



**ASIC**  
Australian Securities &  
Investments Commission

## REGULATORY GUIDE 269

# Approval and oversight of compliance schemes for financial advisers

September 2018

### About this guide

From 1 January 2020, an individual who is authorised to give personal advice to retail clients on relevant financial products (financial adviser) must:

- comply with a code of ethics (code); and
- be covered by a scheme under which their compliance with the code will be monitored and enforced (compliance scheme).

Compliance with the code will be monitored and enforced by monitoring bodies in accordance with compliance schemes approved by ASIC.

This guide sets out our approach to the approval and oversight of a monitoring body's compliance scheme and how we expect a scheme to operate on an ongoing basis.

### 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 guide was issued in September 2018 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

From 1 January 2020, an individual who is authorised to give personal advice to retail clients on relevant financial products (financial adviser) must:

- comply with a code of ethics; and
- be covered by a scheme under which their compliance with the code of ethics will be monitored and enforced.

This guide sets out our approach to approving and overseeing compliance schemes and how we will expect them to operate.

## Background to the professional standards reforms

- RG 269.1 For a number of years, ASIC and others have voiced concerns that the professional, ethical and educational standards of financial advisers are too low and need to be lifted.
- RG 269.2 In response to these concerns, the Australian Government introduced reforms to raise the professional, ethical and educational standards of financial advisers. The adviser professionalism reforms, introduced by the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, commenced on 15 March 2017, but many of the obligations will be phased in over time.
- RG 269.3 As part of the reforms, financial advisers must:
- (a) comply with a single uniform code of ethics (code) from 1 January 2020 (see s921E and 1546F of the *Corporations Act 2001* (Corporations Act)); and

Note 1: The code is being developed by the Financial Adviser Standards and Ethics Authority (FASEA). A [draft version of the code of ethics](#) was released by FASEA on 19 March 2018. Consultation on the draft code closed on 1 June 2018. At the time of release of this guide, FASEA has not released the final code. If there are significant changes from the draft code, we may need to revise our guidance when the final code is released.

Note 2: In this guide, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

- (b) be covered by a scheme under which their compliance with the code will be monitored and enforced (compliance scheme).

## Compliance schemes for financial advisers

RG 269.4 Compliance with the code by financial advisers will be monitored and enforced by monitoring bodies in accordance with compliance schemes approved by ASIC. A monitoring body may be any entity other than an Australian financial services (AFS) licensee or an associate of a licensee: see s921G(3). Financial advice professional associations and professional services firms are examples of the kinds of entities that may wish to have a compliance scheme, but there may be others.

RG 269.5 In this guide we refer to these entities, in the context of their role in operating a compliance scheme, as ‘monitoring bodies’. However, the same entity may carry out other functions (e.g. it may also be a professional association). We refer to the body, in the context of its broader role beyond just acting as a monitoring body, as the ‘entity acting as the monitoring body’.

### When the obligations apply

RG 269.6 An AFS licensee must ensure that all financial advisers authorised under its licence are covered by a compliance scheme that is approved by ASIC: see s921H. If a person becomes an AFS licensee before 15 November 2019:

- (a) in relation to financial advisers who are authorised under their AFS licence on or after 15 November 2019, the requirement in s921H applies on or after 15 November 2019; and
- (b) in relation to financial advisers who were authorised under their AFS licence before 15 November 2019, the licensee must ensure that these financial advisers are covered by a compliance scheme by 1 January 2020 (see s1546G(1)).

RG 269.7 An AFS licensee has 30 business days from the date of authorisation to ensure that a new financial adviser is covered by a compliance scheme: see s921H(2)(a).

RG 269.8 Financial advisers must subscribe to a compliance scheme by 15 November 2019, which is 30 business days before 1 January 2020. Once the 30 business day grace period is taken into account, this means that all financial advisers should be covered by a compliance scheme from 1 January 2020: see paragraph 3.77 of the Explanatory Memorandum to the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 (Explanatory Memorandum).

## Our approach to compliance scheme approval and oversight

RG 269.9 Monitoring and enforcing compliance with the code is a significant responsibility and we will therefore expect monitoring bodies to meet very high standards.

- RG 269.10 ASIC may approve a compliance scheme if we are satisfied that:
- (a) compliance with the code will be appropriately monitored and enforced under the scheme; and
  - (b) the monitoring body has sufficient resources and expertise to appropriately monitor and enforce compliance with the code under the scheme (see s921K(4)).

### **Key principles informing our approach**

- RG 269.11 Our approach is underpinned by three key principles:
- (a) behavioural change;
  - (b) transparency; and
  - (c) consistency and fairness.

- RG 269.12 We have also been informed by our existing guidance.

#### **Behavioural change**

- RG 269.13 One of the key aims of the code and the associated compliance scheme framework is to encourage higher standards of behaviour and professionalism among financial advisers, thereby improving consumer trust in the financial advice industry. This requires financial advisers to:
- (a) feel personally and intrinsically supported and motivated to act in an ethical manner, and in accordance with the code specifically; and
  - (b) have a genuine belief that if they do not comply with the code, that behaviour may be identified and acted on by a monitoring body.

- RG 269.14 This has informed our expectations for robust governance and administration, and effective monitoring and enforcement.

#### **Transparency**

- RG 269.15 Activities of monitoring bodies should be transparent (through public reporting) and subject to regular external review. This will:
- (a) educate financial advisers and AFS licensees on conduct that does and does not comply with the code and the emerging risks of non-compliance;
  - (b) help keep monitoring bodies accountable for the operation of compliance schemes; and
  - (c) help achieve the aim of the professional standards reforms of improving consumer trust in the financial advice industry.

### Consistency and fairness

- RG 269.16 Because financial advisers and AFS licensees may be able to select from a number of different compliance schemes, it is important that there is consistency in the approach to monitoring and enforcement across the schemes.
- RG 269.17 Financial advisers, those who make complaints about them and all other stakeholders should be able to expect issues to be addressed fairly, competently and with an appropriate level of independence, regardless of which compliance scheme covers the adviser.

### Existing guidance

- RG 269.18 We will also be informed by our existing guidance on:
- (a) approving financial services sector codes of conduct, as set out in [Regulatory Guide 183](#) *Approval of financial services sector codes of conduct* (RG 183);
  - (b) approving and overseeing external dispute resolution (EDR) schemes, as set out in [Regulatory Guide 139](#) *Approval and oversight of external dispute resolution schemes* (RG 139); and
  - (c) our oversight role in relation to the Australian Financial Complaints Authority (AFCA), as set out in [Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority* (RG 267).
- RG 269.19 We may revise our guidance after compliance schemes have been operating for a few years and their processes are embedded.

