act in relation to money already held under a CSF offer.

RG 000.65 If we have reason to believe you are not complying with the organisational competence obligation, we may take administrative action. This could include suspending or cancelling your licence, or imposing additional licence conditions: s915C(1)(a) and 914A(1) of the Corporations Act.

Note: For guidance on our administrative powers, see [Regulatory Guide 98](#) *Licensing: Administrative action against financial services providers* (RG 98).

RG 000.66 We expect your measures for complying with the organisational competence obligation will ensure that you:

- (a) review your organisational competence on a regular basis and whenever your responsible managers or business activities change;
- (b) maintain and update the knowledge and skills of your responsible managers; and
- (c) keep records showing that you have reviewed your organisational competence and the steps you have taken to maintain your organisational competence.

Note: For more information on compliance measures, see Sections B and C of RG 104.

RG 000.67 We expect you to document your measures to help demonstrate your compliance with the organisational competence obligation.

RG 000.68 If you breach, or are likely to breach, the organisational competence obligation, you may need to notify us: s912D of the Corporations Act.

Note: For guidance on breach reporting, see RG 78.

## Changes to the business

RG 000.69 If you are applying for a new AFS licence, or adding new responsible managers for a variation to your existing licence, you will need to provide us with information about your nominated responsible managers: see RG 2.261–RG 2.293. You should ensure that this information explains as precisely as possible how the knowledge and skills of each nominated responsible manager will support the particular financial services for which you wish to be authorised.

Note 1: If you are varying your AFS licence and intend to nominate additional responsible managers to meet the competencies of the new authorisation, you will first need to complete [Form FS20](#) *Change of details for an Australian financial services licence*.

Note 2: If you appoint an authorised representative, you must generally lodge a notice with ASIC of the appointment (s916F of the Corporations Act).

RG 000.70 We expect you to review your organisational competence and ensure you will maintain it before you make any changes to your business, such as

expanding your range of financial services or products or replacing a responsible manager.

### **Training and competence**

RG 000.71 You have an obligation to ensure your representatives are trained and competent to provide financial services on your behalf.

RG 000.72 We expect you to:

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

## **Dispute resolution**

RG 000.73 A CSF intermediary that provides a crowd-funding service to retail clients must have a dispute resolution system that meets certain requirements, available for those retail clients (see RG 165).

RG 000.74 The dispute resolution system must consist of:

- (a) internal dispute resolution (IDR) procedures; and
- (b) membership of one or more ASIC-approved external dispute resolution (EDR) schemes.

### **Internal dispute resolution procedures**

RG 000.75 Your IDR procedures must:

- (a) comply with the standards and requirements made or approved by ASIC; and
- (b) cover complaints made by retail clients in relation to the crowd-funding service.

RG 000.76 We explain what an AFS licensee must do to have a dispute resolution system that meets our requirements in Section B of RG 165.

RG 000.77 A CSF intermediary will have two types of clients in relation to a CSF offer:

- (a) the investor making an application for the CSF offer; and
- (b) the company making the CSF offer.

RG 000.78 Your IDR procedures will therefore need to cover complaints made by either type of client, where they are a retail client.

Note: See RG 000.162 on when a client is a retail client for the purposes of the CSF regime.

### **Membership of an external dispute resolution scheme**

RG 000.79 A CSF intermediary must be a member of an EDR scheme or schemes that cover—or together cover—complaints made by retail clients in relation to the crowd-funding service: s912A. Our guidance about membership of ASIC-approved EDR schemes is set out in Section C of RG 165.

## **Risk management**

RG 000.80 As an AFS licensee, you must have adequate risk management systems under s912A(1)(h) of the Corporations Act (except for certain bodies regulated by APRA). You must also have measures in place to ensure that you comply with this obligation on an ongoing basis: see RG 104.35.

Note: Section D of RG 104 provides general guidance on the obligation to have adequate risk management systems.

RG 000.81 This means that you need to explicitly identify the risks you face and their likelihood and potential impact, and have measures in place to keep the risks to an acceptable minimum. We expect your risk management systems will:

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

RG 000.82 Your risk management systems will depend on the nature, scale and complexity of your business and your risk profile. They will be different for each AFS licensee. Your risk management systems will also need to adapt as your business develops and your business risk profile changes over time, so they will need to include arrangements for review of the risks and controls.

RG 000.83 If you use external providers to provide functions that relate to your AFS licence, your risk management measures will be different than if you performed those functions in-house.

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## Specific risks for CSF intermediaries

- RG 000.84 In developing your risk management systems, it is important to consider your specific obligations under the CSF regime, including gatekeeping obligations, which are intended to manage some of the key risks that may arise in the context of crowd-sourced funding.

Note: See Australian and New Zealand Standard AS/NZS 4360–2004: *Risk management systems* for more information.

### Gatekeeping obligations

- RG 000.85 There is a higher risk of default or failure associated with start-up businesses, which means that there is additional risk to investors if a CSF intermediary fails to perform its gatekeeping obligations. Fundraising through crowd-sourced funding also involves costs for companies making CSF offers, meaning that unsuccessful fundraising or successful fundraising for unviable businesses if a CSF intermediary fails to perform its gatekeeping obligations may cause substantial loss to these clients.

