

Attachment 2 to CP 289: Proposed Appendix 9 to RG 166

This attachment contains draft Appendix 9 to Regulatory Guide 166 *Licensing: Financial requirements* (RG 166), which contains our proposed new guidance on the financial resource requirements that will apply to crowd-sourced funding (CSF) intermediaries. We are proposing that Appendix 9, and any consequential amendments, be incorporated into RG 166 once this guidance has been finalised.

See Consultation Paper 289 *Crowd-sourced funding: Guide for intermediaries* (CP 289) for our complete proposals.

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Appendix 9: CSF intermediaries

Key points

If you are a CSF intermediary, you must meet:

- the standard solvency and positive net assets requirement;
- a tailored cash needs requirement;
- a tailored audit requirement;
- the standard surplus liquid funds (SLF) requirement; and
- depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

What requirements apply?

RG 166.345 A CSF intermediary must meet:

- (a) the standard solvency and positive net assets requirement (see RG 166.32–RG 166.34 in Section B);
- (b) a tailored cash needs requirement (see RG 166.346–RG 166.347 and Table 15);
- (c) a tailored audit requirement (see RG 166.348–RG 166.350);
- (d) the surplus liquid funds (SLF) requirement where you hold client money or property valued at \$100,000 or more (see Section C); and
- (e) depending on the financial products and services you offer, any other requirements set out in this guide that apply to you.

Note: A CSF intermediary that is also a licensee authorised to operate a registered scheme as a responsible entity, operate an IDPS, provide a custodial or depository service (except certain incidental providers), or that is subject to s912AB (as notionally inserted by [CO 12/752]) is not required to comply with the financial resource requirements that ordinarily apply to CSF intermediaries. This is because they are subject to equivalent requirements under the relevant class order for the other type of licensee: see s912AH(1) (as notionally inserted by ASIC Corporations (Financial Requirements for Crowd-Sourced Funding Intermediaries) Instrument 2017/XX).

The tailored cash needs requirement

Note: This requirement replaces the standard cash needs requirement in Section B of this guide.

RG 166.346 You must meet the tailored cash needs requirement for CSF intermediaries. You will need to prepare a cash flow projection (see Table 15), which covers a period of at least 12 months—that is, you must assess your cash needs over at least a 12-month forward period.

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- RG 166.347 You must update your cash flow projection when those cash flows cease to cover at least the next 12 months, or there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 in Table 15. Your board or governing body, or you (if a natural person) must approve the cash flow projection at least quarterly.

Table 15: The tailored cash needs requirement for CSF intermediaries

You must meet all these requirements	
Projection	<p>1 Prepare a projection of your cash flows over at least the next 12 months based on your reasonable estimate of what is likely to happen over this term.</p> <p>Note: You can take into account, for example, the following factors in preparing your projection if you reasonably believe they are likely to be available: assets you hold at the time the projection starts that can be used to pay your liabilities; and inflows you may receive, including income from your business; amounts that you may borrow (e.g. under an overdraft); and amounts that you may receive from an eligible provider under an eligible undertaking.</p> <p>2 Document your calculations and assumptions on which the projection is based, and describe in writing why they are the appropriate assumptions.</p> <p>Note: We expect that a description in writing of your calculations and assumptions will vary according to the nature, scale and complexity of your business.</p> <p>3 Update your projection of cash flows when:</p> <p>(a) those cash flows cease to cover the next 12 months; or</p> <p>(b) there is reason to suspect that an updated projection would differ materially from the current projection or show that you were not meeting items 5 or 6 below.</p> <p>4 Have your cash flow projection approved by the board of directors at least quarterly as satisfying the requirements in this cash needs requirement.</p>
Financial resources	<p>5 Document whether, based on your projection of cash flows, you will have access as needed to enough financial resources to meet your liabilities over the projected term of at least the next 12 months, including any additional liabilities you project will be incurred during that term.</p> <p>6 Document whether, based on the projection of your cash flows, you will hold at all times during the period to which the projection relates, an amount in cash—within the extended meaning in ASIC Corporations (Financial Requirements for Crowd-Sourced Funding Intermediaries) Instrument 2017/XX—equal to or greater than 5% of the greater of:</p> <p>(a) the cash outflow for the projected period of at least the next 12 months (if the projection covers a period longer than 12 months, the cash outflow may be adjusted to produce a 12-month average); or</p> <p>(b) your actual cash outflow for the most recent financial year of at least 360 days for which you have prepared a profit and loss statement.</p> <p>7 Hold at all times in cash the amount referred to in item 6 above.</p>

The tailored audit requirement

Note: This requirement replaces the standard audit requirement in Section B of this guide.

- RG 166.348 All AFS licensees must give us an audit report under s989B(3) for each financial year that includes information about compliance with the financial

requirements that apply to them: see Section B. If you do not have to provide an audit report under s989B(3), you must still give us an audit report about compliance with the financial requirements. You must also give us this information if we request it for a specified period at another time: see s912C(2).

Note: For the form of this compliance report applying to licensees generally, see PF 209, condition 28.

- RG 166.349 As a CSF intermediary, the information you must include in your audit report reflects the financial requirements that apply to you: see s912AH as notionally inserted by ASIC Corporations (Financial Requirements for Crowd-Sourced Funding Intermediaries) Instrument 2017/XX.
- RG 166.350 Your audit report must include statements by a registered company auditor addressed to you and ASIC that, for the relevant period:
- (a) in the auditor's opinion, you:
 - (i) complied with the requirements to have the cash flow projection approved by the board at least quarterly, the requirement to hold at all times the amount you are required to hold in cash, and any other financial requirements applying to you;
 - (ii) had, at all times, a cash flow projection (covering at least the following 12 months) that purported to, and on their face appeared to, demonstrate your solvency; and
 - (iii) correctly calculated the cash flow projections based on the assumptions you used for the projection; and
 - (b) following an examination of the calculations, assumptions and description used in preparing the cash flow projection, including the document prepared under items 5 and 6 in Table 15, the auditor has no reason to believe that:
 - (i) you did not have adequate systems for managing the risk of having insufficient financial resources to meet any financial requirements applying to you;
 - (ii) you failed to document the calculations and assumptions used in preparing the cash flow projections and describe why they are appropriate;
 - (iii) you will not have access when needed to enough financial resources to meet your liabilities over the projected term of at least 12 months or that you will not hold at all times during the period to which the projection relates, in cash, an amount equal to or greater than the current amount you are required to hold in cash; and
 - (iv) the assumptions you adopted for your cash flow projections were unreasonable.

Note: We refer to the auditor statements in paragraph (a) as 'positive assurance' and the statements in paragraph (b) as 'negative assurance'. We expect that when giving negative assurance for the purposes of paragraph (b), the auditor will take into consideration any information from the audit for positive assurance.

Underlying principles of the tailored cash needs requirement

RG 166.351 We consider that meeting the requirement for 12-month projections is sound business practice. A CSF intermediary without adequate cash could give rise to significant disruptions for issuer clients and could also put at risk compliance with its obligations in relation to investors. The requirement for a cash buffer reflects Option 1 as set out in Table 4.

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