### Possible alternative approaches

- RG 269.20 We recognise that the existence of multiple approved compliance schemes has the potential to result in duplication of work and additional costs for industry. We are open to considering alternative approaches that minimise these outcomes. For example, if prospective monitoring bodies wish to work together to develop best practice standards for code monitoring and enforcement, or pool resources to minimise the costs of monitoring and enforcement, we are open to considering these proposals.

Note: Monitoring bodies should consider any potential competition law implications of these proposals and seek legal advice.

- RG 269.21 We encourage prospective monitoring bodies to provide details of any alternative proposals they might have that address these issues, but remain consistent with the three key principles we have outlined in RG 269.11–RG 269.17.

## Key factors we will consider when assessing applications for compliance scheme approval

- RG 269.22 In assessing whether a compliance scheme meets the criteria in RG 269.10, we will take into account a number of factors—including those set out at paragraph 3.24 of the Explanatory Memorandum:
- (a) the financial, technological and human resources of the monitoring body and where those resources are situated;
  - (b) the number of financial advisers that the scheme is designed to cover;
  - (c) whether the location of the financial advisers that are designed to be covered by the scheme matches the location of the monitoring body's resources;
  - (d) the consultation procedures that the monitoring body intends to use before making any changes to the scheme;
  - (e) the processes and resources that the monitoring body intends to use for administration, data management and reporting (including its capacity to appropriately handle personal information), and to fairly and effectively monitor compliance with the code and the scheme's rules and decisions;
  - (f) whether the monitoring body outsources any of its functions and how responsibility for these functions is maintained; and
  - (g) the competence of the monitoring body's existing staff and its intended training procedures.

## Purpose of this guide

- RG 269.23 This guide is primarily for applicants for compliance scheme approval, but it may also be of interest to financial advisers and AFS licensees who authorise financial advisers. It explains:
- (a) the process for applying for compliance scheme approval (see RG 269.27–RG 269.32 and Section B); and
  - (b) our expectations on:
    - (i) the governance and administration of a compliance scheme, including the role, composition and expertise of the monitoring body's governing body (see RG 269.33–RG 269.35 and Section C);
    - (ii) the monitoring and enforcement activities carried out under the compliance scheme (see RG 269.36–RG 269.38 and Section D); and
    - (iii) the ongoing operation of a compliance scheme, including data collection, analysis and reporting (see RG 269.39–RG 269.41 and Section E).

- RG 269.24 The appendix sets out the ‘if not, why not’ checklist, based on our guidance in Sections C, D and E. This will require the monitoring body to either confirm that it will comply with the expectations in our guidance or, if not, explain why this is the case and the alternative approach the monitoring body will take.
- RG 269.25 In approving a compliance scheme, we may also impose conditions on the approval. ASIC also has the power to revoke the approval of a compliance scheme: see RG 269.42–RG 269.43 and Section F.
- RG 269.26 A monitoring body must also make formal notifications to ASIC (e.g. when a financial adviser fails to comply with a determination or sanction): see RG 269.44–RG 269.46 and Section G.

### **Compliance scheme approval application process**

- RG 269.27 We want to ensure that the compliance scheme approval application process:
- (a) does not put any compliance scheme at a competitive advantage or disadvantage compared to any others (e.g. by announcing the approval of one compliance scheme before another);
  - (b) allows AFS licensees sufficient time to ensure that all of their existing financial advisers are covered by a compliance scheme by 1 January 2020;
  - (c) gives enough certainty to ASIC and to monitoring bodies to allow them to devote appropriate resources to the approval process and the establishment of compliance schemes and their operations; and
  - (d) ensures that all approved compliance schemes operate in a consistent way.
- RG 269.28 For the initial compliance scheme approval application process (i.e. those compliance schemes intending to operate from 15 November 2019), there will be a three-stage application process, which will require monitoring bodies to:
- (a) register an expression of interest in seeking approval of a compliance scheme during October 2018;
  - (b) submit a draft application for compliance scheme approval between 1 November 2018 and 31 December 2018, which we will aim to provide feedback on by 31 March 2019; and
- Note: The draft application must be accompanied by the prescribed fee.
- (c) submit the final application for compliance scheme approval between 1 June 2019 and 30 June 2019, which must address any feedback that we have provided on the draft application.
- RG 269.29 We will be engaging in ongoing dialogue with applicants throughout the compliance scheme approval application process.

- RG 269.30 We expect to announce all approvals for compliance schemes that have complied with this process on the same date, which we expect to be in early October 2019.
- RG 269.31 An application for compliance scheme approval must contain:
- (a) a letter of application, which sets out key information about the applicant;
  - (b) a completed 'if not, why not' checklist, based on our guidance in Sections C, D and E (the 'if not, why not' checklist is set out in the appendix);
  - (c) a draft compliance scheme document; and
  - (d) further supporting documentation requested by ASIC and specified throughout Sections C, D and E.
- RG 269.32 The compliance scheme approval application process is set out in more detail in Section B.

### **Compliance scheme governance and administration**

- RG 269.33 The governance and administration of a compliance scheme determines how effectively the monitoring body will be able to carry out its operations.
- RG 269.34 Key aspects of a compliance scheme's governance and administration include:
- (a) the role and composition of the monitoring body's governing body;
  - (b) the expertise of the monitoring body and the measures in place to ensure that the expertise is maintained on an ongoing basis; and
  - (c) the resources of the monitoring body and the measures in place to ensure those resources are maintained on an ongoing basis.
- RG 269.35 We will gather information about how monitoring bodies will meet these expectations and our other expectations through the compliance scheme approval application process. Our expectations are set out in Section C and summarised in the 'if not, why not' checklist in Table 7 in the appendix.

### **Compliance scheme monitoring and enforcement**

- RG 269.36 The primary role of a monitoring body is to monitor and enforce compliance with the code. A monitoring body's processes for monitoring and enforcing compliance with the code under its compliance scheme will therefore be very important to our decision to approve the compliance scheme.
- RG 269.37 Key aspects of a compliance scheme's monitoring and enforcement procedures include the monitoring body's approach to:
- (a) carrying out proactive monitoring activities;
  - (b) carrying out reactive monitoring activities, including:

- (i) its processes for soliciting, accepting and carrying out an initial assessment of reports of possible failures to comply with the code and for investigating possible failures to comply with the code; and
- (ii) making determinations about whether a financial adviser has failed to comply with the code and, if so, imposing sanctions;
- (c) resolving disputes with financial advisers; and
- (d) ensuring that its determinations are enforceable on financial advisers.

RG 269.38 Our expectations for monitoring and enforcement are set out in Section D and summarised in the ‘if not, why not’ checklist set out in Table 8 in the appendix.

### **Ongoing operation of a compliance scheme**

RG 269.39 Ongoing review of and reporting on the work of a compliance scheme is important. Among other things, this can provide assurance that the scheme is operating effectively and allow for the identification of areas where the performance of the scheme can be improved.