- RG 000.86 You should consider the types of risks particular to your gatekeeper role and your platform. For example, this will include the risk of publishing a CSF offer document for a company that is not eligible to make offers under the CSF regime. As part of carrying out your gatekeeping obligations as a CSF intermediary, you may wish to ask a prospective offering company about any prior refusal by other CSF intermediaries due to non-eligibility. You should also consider the risk of client manipulation through the abuse of cooling-off rights to create a false impression of significant demand for a CSF offer.

Note: Part 7.10 of the Corporations Act, relating to market misconduct and manipulation, applies to crowd-sourced funding.

### Technological risks

- RG 000.87 A CSF intermediary business will generally have a focus on technology, so you will need to carefully consider specific technological risks, for example:
- (a) compliance risks associated with technological failure (such as maintenance of a communication facility and discharging obligations in relation to cooling-off rights); and
  - (b) business continuity and disaster recovery planning.

### Malicious cyber activity and ensuring cyber resilience

- RG 000.88 You can manage the risk of malicious cyber activity, and ensure cyber resilience, by:
- (a) conducting regular cyber resilience health checks (for additional guidance, see [Report 429](#) *Cyber resilience: Health check* (REP 429));

- (b) updating policies and procedures to reflect current industry and international guidance;
- (c) regularly testing IT systems;
- (d) developing, testing and implementing disaster recovery and business continuity plans; and
- (e) regularly reviewing the material risks from and to other entities, as a result of technology interdependencies.

### **Employee misconduct**

RG 000.89 Another relevant risk is the conduct of employees (deliberately or inadvertently) not aligning with your interests or obligations as a CSF intermediary.

RG 000.90 Some ways you might seek to manage this risk include:

- (a) carrying out comprehensive employment screening;
- (b) having specific provisions in your conflicts of interest policy that you implement where appropriate;
- (c) adequately training employees about your conflicts of interest policy;
- (d) having appropriate remuneration systems that support risk management and do not create incentives for employee misconduct;
- (e) monitoring employee conduct through, for example, exceptional reporting of unusual events and random review or audit of transaction records;
- (f) maintaining an internal audit function;
- (g) conducting peer reviews;
- (h) having whistleblower policies and procedures;
- (i) electronically monitoring high-risk functions; and
- (j) implementing other controls to prevent misappropriation of client funds, such as co-signing policies.

### **Fraud**

RG 000.91 You can manage the risk of fraud, and the risk of other illegal activities being undertaken through your platform, by:

- (a) segregating duties, particularly for staff involved in high-risk functions;
- (b) maintaining an internal audit function;
- (c) conducting peer reviews;
- (d) reporting unusual events;
- (e) implementing whistleblower policies, including externally managed confidential hotlines;

- (f) rotating staff involved in high-risk functions;
- (g) requiring dual approvals for significant transactions;
- (h) ensuring regular reporting from external service providers;
- (i) conducting inquiries about the offering company and associated persons; and
- (j) implementing effective and comprehensive checking processes.

### Compliance measures

- RG 000.92 An AFS licensee is required by its AFS licence conditions to establish and maintain compliance measures that ensure, as far as is reasonably practicable, that it complies with the provisions of the financial services laws: condition 4 in [Pro Forma 209 Australian financial services licence conditions](#) (PF 209).
- RG 000.93 To meet this requirement and manage your risk of non-compliance, you will generally need a number of processes and systems that operate robustly to manage the relevant risks—for example:
- (a) disclosure and reporting;
  - (b) having adequate arrangements to manage conflict of interests;
  - (c) ensuring fees are calculated and deducted correctly;
  - (d) meeting client money handling requirements;
  - (e) compliant complaints handling;
  - (f) ensuring staff competency; and
  - (g) meeting financial requirements.

## Compensation arrangements

- RG 000.94 If a CSF intermediary provides a crowd-funding service to a person as a retail client, it must have adequate arrangements for compensating them for loss or damage suffered because of breaches of its obligations under Ch 7 of the Corporations Act.

Note: You will need to consider both retail clients that are investors and those that are companies making CSF offers.

- RG 000.95 The objective of the compensation requirements is to reduce the risk that compensation claims to retail clients cannot be met by a licensee due to a lack of available financial resources. They are not a mechanism for providing compensation directly to consumers.

- RG 000.96 Your compensation arrangements must:
- (a) satisfy the requirements in the Corporations Regulations to obtain adequate professional indemnity (PI) insurance cover, considering the nature of your business and your potential liability for compensation claims (reg 7.6.02AAA); or
  - (b) be approved by ASIC as alternative arrangements.
- RG 000.97 We have provided guidance on what we regard as the minimum requirements for adequate PI insurance in Section C of RG 126.

## Client money handling

- RG 000.98 Money received by a CSF intermediary from investor clients must be held in an account of the licensee that is kept under s981B of the Corporations Act and operated as a trust account in accordance with regs 7.8.01–7.8.03. There are also particular requirements about receipt and payment of the money under the CSF regime, as discussed at RG 000.148. We expect you to have appropriate systems and controls to ensure that you meet these requirements.
- RG 000.99 An AFS licensee has obligations to keep records of financial transactions under s988A of the Corporations Act. The annual lodgement of your financial statements must be accompanied by an audit report (by the auditor of your financial statements) on compliance with the requirements for keeping the s981B account.

## Providing a Financial Services Guide

- RG 000.100 An AFS licensee providing financial services to a retail client must give them a Financial Services Guide under Div 2 of Pt 7.7 of the Corporations Act. Generally, this must be given as soon as practicable after it becomes apparent that a financial service will or is likely to be provided to the client.
- RG 000.101 For retail clients that are investors in a CSF offer, the Financial Services Guide could be provided electronically through your platform to persons accessing the application facility, as that is the time when you begin providing the financial service to investors.
- RG 000.102 For retail clients that are companies making CSF offers, the Financial Services Guide could be given by email when it appears likely that they will enter a hosting agreement—as it is the entry into the hosting agreement that commences your provision of the financial services to companies making CSF offers through your platform.

RG 000.103 The Financial Services Guide provides important information. It needs to include clear disclosure, including an explanation of how you are remunerated.

Note: See [Regulatory Guide 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) for guidance on preparing a Financial Services Guide.

RG 000.104 An authorised representative of an AFS licensee who provides financial services to a retail client must also give a Financial Services Guide. This will apply if an authorised representative provides the communication facility or undertakes gatekeeper checks on your behalf.

## Advertising by CSF intermediaries

RG 000.105 Advertising by a CSF intermediary may take many forms, including by posting content on the platform (including the webpages with the application facility and the communication facility), internet, social media, television, radio or print advertising, conducting webinars or seminars, and inclusion of information in social media. All advertising that a CSF intermediary causes or authorises to be communicated must comply with certain requirements, whether or not it is attributed to the CSF intermediary.

RG 000.106 You need to ensure that your advertising:

- (a) is not misleading or deceptive, including that it is balanced and that there are reasonable grounds for any statements about the future;
- (b) complies with s738ZG of the Corporations Act, if it relates to a CSF offer or proposed offer; and
- (c) if it contains financial product advice, is provided when you have an authorisation in your AFS licence to provide the financial product advice (if required).

### Advertising of CSF offers

RG 000.107 Generally, under s738ZG of the Corporations Act, a person must not:

- (a) advertise a CSF offer or intended offer; or
- (b) publish a statement that:
  - (i) directly or indirectly refers to a CSF offer or intended offer; or
  - (ii) is reasonably likely to induce people to apply for securities pursuant to a CSF offer or intended offer.

RG 000.108 This restriction does not apply where the advertisement or publication states that a person should, in deciding whether to make an application under the CSF offer, consider the CSF offer document and the general risk warning (whether or not the advertisement or publication also contains other material).

RG 000.109 This requirement applies to CSF intermediaries as well as companies making CSF offers and other persons. A number of exceptions apply.

Note: For further information see RG XXX.

### **Not misleading or deceptive**

RG 000.110 Advertising, whether of a CSF offer or of your platform, must not be misleading or deceptive. Advertising includes material that you publish on the communication facility. See [Regulatory Guide 234 Advertising financial products and services \(including credit\): Good practice guidance \(RG 234\)](#) for guidance to help you ensure that your advertising is not misleading.

Note: See RG XXX for further guidance about advertising in the context of crowd-sourced funding.

RG 000.111 It may be misleading to:

- (a) state success stories without acknowledging a significant failure to provide returns to investors, if that is the case;
- (b) present views about a CSF offer as those of investors, if in fact these are your views (as the CSF intermediary) or the views of your associate rather than views of other investors; or
- (c) quote levels of investment that include investments by you (as the CSF intermediary) or your associates, or associates of the company making the CSF offer, or amounts that are subject to cooling-off, if the reader may be given the impression that the level of investment shows the confirmed level of interest of unassociated public investors.

RG 000.112 When considering the placement, presentation and content of advertising or other communications to clients, it is good practice to consider the context. Information provided by electronic media may not be read as thoroughly in some cases, so it is particularly important for readers' understanding that the information is layered appropriately. For example, key information that is necessary for understanding should not be placed at the bottom of a webpage where it can only be accessed by scrolling, or through links that are not clear and prominent.

RG 000.113 Following good practices that are informed by an understanding of how those exposed to advertising are likely to be affected by it, especially with robust consumer testing, will help you ensure advertising is not misleading.

## **Financial product advice**

RG 000.114 Generally, a person who carries on a business of providing financial services must have an AFS licence authorising the provision of those services. Provision of financial product advice is a separate financial service to being

a CSF intermediary. Generally, if you include in advertising or other communications (on the communication facility or otherwise) matters of opinion or a recommendation that is intended to, or may be reasonably regarded as intended to, influence a decision about financial products (such as shares offered or to be offered through your platform), that will be financial product advice: s766B of the Corporations Act.

Note: See [Regulatory Guide 36](#) *Licensing: Financial product advice and dealing* (RG 36), [Regulatory Guide 175](#) *Licensing: Financial product advisors—Conduct and disclosure* (RG 175) and [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244).

- RG 000.115 It is not financial product advice to provide opinions or recommendations that only influence a decision about a financial *service* (such as the decision to use your platform) and that are not intended to, and cannot be reasonably regarded as intended to, influence a decision about any financial *product* (such as shares offered through your platform).
- RG 000.116 It is not financial product advice to provide a CSF offer document or to communicate a statement that is attributed to, and is contained in or drawn from, the document: reg 7.1.08(3A).
- RG 000.117 It is not financial product advice to filter or screen CSF offers when deciding whether to publish the offers on your platform. Disclosing that you undertake filtering, if it is based on matters of opinion about things that could affect a decision whether to offer or apply for shares, could be financial product advice.