RG 269.40 Key aspects of the ongoing operation of a compliance scheme are:

- (a) the data collection, analysis and regular reporting that monitoring bodies should carry out;
- (b) the reporting to ASIC of serious contraventions and systemic issues;
- (c) the independent review of the compliance scheme that the monitoring body must, under s921S, arrange at least every five years;
- (d) the consultation that the monitoring body must undertake on its compliance scheme while it is being developed and if it plans to make changes to it;
- (e) the information sharing that should occur between monitoring bodies when a financial adviser seeks to move to another compliance scheme; and
- (f) the ongoing support and education that monitoring bodies may provide to financial advisers to support and encourage them to act in accordance with their ethical obligations.

RG 269.41 Our expectations for the ongoing operation of compliance schemes are set out in Section E and summarised in the ‘if not, why not’ checklist set out in Table 9 in the appendix.

### **Revocation of and conditions on compliance scheme approval**

RG 269.42 We may revoke our approval of a compliance scheme, vary any conditions on it or impose new conditions (see s921K(7)) if the monitoring body:

- (a) does not comply with a request from ASIC to provide information;
- (b) fails to notify ASIC of a significant change to the monitoring body's resources or expertise; or
- (c) fails to notify ASIC or the relevant AFS licensee of a financial adviser's failure to comply with the code or a sanction imposed.

RG 269.43 Section F sets out how we will exercise these powers, including the information that we would expect to take into account in deciding whether to exercise them and the threshold for doing so.

### **Notifications to ASIC**

RG 269.44 Failures to comply with the code and any consequent sanctions will be made public on the financial advisers register, which is administered by ASIC. This allows consumers to find out whether a financial adviser whose services they have engaged, or intend to engage, has failed to comply with the code in the past. A monitoring body must provide this information to ASIC for the information to be displayed on the register.

RG 269.45 A monitoring body must also provide notifications to ASIC about:

- (a) significant changes to its resources or expertise; and
- (b) proposed modifications to its compliance scheme.

RG 269.46 We summarise these notification obligations and our guidance on them in Section G.

## B Applying for compliance scheme approval

### Key points

An applicant that wishes to operate an approved compliance scheme from 15 November 2019 must undergo a three-stage application process that comprises:

- registering an expression of interest with ASIC;
- submitting a draft application for compliance scheme approval; and
- submitting a final application for compliance scheme approval (see RG 269.47–RG 269.48).

An application for compliance scheme approval must include:

- a letter of application;
- a completed 'if not, why not' checklist;
- a compliance scheme document; and
- supporting documentation (see RG 269.49–RG 269.58).

We intend to announce all of the initial compliance scheme approvals on the same date, which we expect to be in early October 2019: see RG 269.59–RG 269.62.

### The application process

RG 269.47 We will conduct a three-stage application process for initial applications. Only those monitoring bodies that meet certain criteria will be eligible to have their compliance scheme approval announced on the initial approval date, which we expect to be in early October 2019. In particular, the monitoring body must:

- (a) register an expression of interest with ASIC;
- (b) submit a draft application for compliance scheme approval, which must be accompanied by the prescribed fee; and
- (c) submit a final application for compliance scheme approval, which must address any feedback that we have provided on the draft application.

RG 269.48 Table 1 provides an overview of the three-stage process, including the timeline, for monitoring bodies that wish to have a compliance scheme approved by the initial approval date. Monitoring bodies that wish to apply for approval of a compliance scheme after this period should consult with ASIC on an individual basis.

**Table 1: Overview of the application process for initial applicants**

Stage	Description	Timing
Register an expression of interest	<p>An entity that wishes to become a monitoring body must register an expression of interest with ASIC.</p> <p>The expression of interest should be in the form of a letter that:</p> <ul style="list-style-type: none"> <li>• sets out the name of the monitoring body; and</li> <li>• states that the monitoring body intends to submit a draft application for compliance scheme approval.</li> </ul> <p>Note: No further information is required to be provided at this stage.</p>	October 2018
Submit a draft application	<p>An applicant must submit a draft application for compliance scheme approval to ASIC, accompanied by the prescribed fee: see RG 269.49–RG 269.58 for the content of the application.</p> <p>Note: We will provide feedback on draft applications to applicants from 1 January 2019 to 31 March 2019.</p>	1 November 2018 to 31 December 2018
Submit a final application	<p>An applicant must submit a final application for compliance scheme approval to ASIC. The application must address any feedback we have provided on the draft application.</p> <p>Note: We expect to announce approvals for these initial applications in early October 2019.</p>	1 June 2019 and 30 June 2019

Note: The expression of interest, the draft application and the final application should be addressed to 'Financial Advisers, Australian Securities and Investments Commission' and emailed to [applications@asic.gov.au](mailto:applications@asic.gov.au).

## What to include in the application

- RG 269.49 For its draft application for compliance scheme approval, a monitoring body must submit:
- a letter of application*, which sets out key information about the applicant, such as the name of the monitoring body and compliance scheme;
  - a completed 'if not, why not' checklist*, which will be based on our guidance in Sections C, D and E of this guide;
  - a draft compliance scheme document* (see Table 2 for more information on what this should include); and
  - further supporting documentation* mentioned throughout Sections C, D and E of this guide (such as particular statements, internal policies and procedures, or template agreements that are referred to elsewhere in the application).
- RG 269.50 The final application should incorporate any feedback we have provided on the draft application.

## Letter of application

- RG 269.51 A monitoring body that wishes to have its compliance scheme approved should provide the following information in its letter of application:
- (a) the name of the monitoring body;
  - (b) the Australian Business Number (ABN) of the monitoring body;
  - (c) the name of the compliance scheme;
  - (d) whether the monitoring body holds an AFS licence or is an associate of a licensee;
  - (e) whether the monitoring body administers its own ethical code and, if yes, confirmation that this ethical code is not inconsistent with the FASEA code (see RG 269.52); and
  - (f) the contact person for the application.

## Monitoring bodies that administer their own code

- RG 269.52 Some applicants (e.g. industry associations) may administer their own code that they require members to adhere to. In these circumstances:
- (a) the association's own ethical code must not be inconsistent with the code or the compliance scheme should provide that, in the event of an inconsistency between FASEA's code and its own ethical code, FASEA's code prevails (the monitoring body must confirm this in the letter of application); and
  - (b) the information in the application must relate only to the measures (e.g. resources, policies and procedures) used for monitoring and enforcing compliance with the code under the compliance scheme. Where these overlap with the measures applied to monitor and enforce compliance with the association's own ethical (or other conduct or practice) code, the monitoring body should make clear the extent to which this will be the case.