## C Specific obligations under the CSF regime

### Key points

CSF intermediaries have specific obligations under the CSF regime in the Corporations Act, including in relation to:

- gatekeeper obligations (see RG 000.119–RG 000.131);
- providing certain information (see RG 000.132–RG 000.134);
- providing an application facility (see RG 000.135–RG 000.136);
- providing a communication facility (see RG 000.137–RG 000.147);
- dealing with application money (see RG 000.148–RG 000.149);
- timing rules for CSF offers (see RG 000.150–RG 000.153); and
- defective CSF offer documents (see RG 000.154–RG 000.159).

Additional requirements apply for retail clients (see RG 000.160–RG 000.169).

- RG 000.118 In addition to complying with your general obligations as an AFS licensee under Ch 7 of the Corporations Act, you must also comply with the specific obligations for CSF intermediaries set out in Pt 6D.3A.

### Gatekeeper obligations

- RG 000.119 A CSF intermediary has certain specific obligations that apply in recognition of its important role as a ‘gatekeeper’ for its platform, which include:
- (a) performing certain checks before publishing a CSF offer document on your platform; and
  - (b) not publishing, or not continuing to publish, a CSF offer document on your platform in certain circumstances.

### Completing the required checks

- RG 000.120 Before publishing a CSF offer document (or a supplementary or replacement document) on your platform, you have to perform certain checks to a reasonable standard. The intention of this requirement is not for you to conduct comprehensive checks on the company making a CSF offer (as directors of a public company making an initial public offering may do to rely on statutory defences of having met duties of due diligence), but rather to ensure you do not publish, or continue to publish, the CSF offer document in specific circumstances.

Note: See [Report 484](#) *Due diligence practices in initial public offerings* (REP 484).

RG 000.121 The checks that you must complete are specified in the Corporations Regulations, and summarised below in Table 2. It is important that you are familiar with the detail of the checks set out in the Corporations Regulations.

**Table 2: Checks to be completed by a CSF intermediary about a company seeking to make a CSF offer**

Check	Summary	Corporations Regulations reference
Identity of the company	You must check the following details of the company: <ul style="list-style-type: none"> <li>name, Australian Company Number (ACN) and type (e.g. public company);</li> <li>address of its registered office; and</li> <li>address of its principal place of business.</li> </ul>	reg 6D.3A.08(2)
Eligibility to make a CSF offer and the CSF offer document	You must check whether: <ul style="list-style-type: none"> <li>the company is an 'eligible CSF company' under s738H(1); and Note: For further information see RG XXX.</li> <li>the CSF offer document contains the information required by regs 6D.3A.02–6D.3A.06, and is worded and presented in a 'clear, concise and effective' manner.  Note 1: The required topics must not merely be mentioned and addressed—you need to check if all of the required information is provided about each of the required elements. RG XXX provides guidance on the information required to be in the CSF offer document.  Note 2: A CSF offer document may also contain additional information.</li> </ul>	reg 6D.3A.08(3)
Information about key personnel	You must check the names and addresses of each current and proposed director and other officer or senior manager of the company, and whether the CSF offer document contains required information about those persons and the company  Note: For further information see RG XXX.	reg 6D.3A.08(4)

Source: Regulation 6D.3A.08 of the Corporations Regulations.

RG 000.122 These checks must be done to a 'reasonable standard', which is explained in reg 6D.3A.09 of the Corporations Regulations. To meet this requirement you must, to the extent that information to be checked is of a kind that is included in a register kept by ASIC under the Corporations Act or on ASIC's website, check:

- (a) whether the information is included in that register or on that website; and
- (b) if it is included—whether the information is contrary to any other information that you have.

RG 000.123 The prescribed checks under the CSF regime are a minimum requirement and are not intended to limit the checks conducted, or information that a CSF intermediary may wish to seek from an offering company or its officers. It is important, if you lead potential clients to believe that you will undertake

certain checks or achieve a certain level of quality in CSF offers, that you take the necessary reasonable steps to ensure these expectations are met.

RG 000.124 Depending on the circumstances, as part of checking that the company has its principal place of business in Australia and most of its directors ordinarily resident in Australia, you should make reasonable further inquiries of an offering company that requests the funds raised to be paid directly to an offshore bank account, and only transfer the money to this account if you do not find evidence that the company is not eligible or that the fundraising is associated with illegal activities.

RG 000.125 For checking whether the CSF offer document is worded or presented in a 'clear, concise and effective' manner, you must check the document in accordance with a reasonable process that you have developed, documented and implemented for this purpose.

Note: See guidance on wording and presenting a CSF offer document in a 'clear, concise and effective' manner in RG XXX.

### **Requesting information from the offering company**

RG 000.126 To request information or matters described in Table 2 that are not of a kind that is included in a register kept by ASIC under the Corporations Act or on ASIC's website, you need to:

- (a) explain in writing to the offering company what information or matters are required, including the level of detail required for each; and

Note: See RG XXX for guidance on the information to be included in a CSF offer document, which may assist in relation to this requirement.

- (b) require the offering company to provide the information and matters to you in accordance with a reasonable process that you have developed, documented and implemented for this purpose.