## The 'if not, why not' checklist

- RG 269.53 A completed 'if not, why not' checklist should be based on our guidance in Sections C, D and E of this guide. The 'if not, why not' checklist is set out in the appendix.
- RG 269.54 The completed 'if not, why not' checklist should either:
- (a) confirm that the compliance scheme will include the measures set out in the checklist and summarise the supporting evidence for this (e.g. by pointing to the relevant provision in the compliance scheme document or an internal policy or procedure of the monitoring body); or

- (b) if the compliance scheme will not include those measures, explain why this is the case and the alternative approach the monitoring body will take to satisfying ASIC of the matter to which the checklist item relates.

## Compliance scheme document

RG 269.55 While a compliance scheme comprises all processes, resources, expertise and arrangements used to monitor and enforce compliance with the code, it should also be expressed, at a high level, in a single document that is made public: see s921P.

RG 269.56 Table 2 sets out what a compliance scheme document should include. While we recognise that monitoring bodies may not have finalised their compliance scheme before applying to have it approved, we expect them to submit a draft version of the compliance scheme document with the draft application for scheme approval.

**Table 2: Content of the compliance scheme document**

Content	Description
Name of the compliance scheme and monitoring body	A compliance scheme document should set out the name of the compliance scheme and the name of the monitoring body for the scheme.
Core functions of the compliance scheme	<p>A compliance scheme document should set out the core functions of the compliance scheme, which should be, at a minimum, to:</p> <ul style="list-style-type: none"> <li>proactively monitor compliance with the code by 'covered financial advisers';</li> </ul> <p>Note: We use the term 'covered financial advisers' to refer to financial advisers covered by a particular compliance scheme.</p> <ul style="list-style-type: none"> <li>carry out reactive monitoring activities by investigating and making determinations about any allegations from any person that a covered financial adviser has breached the code; and</li> <li>impose and enforce sanctions on covered financial advisers where appropriate.</li> </ul>
How core functions will be carried out	A compliance scheme document should include a general statement about the arrangements for carrying out the core functions. More detail about how the monitoring body will carry out the core functions will also be set out in various other documents (e.g. the annual work plan described in RG 269.105–RG 269.107).
Sanctions	A compliance scheme document should include the sanctions for failures to comply with the code by covered financial advisers: see RG 269.143–RG 269.148 for more information on our expectations for sanctions.
Disputes	A compliance scheme document should explain how a dispute between the monitoring body and a covered financial adviser is to be resolved: see RG 269.149–RG 269.157 for more information on our expectations for dispute resolution.

Content	Description
Reporting of compliance failures	A compliance scheme document should explain how a person may make a report to the monitoring body about a failure, or a possible failure, to comply with the code by a covered financial adviser: see RG 269.119–RG 269.123 for more information on our expectations for accepting reports of failures to comply with the code.

## Supporting documentation

- RG 269.57 The application should also include further supporting documentation mentioned throughout Sections C, D and E of this guide—for example, particular statements, internal policies and procedures, or template agreements that are referred to elsewhere in the application.
- RG 269.58 A monitoring body applying for approval of a compliance scheme must also provide any additional information that we reasonably request during the application process if it wishes to continue to have its application considered.

## Compliance scheme approval

- RG 269.59 While we will consider applications for compliance scheme approval that do not meet the criteria set out above, we:
- (a) will give priority to those that meet these criteria; and
  - (b) may not announce approval on the same date as applications that did meet the criteria.
- RG 269.60 We will approve compliance schemes in a formal approval letter, which will be a public document. This letter will set out any conditions on which we have approved the compliance scheme (in accordance with s921K(5) and our guidance in Section F).
- RG 269.61 To ensure that AFS licensees and financial advisers know which compliance schemes they may select from, and to avoid giving a competitive advantage to any compliance scheme by announcing its approval before others, we aim to announce all of the initial compliance scheme approvals (i.e. approvals for those monitoring bodies that wish to operate compliance schemes from 15 November 2019) on the same date, which we expect to be in early October 2019.
- RG 269.62 We consider that this will leave sufficient time for AFS licensees and financial advisers to select a compliance scheme.

Note: For details about when the obligation for an AFS licensee to ensure that financial advisers who operate under its licence are covered by a compliance scheme applies, see RG 269.6–RG 269.8.

## C Compliance scheme governance and administration

### Key points

The governance and administration of a compliance scheme is important because it determines how effectively the monitoring body will be able to carry out its operations.

Each monitoring body should have a governing body, which:

- sets the strategic direction for the monitoring body and oversees its operations;
- is independent and impartial; and
- is made up of members with appropriate expertise (see RG 269.63–RG 269.89).

Having adequate resources (including human, financial and technological resources) is crucial to the ability of the monitoring body to effectively monitor and enforce compliance with the code: see RG 269.90–RG 269.93.

A monitoring body may choose to outsource activities to a third party, except the responsibility of the governing body to oversee the operation of the compliance scheme: see RG 269.94–RG 269.100.

### Governance

RG 269.63 The way a monitoring body is governed is critical to how effectively it can carry out its role of monitoring and enforcing compliance with the code, and will therefore be relevant to our decision whether or not to approve a compliance scheme.

RG 269.64 Each monitoring body should have a non-executive governing body that:

- (a) sets the strategic direction for the monitoring body and oversees its operations (see RG 269.65–RG 269.68);
- (b) is independent and impartial (see RG 269.69–RG 269.76); and
- (c) is made up of members with appropriate expertise (see RG 269.77–RG 269.89).

### Responsibilities of governing body and staff of monitoring body

#### Delineation of responsibilities

RG 269.65 The governing body will be made up of non-executive members: see RG 269.71. It is therefore the staff of the monitoring body who will be

responsible for carrying out the day-to-day activities required to give effect to the compliance scheme.

RG 269.66 While the delineation of responsibilities between the governing body and the staff of the monitoring body may differ between compliance schemes, Table 3 sets out what we expect would be typical.

**Table 3: Expected responsibilities of governing body and staff of monitoring body**

Topic	Governing body responsibility	Monitoring body staff responsibility
Failure to comply with code	The governing body or its appointed panel makes a determination about whether a financial adviser has failed to comply with the code (including holding hearings) and imposes sanctions as appropriate: see RG 269.137–RG 269.148.	Staff receive a report of a possible failure to comply with the code (e.g. through an external complaint or internal referral), assess it, investigate it and make recommendations to the governing body following the investigation: see RG 269.119–RG 269.136.
Operations	The governing body oversees the operations of the monitoring body under the compliance scheme, including by ensuring that: <ul style="list-style-type: none"> <li>• staff of the monitoring body are appropriately trained and have appropriate expertise to carry out their roles under the compliance scheme;</li> <li>• the monitoring body is appropriately resourced to carry out its role in accordance with the compliance scheme and the expectations set out in this guide (e.g. by monitoring the monitoring body's ability to manage its workload); and</li> <li>• the required independent review of the compliance scheme takes place at least every five years.</li> </ul>	Staff carry out the day-to-day work of the compliance scheme and report to the governing body.
Proactive monitoring activities	The governing body approves the annual work plan for the compliance scheme, which sets out the proactive monitoring activities that the monitoring body will carry out regarding compliance with the code each year: see RG 269.101–RG 269.116.	Staff develop and give effect to the annual work plan.
External reporting	The governing body approves annual public reporting and six-monthly reporting to ASIC about the operation of the monitoring body under the compliance scheme.	Staff prepare reports for approval by the governing body.