RG 000.127 We expect that a reasonable process for requiring an offering company to provide information will generally include:

- (a) contractual promises by the offering company to provide the information compliantly and in accordance with the requirements that have been explained;
- (b) checking that the offering company's relevant officers understand the requirements as explained;
- (c) using independent and reliable sources of information, where reasonably available, to check the information is accurate and complete;
- (d) checking that the offering company's relevant officers understand the potential practical, reputational and civil and criminal consequences that may flow from failure to provide the required information in relevant circumstances;

- (e) having, and informing the offering company that you have, an active process for monitoring communications on the communication facility and complaints received, to identify possible failures of disclosure and take action where appropriate; and
- (f) requiring personal confirmations by relevant directors that the information is accurate and complete based on their knowledge.

RG 000.128 What is a reasonable process will depend on the nature, scale and complexity of your business and the companies seeking to use your platform. Fewer steps may be needed to the extent that you apply filtering criteria to reduce the likelihood of your platform being used by offering companies that would not meet the disclosure requirements.

**Failure to complete the prescribed checks**

RG 000.129 The consequences of failing to conduct one of the gatekeeper checks, or failing to conduct a check to a reasonable standard, are serious. It is a strict liability offence to not comply with this requirement and if you do not comply you are taken to have knowledge of anything you would have had knowledge of had you conducted the check to a reasonable standard. This is relevant to determining whether you meet the other gatekeeper obligation in relation to not publishing, or continue to publish, a CSF offer document in certain circumstances (see RG 000.130).

**Publishing of CSF offer documents**

RG 000.130 A CSF intermediary must not publish or continue to publish a CSF offer document in four specific circumstances, which are summarised in Table 3.

**Table 3: When a CSF intermediary must not publish or continue to publish a CSF offer document**

Circumstance	Details
The CSF intermediary is not satisfied as to the identity of the offering company or of its directors or other officers	<p>The CSF intermediary must satisfy itself as to the identity of the company making the CSF offer and its directors, officers and senior managers.</p> <p>Note: ‘Officer’ is defined in s9 of the Corporations Act, and includes persons who exert significant influence over a company or its directors.</p>

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Circumstance	Details
The CSF intermediary has reason to believe that any of the directors or other officers are not of good fame or character	<p>The law does not define ‘good fame or character’ for this purpose, but factors that may give a CSF intermediary reason to believe that a person is not of good fame or character include:</p> <ul style="list-style-type: none"> <li>• criminal or civil penalty proceedings or disciplinary action where they were found to have engaged in dishonest or fraudulent activity;</li> <li>• insolvency history, depending on the circumstances;</li> <li>• bans from managing corporations;</li> <li>• bans from providing financial services; and</li> <li>• failure to be frank and honest in dealing with and providing information to the intermediary.</li> </ul>
The CSF intermediary has reason to believe the offering company or its directors or other officers have, in relation to the CSF offer, knowingly engaged in conduct that is misleading or deceptive or likely to mislead or deceive	<p>Conduct that is misleading or deceptive, or likely to mislead or deceive, may occur at various stages of the CSF offer—for example:</p> <ul style="list-style-type: none"> <li>• pre-offer—where a CSF intermediary has reason to believe that the directors’ representations about an offer are dishonest; and</li> <li>• during an offer—where a CSF intermediary has reason to believe that the directors have provided misleading information in response to a post on the communication facility.</li> </ul> <p>Note: Where the relevant conduct is in relation to a defective CSF offer document, the specific rules covering defective documents will apply (see RG 000.154–RG 000.159).</p>
The CSF intermediary has reason to believe the offer is not an eligible CSF offer	<p>This rule intends to ensure that offering companies that purport to be eligible to raise funds under the CSF regime, but are not in fact eligible, are excluded from making a CSF offer. For example, a CSF intermediary would have reason to believe an offer is not an eligible CSF offer if it has reason to believe that it does not comply with the issuer cap (see RG XXX).</p>

Source: Section 738Q(5) of the Corporations Act.

### Arrangements to ensure compliance with gatekeeper obligations

- RG 000.131 To ensure its effectiveness as a gatekeeper, a CSF intermediary must have in place ‘adequate arrangements’, recorded in writing, to ensure it complies with the gatekeeper obligations. This means you must have in place sufficient policies, systems and procedures that ensure you are aware of, and comply with (on an ongoing basis), your gatekeeper obligations—and ensure these are followed in practice.

### Prominent display of certain information on platform

- RG 000.132 A CSF intermediary must prominently display the following information on its platform:

- (a) a prescribed general risk warning, at all times while a CSF offer is open or suspended;
- (b) the platform fees paid to it by the company making the CSF offer, and any interests that it has or intends to take in the company;
- (c) information relating to retail clients' cooling-off rights, while an offer is open or suspended (see RG 000.163– RG 000.164).

RG 000.133 Whether information is displayed prominently will depend on the particular facts and circumstances, including the design of your CSF platform. For example, information presented at the top of a webpage with sufficient space or bordering to separate it from other information is more likely to be prominent, while information contained in a lengthy disclaimer and not likely to come to the attention of a potential investor is unlikely to be sufficiently prominent. To be prominent, the information—such as the statement to consider the general risk warning and CSF offer document—needs to be on a page that an investor must access before applying for shares under the CSF offer.

RG 000.134 The CSF offer document must be published on the platform containing the application facility. To ensure this, it would be appropriate for the CSF offer document to be displayed to, or downloaded by, the investor prior to them applying for shares. This will ensure that the investor is able to correctly acknowledge that they have read the CSF offer document, and can form part of arrangements to manage the risk of investor misunderstanding and complaints. Ensuring this would form part of arrangements to manage the risk of the CSF intermediary not meeting its gatekeeper obligations, by increasing the chances of investors identifying problems in the CSF offer document that the CSF intermediary should have identified.