Topic	Governing body responsibility	Monitoring body staff responsibility
Systemic issues or serious contraventions	<p>The governing body approves recommendations on whether a matter reveals a systemic issue or represents a serious contravention of the law that should be reported to ASIC, to the relevant AFS licensee, or in the compliance scheme's annual public reports or six-monthly reports to ASIC.</p> <p>Note: For more information on our expectations about reporting systemic issues or serious contraventions, see RG 269.176–RG 269.180.</p>	<p>Staff make recommendations about whether a matter should be reported to ASIC or the relevant AFS licensee as a systemic issue or serious contravention.</p>
General monitoring	<p>The governing body receives reports on general trends and issues arising from the matters considered under the compliance scheme and approving recommendations to:</p> <ul style="list-style-type: none"> <li>• amend the compliance scheme; and</li> <li>• suggest amendments to the code.</li> </ul>	<p>Staff produce reports on those trends and issues and, if appropriate, recommend amendments to:</p> <ul style="list-style-type: none"> <li>• the compliance scheme; and</li> <li>• the code.</li> </ul>
Internal reporting	<p>The governing body determines the reporting that must be provided to the governing body on an ongoing basis. At a minimum, we would expect this to include reporting on all of the following, but governing bodies should consider whether they need further reporting to carry out their oversight role:</p> <ul style="list-style-type: none"> <li>• the progress of proactive monitoring activities (e.g. whether they are progressing in line with the annual work plan);</li> <li>• the progress of particular investigations (e.g. how long they have been open for);</li> <li>• reports received of possible failures to comply with the code (including who they are from, who they relate to and their nature); and</li> <li>• analysis about closed matters (e.g. how long investigations are taking from start to finish and what issues are recurring in the investigations).</li> </ul>	<p>Staff prepare the reports requested by the governing body.</p>
Notifications	<p>The governing body notifies ASIC:</p> <ul style="list-style-type: none"> <li>• if there is a significant reduction to the resources or expertise the monitoring body uses to enforce compliance with the code under the scheme (under s921T); and</li> <li>• about any proposed modification to the compliance scheme (under s921R).</li> </ul>	<p>Staff report to the governing body about the resources and expertise within the monitoring body.</p> <p>Staff prepare draft notifications to ASIC.</p>

### Delegation of responsibilities

RG 269.67 The governing body may delegate any of its responsibilities to staff of the monitoring body, provided they have the appropriate expertise (e.g. to the chief

executive officer of the monitoring body). The only exceptions are the following responsibilities, which must be retained by the governing body:

- (a) responsibility for overseeing the operation of the compliance scheme; and
- (b) responsibility for making an ultimate determination about whether a covered financial adviser has failed to comply with the code, and what sanctions should be imposed (see RG 269.137–RG 269.148).

### **Governing body charter or terms of reference**

- RG 269.68 The governing body should have a charter or terms of reference that sets out:
- (a) the body’s objectives, functions and responsibilities;
  - (b) a code of conduct for the individual members of the governing body;
  - (c) the responsibilities of the individual members of the governing body (e.g. their duties in the event they have a conflict of interest);
  - (d) the rules for membership of the governing body (e.g. composition, tenure and termination); and
  - (e) the rules for meetings of the governing body (e.g. quorum requirements, notice of meetings, voting requirements).

Note: For the expertise we expect the governing body to have, see RG 269.77–RG 269.89.

### **Independence and impartiality**

- RG 269.69 Conflicts of interest can arise in the various roles that an entity acting as a monitoring body may carry out. For example, the entity’s interest in attracting and retaining financial advisers to its compliance scheme (or to the membership of its professional association) could discourage it from fully and robustly pursuing instances of possible non-compliance with the code and imposing appropriate sanctions. This is particularly acute where the entity acting as the monitoring body also carries out other functions, such as lobbying and industry representative work.

- RG 269.70 It is important that the potential conflicts of interest that an entity acting as a monitoring body may have are managed and there is some degree of independence and impartiality within monitoring bodies at both the governing and operational levels.

### **Governing body independence**

- RG 269.71 The governing body should be independent from the financial advice industry that it seeks to regulate. Accordingly, the governing body should:
- (a) be made up of non-executive members (i.e. they may not be employed by the entity acting as the monitoring body); and

- (b) have a minimum of three members, including an independent chair and an equal balance of members with:
  - (i) relevant background and experience in the financial advice industry who must not themselves be covered by the compliance scheme; and
  - (ii) consumer representative experience (e.g. this could include representatives from consumer organisations or individuals with consumer specialist knowledge and/or experience).

Note: Where there is an uneven number of governing body members (apart from the chair), the governing body must have more members with consumer representative experience than members with relevant industry understanding and experience.

RG 269.72 In order to be classified as independent, the chair must not:

- (a) be a member of any financial advice industry association;
- (b) currently be a financial adviser (i.e. an individual who is authorised to give personal advice to retail clients on relevant financial products);
- (c) be an AFS licensee whose advisers are covered by a compliance scheme; or
- (d) be a director or responsible officer of an AFS licensee whose advisers are covered by a compliance scheme.

RG 269.73 The monitoring body should have a policy for identifying and preventing conflicts of interest at the level of the governing body. The monitoring body should also notify ASIC about any direct or indirect pecuniary interest that a member of the governing body has or acquires that conflicts or could conflict with the proper performance of the person's duties as a member of the governing body.

#### **Monitoring body staff impartiality**

RG 269.74 The potential for conflicts of interest at the monitoring body staff level should be addressed by:

- (a) ensuring that the staff responsible for carrying out monitoring and enforcement activities for the compliance scheme do not also have other conflicting roles within the entity acting as the monitoring body; and
- (b) the monitoring body having a policy for identifying and preventing such conflicting roles.

RG 269.75 For example, persons responsible for carrying out monitoring and enforcement activities for the compliance scheme should not also be responsible for:

- (a) attracting and retaining members of the industry association (if relevant); or
- (b) carrying out lobbying on behalf of covered financial advisers.

RG 269.76 There may also be other roles that could lead to similar conflicts, depending on the particular circumstances of the monitoring body and the entity acting as

the monitoring body. The monitoring body's policy for identifying and preventing conflicts should include measures to identify and address such conflicting roles.

## Expertise

RG 269.77 Before approving a compliance scheme, we must be satisfied that the monitoring body has sufficient expertise to appropriately monitor and enforce compliance with the code. We consider that a very important element of this is the expertise of the governing body and the measures to ensure this expertise is maintained on an ongoing basis.

RG 269.78 To assess the expertise of the monitoring body, we will review:

- (a) the expertise of the members of the proposed initial governing body (see RG 269.80–RG 269.82);
- (b) the processes and criteria for appointing new members of the governing body on an ongoing basis (see RG 269.83–RG 269.84);
- (c) the job descriptions for the monitoring body staff who will carry out the day-to-day work of the compliance scheme (see RG 269.85–RG 269.87); and
- (d) the intended procedures for maintaining the expertise of the entire staff of the monitoring body (see RG 269.88–RG 269.89).

RG 269.79 It will then be the responsibility of the governing body to ensure that the staff of the monitoring body have the appropriate expertise to carry out their roles on an ongoing basis.

Note: The monitoring body also has an obligation to notify ASIC if it significantly reduces the expertise it uses to monitor or enforce compliance with the code: see s921T.

## Expertise of the proposed initial governing body

RG 269.80 At a minimum, we expect there to be:

- (a) one member of the governing body who, at some point in the five years before being appointed to the governing body, met the training and competence standards that would have allowed them to give personal advice to retail clients on relevant financial products; and

Note: Depending on when the standards were met, these could be the standards in [Regulatory Guide 146 Licensing: Training of financial product advisers](#) (RG 146) or the new standards set by FASEA (when they begin to apply).

- (b) one member of the governing body who has experience in and knowledge of the principles of procedural fairness and administrative law (see RG 269.141–RG 269.142, which explains the importance of these principles in the context of the compliance scheme).

RG 269.81 This should be the case not only for the initial governing body, but also when appointing new members of the governing body.

RG 269.82 We expect that the monitoring body will include the proposed composition of its governing body in its application for approval of the compliance scheme. We also expect that the monitoring body will provide, with its application:

- (a) a curriculum vitae for each proposed member of the proposed initial governing body; and
- (b) an explanation of why the member was chosen, in light of the criteria that its policy says it will consider when selecting a member of the governing body (see RG 269.83–RG 269.84).

Note: A monitoring body may not have hired the members of the proposed initial governing body by the time it submits its draft application for compliance scheme approval. If this is the case, it is sufficient at the draft application stage for the monitoring body to provide its policy or procedure that documents the matters set out in RG 269.83–RG 269.84. However, a monitoring body will be expected to include the proposed composition of its governing body and provide the information in RG 269.82 in its final application.

### **Appointing new members of the governing body**

RG 269.83 We expect that the monitoring body will have a policy or procedure that documents:

- (a) how the members of the governing body are appointed and replaced; and
- (b) what criteria are used to determine whether a person should be appointed to the governing body.

RG 269.84 The policy or procedure documenting how the members of the governing body are appointed should, at a minimum, require the following matters to be considered before appointing a member of the governing body:

- (a) how the person's skills and knowledge will fit with those of the other members of the governing body, including whether the governing body will have the necessary independence (as set out in RG 269.71–RG 269.73) and expertise (as set out in RG 269.80);
- (b) whether the person is of good fame and character. This assessment may be based on the matters set out in s913B(4) (i.e. whether the person has been convicted of serious fraud within the last 10 years, held an AFS licence that was suspended or cancelled, or had a banning or disqualification order made against them);
- (c) the person's knowledge of issues relevant to the financial advice industry;
- (d) the person's ability to exercise sound and fair judgement;
- (e) the person's capacity and willingness to consult with a broad range of stakeholders; and

- (f) any other matter thought relevant to the person's ability to carry out a role as a member of the governing body.

### **Job descriptions for monitoring body staff**

- RG 269.85 The monitoring body staff will clearly also play an important role in the administration of a compliance scheme and their competence is also important: see paragraph 3.24 of the Explanatory Memorandum. However, monitoring bodies may not have hired all their staff by the time they submit their applications for compliance scheme approval.
- RG 269.86 Accordingly, we expect that the monitoring body will develop, and submit with its application for compliance scheme approval, job descriptions for each role with responsibility for carrying out the core functions of the compliance scheme.
- RG 269.87 The job descriptions should set out:
- (a) the responsibilities of the person; and
  - (b) the skills, qualifications and knowledge that are required of the person.

### **Maintaining the expertise of the staff of the monitoring body**

- RG 269.88 We expect that the governing body will have a policy or procedure covering the maintenance of the expertise of the monitoring body's staff, and that the monitoring body will include this proposed policy or procedure with its application for compliance scheme approval.
- RG 269.89 Some controls that these procedures may set out include:
- (a) training procedures;
  - (b) performance review processes; and
  - (c) disciplinary processes.

## **Resources**

- RG 269.90 Having adequate resources (including financial, human and technological resources) is crucial to the ability of the monitoring body to effectively monitor and enforce compliance with the code.
- RG 269.91 The resources required to effectively carry out a monitoring body's activities under a compliance scheme will depend on a number of factors, including:
- (a) the number of covered financial advisers;
  - (b) the homogeneity (or otherwise) of the covered financial advisers (e.g. whether their AFS licence authorisations and client bases are similar and whether the advisers are from a small or varied group of licensees);

- (c) whether the covered financial advisers are primarily located close to the monitoring body (i.e. the geographical distribution of the advisers);
- (d) the extent to which the monitoring body relies on outsourced service providers to carry out its activities; and
- (e) whether, for the purposes of monitoring and enforcing the code, the monitoring body relies on processes and resources used by the entity acting as the monitoring body for monitoring its own code or ethical obligations.

RG 269.92 These matters will differ greatly between compliance schemes, so we have not set specific expectations about what resources the monitoring body should have. Instead, a monitoring body should, as part of its application for compliance scheme approval, provide a statement that sets out the basis on which the monitoring body considers its financial, human and technological resources to be adequate to allow it to appropriately monitor and enforce compliance with the code, given:

- (a) the factors outlined in RG 269.91;
- (b) the financial resources that the monitoring body has and needs to carry out its functions under the compliance scheme (e.g. according to the business plan for the compliance scheme, which sets out the projections of the number and locations of financial advisers the scheme will cover and the expected fee revenue);
- (c) the human resources that the monitoring body has and needs to carry out its functions under the compliance scheme (e.g. according to the business plan for the compliance scheme, its organisational chart and job descriptions for the roles set out in the chart);
- (d) the technological resources that the monitoring body has and needs to carry out its functions under the compliance scheme (e.g. according to the business plan for the compliance scheme, its information technology (IT) strategy, disaster recovery plan, and data back-up and recovery plans); and
- (e) any policies or procedures for ensuring the maintenance of appropriate financial, human and technological resources on an ongoing basis, which should cover, at a minimum:
  - (i) the key indicators that might show the monitoring body does not have enough resources; and
  - (ii) what reporting is provided to the governing body to allow it to monitor the adequacy of the resources.