## Providing an application facility

RG 000.135 A CSF intermediary must provide a facility (referred to as the application facility) on its platform to enable people to make applications in response to CSF offers. All applications must be made through this facility and you must as soon as practicable reject, and refund any money paid for, any applications made other than through the application facility. Restricting the making of applications to the application facility ensures that applicants are made aware of, and receive, the investor protections under the CSF regime.

Note: You must ensure that retail clients complete a risk acknowledgment prior to making an application (see RG 000.166).

RG 000.136 The application facility must only be available while the relevant CSF offer is open—applicants must not be able to make applications while an offer is closed or suspended.

## Providing a communication facility

- RG 000.137 A CSF intermediary must provide a communication facility in relation to each CSF offer while the offer is open or suspended.
- RG 000.138 The purpose of the communication facility is to allow potential investors, the company making the CSF offer and the CSF intermediary to communicate with each other about the offer. The facility must enable a person who accesses the CSF offer document to:
- (a) make posts relating to the offer;
  - (b) see posts relating to the offer; and
  - (c) ask the company making the offer, or the CSF intermediary, questions relating to the offer.
- RG 000.139 The communication facility must also enable the company making the offer and the CSF intermediary to respond to questions and posts.
- RG 000.140 The communication facility does not need to be open to the general public, but must be accessible to persons that are able to access the CSF offer document. If a person is able to access a CSF offer document once they have registered on your platform, they must be able to make and see posts on the communication facility for the offer on registration.

### Communications from the company making a CSF offer

- RG 000.141 Persons who are officers, employees or agents of the company making a CSF offer (or a related party or associate) or of the CSF intermediary (or an associate), must clearly disclose that fact when posting on the communication facility.

### Monitoring and quality control of communication facility

- RG 000.142 You may decide your approach to monitoring posts on your communication facility. This may be a pre-vetting arrangement where you review posts before they appear, or a review of posts as they are posted and in response to complaints.
- RG 000.143 You may, and may be required to, refuse to post communications on the facility or remove them from the facility if they are misleading or otherwise unlawful or clearly irrelevant. You may not refuse to post or remove communications from the facility because they are negative or critical towards the offer, you, or an offering company.
- RG 000.144 You should consider what approach is appropriate in light of the particular risks in the circumstances—for example, the nature of the CSF offer, the level of investor interest, and how the communication facility is being used.

You should therefore have sufficient resources and procedures to allow you to adapt your monitoring of the communication facility as appropriate for each CSF offer, and keep in mind the purpose of the communication facility to inform investment decisions through frank discussion in good faith.

### Misleading information

- RG 000.145 You must take action—by removing a CSF offer document from your platform and closing a CSF offer—if you have reason to believe that the company making the offer, or its director or officer, has knowingly engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive: see s738Q(5)(c) of the Corporations Act. This could include, for example, providing misleading information in response to a post on the communication facility.
- RG 000.146 This obligation only arises where you have reason to believe the offering company or relevant person *knowingly* engaged in misleading or deceptive conduct. It applies when you have reason to believe, even if you do not in fact believe, and does not require proof beyond reasonable doubt.
- RG 000.147 There may be cases where an offering company unintentionally provides information that is misleading, which in itself does not require you to take action. However, if the company subsequently fails to provide further disclosure to ensure readers are not misled, this may separately be misleading conduct that is knowingly engaged in, which would require you to remove the CSF offer document and close the CSF offer.

### Dealing with application money

- RG 000.148 The client money provisions in Div 2 of Pt 7.8 of the Corporations Act apply in relation to money that is received by a CSF intermediary for a CSF offer. Generally, money paid to an AFS licensee to be used to pay an issuer of shares or other financial products to acquire the financial products must be held in a trust account for the paying client. Regulations 7.8.01–7.8.03 of the Corporations Regulations set out requirements for operating the account.
- RG 000.149 In addition, you must deal with application money for a CSF offer in certain ways in different circumstances, as summarised below in Table 4.

**Table 4: Dealing with application money for a CSF offer**

Circumstance	A CSF intermediary must
<p>A CSF offer is complete and the company has issued shares to applicants.</p> <p>Note: An offer is complete in the circumstances set out in s738N(7) of the Corporations Act.</p>	Pay the application money to the company, less fees payable to the CSF intermediary under the hosting agreement, as soon as practicable.
<p>A CSF offer is closed:</p> <ul style="list-style-type: none"> <li>for a reason other than because the CSF intermediary was required to do so under s738N(4)(a)–(c) of the Corporations Act; or</li> <li>because the intermediary was required to do so under s738N(4)(a)–(c), and all withdrawal periods under the offer have ended, and the applications not withdrawn at that time do not meet the minimum subscription amount for the offer.</li> </ul>	Refund the application money to applicants who have not withdrawn their applications or had their applications rejected.
A person withdraws an application as permitted under s738T of the Corporations Act, or the person's application is rejected or unsuccessful for any other reason.	Refund the application money to the applicant as soon as practicable.

Source: Section 738ZB of the Corporations Act.

## Timing rules for CSF offers

### General timing rules

- RG 000.150 A CSF offer is open from the time when it is first published on a CSF intermediary's platform, and can only be closed by the intermediary giving written notice on its platform that the CSF offer is closed.
- RG 000.151 You have the power to close a CSF offer at any time, subject to limits imposed by the hosting arrangement with the company making the offer (other than limits that would prevent you from closing an offer where you are required to do so under the CSF regime).