RG 269.93 While we will make an assessment of the monitoring body's resources on the basis of the statement it provides as part of its compliance scheme approval application, the governing body will be responsible for overseeing whether the monitoring body is adequately resourced on an ongoing basis. The adequacy

of the monitoring body's resources will also be discussed between ASIC and the monitoring body during quarterly meetings: see RG 269.171 for more information.

Note: The monitoring body also has an obligation to notify ASIC if it significantly reduces the resources it uses to monitor or enforce compliance with the code: see s921T.

## Outsourcing

RG 269.94 Outsourcing may be a feature of a monitoring body's operation and it can be an important way to access resources that the monitoring body does not have internally. If the activities carried out under these outsourcing arrangements are the core functions of a compliance scheme (i.e. monitoring and enforcement of the code), they are relevant to our decision about whether to approve the compliance scheme: see paragraph 3.24 of the Explanatory Memorandum.

### Core functions of the compliance scheme

RG 269.95 An activity will be a core function of the compliance scheme if it is carried out for the purpose of monitoring or enforcing compliance with the code. For example:

- (a) a monitoring body's proactive monitoring activities and investigation of potential breaches of the code are activities that constitute the core functions of a compliance scheme; and
- (b) data hosting and marketing activities related to the business operations of the entity acting as the monitoring body more generally are not the core functions of a compliance scheme, even though these services may be relied on for the monitoring body to carry out its activities.

RG 269.96 There are certain functions that must not be outsourced to a third party. These include the responsibilities of the governing body to:

- (a) oversee the operation of the compliance scheme; and
- (b) apply independent judgement to make determinations about whether a covered financial adviser has failed to comply with the code, and what sanctions should be imposed.

### Controls on outsourcing

RG 269.97 If a monitoring body outsources core functions of the compliance scheme, it still maintains responsibility for the activities. It cannot outsource this responsibility. It is therefore important that the monitoring body puts in place appropriate measures to ensure that it has confidence in and oversight of the activities being provided by the outsourced service provider.

RG 269.98 When there is any outsourcing by a monitoring body of the core functions of the compliance scheme, we expect that the monitoring body should conduct due diligence on:

- (a) whether it is appropriate to outsource the proposed activity (including considering the costs of outsourcing against carrying out the activities internally, and what contingency plans it needs if the outsourcing agreement is terminated); and
- (b) the outsourced service provider before appointing it.

RG 269.99 The monitoring body should keep records of its due diligence and reasons for deciding to proceed with appointing an outsourced service provider.

RG 269.100 We also expect that the monitoring body will enter into a binding contractual arrangement with the outsourced service provider for core functions. That contract should set out the terms on which the outsourced service provider will provide the outsourced services and address, at a minimum:

- (a) how the monitoring body ensures that the outsourced service provider remains accountable for performing the activities to a high standard (e.g. service-level agreements and/or regular reporting by the outsourced service provider to the monitoring body may be appropriate);
- (b) the security and confidentiality of the information the outsourced service provider gathers and uses in carrying out its activities; and
- (c) in what circumstances the agreement will terminate, how much notice the monitoring body may have of such termination (which may be relevant to the contingency plan that will need to be in place), and the processes in place when the agreement terminates (e.g. the return of or access to information held by the outsourced service provider that it gathered or used in carrying out its activities).

## D Compliance scheme monitoring and enforcement

### Key points

This section sets out our guidance for the monitoring and enforcement activities carried out under a compliance scheme.

We consider that a monitoring body should carry out:

- proactive monitoring activities, which should be determined each year in a risk-based annual work plan and should comprise, at a minimum, one thematic ‘own-motion’ inquiry each year (see RG 269.101–RG 269.116); and
- reactive monitoring activities, which should be carried out in accordance with defined processes for receiving and making an initial assessment of reports of potential failures to comply, investigating those reports, making a decision and, if necessary, determining any sanctions (see RG 269.117–RG 269.148).

A compliance scheme document must also set out how a dispute is to be resolved between the monitoring body and a covered financial adviser. We have set out a suggested high-level process to allow each monitoring body to determine its own, more detailed appeal and dispute resolution procedures: see RG 269.149–RG 269.157.

We also consider that a monitoring body should make the compliance scheme enforceable by entering into legally binding agreements with all covered financial advisers: see RG 269.158–RG 269.164.

### Proactive monitoring activities

RG 269.101 Reports that monitoring bodies receive about possible failures to comply with the code will assist in identifying breaches. However, to achieve the objective of encouraging higher standards of ethical behaviour and professionalism among financial advisers:

- (a) monitoring bodies need to have a way to uncover examples of both ethical and unethical behaviour that they can highlight and use to educate covered financial advisers; and
- (b) financial advisers need to know that any conduct they engage in that is inconsistent with the code may be detected and acted on.

RG 269.102 We do not consider monitoring carried out in response to reports of possible code breaches alone (i.e. reactive monitoring activities) will be sufficient to achieve these objectives.

RG 269.103 We expect a monitoring body to also carry out proactive monitoring activities—those that the monitoring body undertakes based on the risks of

non-compliance and the compliance objectives. Proactive monitoring activities should be determined each year in a risk-based annual work plan and should comprise, at a minimum, one thematic ‘own-motion’ inquiry each year.

Note: The Explanatory Memorandum contemplates monitoring bodies carrying out proactive monitoring: see paragraph 3.46 of the Explanatory Memorandum.

RG 269.104 The compliance scheme document will set out the administration, monitoring and enforcement framework under which the monitoring activities will be carried out. However, we expect the specific proactive monitoring activities carried out by the monitoring body to change each year, depending on the key risks to non-compliance identified by the monitoring body in that year. These risks, and the proactive monitoring activities designed to address them, should be set out in an annual work plan. This annual work plan should be provided to ASIC and an overview of the compliance scheme’s key areas of focus should be made public each year.

Note: For the first year of code monitoring, it is sufficient for monitoring bodies to provide to ASIC a partial-year annual work plan by 31 March 2020 covering the period from 1 April 2020 to 31 December 2020. Monitoring bodies will be required to carry out proactive monitoring activities from 1 April 2020.