### When a CSF offer must be closed

- RG 000.152 You must close a CSF offer at the earliest of the following times:
- three months after the offer is made;
  - any date specified in the CSF offer document that the offer will close;
  - when you consider the offer to be fully subscribed;
  - when the company making the offer withdraws the offer;
  - when the gatekeeper obligations require you to remove the CSF offer document from your platform (see RG 000.119–RG 000.130).

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### When a CSF offer must be suspended

RG 000.153 You must suspend a CSF offer (if you do not close it) if you become aware that the CSF offer document is defective (see RG 000.154–RG 000.156).

### Defective CSF offer documents

RG 000.154 A CSF offer document will be defective where:

- (a) it contains a misleading or deceptive statement; or
- (b) there is an omission of information required to be included; or
- (c) a new circumstance has arisen that would have been required to have been included, had it arisen before the document was published.

RG 000.155 If you become aware that a CSF offer document is defective, you must:

- (a) notify the company making the CSF offer as soon as possible; and
- (b) remove the CSF offer document from your platform and either close or suspend the offer by giving notice on your platform.

Note: You are taken to have knowledge of any matter that you would have known had you conducted the relevant prescribed checks to a reasonable standard (see RG 000.129).

RG 000.156 If you suspend a CSF offer, a notice of suspension must continue to appear on the platform for the entire time the offer is suspended, and no applications may be received while the offer is suspended.

### Supplementary or replacement CSF offer documents

RG 000.157 An offering company may decide to prepare a supplementary or replacement CSF offer document to correct a defect in a CSF offer document.

RG 000.158 Where you publish a supplementary or replacement CSF offer document on your platform you must, as soon as practicable, give each person who has already applied to the CSF offer a written notice, accompanied by that document, advising that they may, within one month after the date of the notice, withdraw their application and have their application money refunded.

RG 000.159 If a CSF offer has been suspended, the suspension ends when you first publish the supplementary or replacement CSF offer document on your platform.

### Additional obligations when dealing with retail clients

RG 000.160 When providing a crowd-funding service to a retail client seeking to apply for shares under a CSF offer, a CSF intermediary must comply with additional obligations under the CSF regime that involve:

- (a) unconditional cooling-off rights;
- (b) risk acknowledgements;
- (c) a cap on investment; and
- (d) restrictions on financial assistance.

RG 000.161 These additional obligations aim to ensure that retail clients can make informed decisions, and are not exposed to excessive levels of risk.

RG 000.162 If you are not going to treat a potential investor as a retail client, you must determine that the person is not a retail client when they first use the application facility to apply for a CSF offer.

Note: The person will be a retail client where they are a retail client for the purposes of Ch 7 of the Corporations Act (s738D).

### Unconditional cooling-off rights

RG 000.163 All retail clients who make an application in response to a CSF offer have an unconditional right to withdraw their application within five business days of making the application. The applicant must exercise this right in accordance with the method specified by the CSF intermediary on its platform.

RG 000.164 You must ensure that the following statements appear prominently on your platform at all times while a CSF offer is open or suspended:

- (a) a statement about the right of retail clients to withdraw applications; and
- (b) a statement specifying a method for a person to exercise this right.

RG 000.165 As an AFS licensee you must do all things necessary to ensure that you provide the cooling-off method, as part of your financial service, in a manner that is honest, efficient and fair. You should ensure the method is simple to use, and consider using an online facility since the application will have been made online.

### Risk acknowledgements

RG 000.166 A CSF intermediary must ensure that a retail client is not able to make an application under a CSF offer unless they complete an applicant risk acknowledgement containing the exact wording in the Corporations Regulations. You may choose to have an investor digitally sign the acknowledgement, although this is not required for it to be 'completed'.

Note: See reg 6D.3A.07 for the prescribed wording of the risk acknowledgement.

### Investor cap

RG 000.167 A CSF intermediary must reject an application from a retail client where it would breach the \$10,000 cap on the maximum amount that a retail client

can pay for, and have payable in respect of, applications for CSF offers made by a particular company via the same intermediary over a 12-month period.

- RG 000.168 We expect you to have the necessary systems and procedures in place to ensure compliance with this obligation. For instance, you should have systems and procedures to ensure that a retail client cannot make one or more applications in response to an offer from a company for more than \$10,000 in total. This would generally involve reasonable identification processes for each retail client.

### **Restrictions on financial assistance**

- RG 000.169 As a CSF intermediary, you must not financially assist a retail client in relation to a CSF offer, or arrange financial assistance for a retail client to acquire shares under a CSF offer, that you are hosting or intending to host.

## **Consequences if there is a breach**

- RG 000.170 As a CSF intermediary, you will commit an offence if you:

- (a) fail to comply with your gatekeeper obligations;
- (b) do not have in place ‘adequate arrangements’ to ensure you comply with the gatekeeper obligations;

Note: This means that you must have in place policies, systems and procedures to ensure that you comply with the gatekeeper obligations, and ensure that those policies, systems and procedures are adhered to. This must be documented in writing.

- (c) publish a CSF offer document or information about a CSF offer that includes a statement or information that is materially misleading and is likely to induce an investor to apply under the offer and you know, or ought reasonably to have known, that the statement or information is materially misleading: s1041E.

- RG 000.171 A breach of any of these obligations is also a breach of your obligation to comply with financial services laws under s912A of the Corporations Act. The requirement to report significant breaches under s912D will therefore apply. We may consider action to include additional conditions in an AFS licensee, or suspend or revoke their licence if appropriate, if a breach occurs—and we may take into account whether there has been any failure to report significant breaches to ASIC.

## D Data reporting requirements

- RG 000.172 A CSF intermediary will be asked to provide certain information to us about its business after the end of each financial year. We may specify the form and timing for providing the information and other requirements, to enable you to put in place measures to collect the information. We expect most of the required information will be readily available in your records from management of your business.
- RG 000.173 The required information may include information about:
- (a) the total amount raised by all eligible CSF companies through your platform;
  - (b) successful CSF offers made through your platform;
  - (c) unsuccessful offers;
  - (d) investors in CSF offers; and
  - (e) operation of your platform.
- RG 000.174 This information will help us better understand your business and how it compares to other CSF intermediary businesses. We may publish a report based on the aggregated information collected.
- RG 000.175 We will adjust the data reporting requirements as necessary, based on our experience in previous collection cycles. We will seek to avoid requiring information that is similar to information we already have, and will have regard to minimising compliance costs.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
communication facility	A facility provided by a CSF intermediary in relation to a CSF offer that can be used by investors, the company making the offer and the CSF intermediary to communicate about the CSF offer
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of the Act
crowd-funding service	Has the meaning given in s766F of the Corporations Act
CSF	Crowd-sourced funding
CSF intermediary	An AFS licensee whose licence expressly authorises the licensee to provide a crowd-funding service Note: See s738C of the Corporations Act.
CSF offer	An offer of ordinary shares that is made under the CSF regime in Pt 6D.3A of the Corporations Act Note: See s738B of the Corporations Act.
CSF offer document	A document setting out the terms of a CSF offer that complies with s738J of the Corporations Act
CSF regime	The statutory regime for crowd-sourced funding in Pt 6D.3A of the Corporations Act regulating CSF offers
eligible CSF company	A company that meets the requirements in s738H of the Corporations Act to be eligible to make a CSF offer
general risk warning	A statement in the terms specified in reg 6D.3A.10 of the Corporations Regulations, which alerts retail investors to the risks associated with investing in CSF offers Note 1: See s738ZA(2) of the Corporations Act. Note 2: See also reg 6D.3A.03 for the version of the risk warning that must be included in a CSF offer document.
platform	A website or other electronic facility provided by the CSF intermediary to host a CSF offer
related party	Has the meaning given by s738G(3) of the Corporations Act

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<b>Term</b>	<b>Meaning in this document</b>
retail client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations

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## Related information

### Headnotes

crowd-sourced funding, CSF, checks, document, gatekeeper, intermediary, offer, platform, regime

### Class orders and legislative instruments

[ASIC Corporations \(Repeal and Transitional\) Instrument 2017/186](#)

ASIC Corporations (Financial Requirements for Crowd-Sourced Funding Intermediaries) Instrument 2017/XX

### Information sheets

[INFO 213](#) *Marketplace lending (peer-to-peer lending) products*

### Pro formas

[PF 209](#) *Australian financial services licence conditions*

### Regulatory guides

[RG 1](#) *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence*

[RG 2](#) *AFS Licensing Kit: Part 2—Preparing your AFS licence application*

[RG 3](#) *AFS Licensing Kit: Part 3—Preparing your additional proofs*

[RG 36](#) *Licensing: Financial product advice and dealing*

[RG 78](#) *Breach reporting by AFS licensees*

[RG 98](#) *Licensing: Administrative action against financial services providers*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 105](#) *Licensing: Organisational competence*

[RG 126](#) *Compensation and insurance arrangements for AFS licensees*

[RG 133](#) *Managed investments and custodial or depository services: Holding assets*

[RG 148](#) *Platforms that are managed investment schemes and nominee and custody services*

[RG 165](#) *Licensing: Internal and external dispute resolution*

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[RG 166](#) *Licensing: Financial requirements*

[RG 167](#) *Licensing: Discretionary powers*

[RG 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

[RG 172](#) *Australian market licences: Australian operators*

[RG 175](#) *Licensing: Financial product advisors—Conduct and disclosure*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 234](#) *Advertising financial products and services (including credit): Good practice guidance*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG XXX](#) *Crowd-sourced funding: Guide for public companies*

## **Legislation**

Corporations Act, Pts 2D.6, 6D.3A, 7.6, 7.7, 7.8, s9, 708, 731G, 738B, 738C, 738H, 738J, 738N, 738Q, 738T, 738ZA, 738ZB, 738ZG, 761A, 766B, 766C, 766F, 769B, 912A, 912D, 913B, 914A, 915C, 916F, 920A, 921A, 981B, 988A, 989A, 1041E

*Corporations Amendment (Crowd-sourced Funding) Act 2017*

Corporations Amendment (Crowd-sourced Funding) Regulations 2017

Corporations Regulations, regs 6D.3A.02–6D.3A.06, 6D.3A.08, 6D.3A.09, 7.8.01–7.8.03, 7.1.08, 7.6.02AAA, 7.6.04

## **Reports**

[REP 429](#) *Cyber resilience: Health check*

[REP 484](#) *Due diligence practices in initial public offerings*

## **ASIC forms**

[Form FS20](#) *Change of details for an Australian financial services licence*

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