## The annual work plan

RG 269.105 In order to prepare its annual work plan, the monitoring body should:

- (a) identify the key risks to compliance with the code in the forthcoming year by using sources such as:
  - (i) publicly available information about improper conduct by financial advisers (such as in media releases on enforcement outcomes achieved by ASIC, ASIC reports or publications raising concerns about particular trends or conduct, and publicly available information from AFCA or in the media);
  - (ii) information from the monitoring and enforcement activities that the monitoring body has carried out in previous years; and
  - (iii) reports of possible failures to comply with the code received by the monitoring body;
- (b) evaluate the key risks to compliance to prioritise those that should be the key areas of focus for the annual work plan; and
- (c) design the proactive monitoring activities (at a minimum, one thematic own-motion inquiry each year as described in RG 269.108–RG 269.111) to address these compliance risks.

RG 269.106 The annual work plan should then set out what the monitoring body will be focusing on as a result of the risk identification, evaluation and monitoring process carried out, including:

- (a) the compliance risks and objectives that the annual work plan will focus on;

- (b) a description of the scope and focus of the proactive monitoring activities that the monitoring body will carry out in the year (i.e. the thematic own-motion inquiry and any other proactive monitoring activities—see RG 269.108–RG 269.111);
- (c) a detailed explanation of the work involved in carrying out the proactive monitoring activities, including what information the monitoring body proposes to gather to carry out the activities (e.g. policies and procedures of AFS licensees, performance reviews for financial advisers or complaints data); and
- (d) when the activities will be carried out and what resources will be used to carry them out.

RG 269.107 We recognise that the focus of the monitoring body may change over the course of a year as risks emerge, and that this may necessitate changes to its annual work plan. If the monitoring body revises its annual work plan during the year, it should, as soon as it is reasonably practicable, give a copy of the revised annual work plan to ASIC.

### **Thematic own-motion inquiry**

RG 269.108 A monitoring body should carry out, at a minimum, one thematic own-motion inquiry each year.

Note 1: The thematic own-motion inquiry could involve, for example, a monitoring body conducting an inquiry testing financial advisers' compliance with a specific standard in the code.

Note 2: These are the minimum proactive monitoring activities that we expect monitoring bodies to carry out. Additional activities should be carried out where it is necessary or appropriate: see RG 269.112–RG 269.116.

RG 269.109 We envisage that the focus of the thematic own-motion inquiry is likely to change each year. The focus and scope of the inquiry will be identified in the annual work plan, as detailed in RG 269.106.

RG 269.110 The thematic own-motion inquiry should result in a report that explains:

- (a) the scope of the inquiry and why the monitoring body chose that particular topic as the focus of the inquiry (this should be consistent with the annual work plan);
- (b) the information-gathering activities the monitoring body conducted, including what it asked for and received;
- (c) how the monitoring body analysed the information and what the findings were;
- (d) any recommendations that the monitoring body has for financial advisers to improve their behaviour and compliance with the code, based on

examples of good and ethical behaviour it has identified as well as poor behaviour (where appropriate); and

- (e) any recommendations that the monitoring body has for AFS licensees under whose licences financial advisers operate, to improve compliance with the code. While licensees are not directly subject to the code, they must still take reasonable steps to ensure that their representatives comply with their obligations in relation to it (see s912A(1)(ca)).

RG 269.111 Our expectation that monitoring bodies should carry out at least one thematic own-motion inquiry each year does not preclude them from investigating individual covered financial advisers if they become aware of a particular failure or possible failure to comply with the code. We expect that this would be done in accordance with the typical monitoring and enforcement process outlined in Table 4.

### **Other proactive monitoring activities**

RG 269.112 Monitoring bodies should consider carrying out additional proactive monitoring activities where it is necessary or appropriate. For example, monitoring bodies could carry out:

- (a) more than one thematic own-motion inquiry each year;
- (b) a compliance statement process, with associated verification activities; or
- (c) proactive audits where monitoring bodies review compliance with the code or a specific standard in the code by a random sample of covered financial advisers.

RG 269.113 An annual compliance statement process might entail sending a questionnaire to covered financial advisers, the theme and content of which is based on the identified compliance risks set out in the annual work plan, to give the covered financial advisers the chance to:

- (a) self-report any non-compliance with the code and how that non-compliance was remedied;

Note: If a covered financial adviser reports that they have failed to comply with the code, the monitoring body should make a written determination about this and notify ASIC of the failure for it to be displayed on the financial advisers register: see s922HD.

- (b) identify any emerging or significant risks to financial advisers' compliance with the code; and
- (c) share information about good practice they engage in or have seen in the areas covered by the questionnaire.

RG 269.114 Where monitoring bodies carry out a compliance statement process, we would expect the monitoring body to carry out some verification activities of the responses to the questionnaire that financial advisers submit. These verification activities might include, for example:

- (a) follow-up interviews, workshops or focus groups to discuss responses to the questionnaire; and
- (b) sampling and integrity testing (e.g. shadow shopping or desk-based or on-site reviews).
- RG 269.115 We also encourage monitoring bodies to consult with financial advisers who are to receive the questionnaire before sending it—to ensure they understand the questions it poses in a consistent manner.
- RG 269.116 The proactive monitoring activities should focus not only on uncovering failures to comply with the code, but should also seek to identify examples of good practice that can be used to educate and inform financial advisers about how to improve their behaviour.

## Reactive monitoring activities

- RG 269.117 Reactive monitoring activities are those carried out in response to a report of a possible failure by a financial adviser to comply with the code (e.g. from consumers who have engaged the services of the financial adviser, from other members of the financial advice profession, or from AFS licensees who have observed a financial adviser's conduct).
- RG 269.118 We expect that allegations of particular failures to comply with the code received by monitoring bodies will usually be dealt with in the manner set out in Table 4.

**Table 4: Typical monitoring and enforcement process**

Stage	Description
<p><b>Stage 1: Receipt of report</b></p> <p>See RG 269.119– RG 269.121</p>	<p>The monitoring body receives a report about a particular financial adviser's conduct. This report may be from a member of the public, a peer, an AFS licensee, or AFCA, or may be an internal report, based on conduct identified during the course of the monitoring body's proactive monitoring activities.</p>
<p><b>Stage 2: Initial assessment of report</b></p> <p>See RG 269.124– RG 269.127</p>	<p>The monitoring body makes an initial assessment of the report to identify:</p> <ul style="list-style-type: none"> <li>• whether the financial adviser is covered by the compliance scheme; and</li> <li>• whether the report indicates a possible failure by the financial adviser to comply with the code.</li> </ul> <p>If the report indicates a possible failure to comply with the code, the monitoring body refers the matter for further investigation and should obtain the reporter's consent to refer the matter to AFCA. If the report does not indicate a possible failure to comply with the code, the monitoring body could refer the reporter to the relevant AFS licensee or AFCA, or could refer the matter to ASIC (if it indicates a possible breach of legal requirements).</p> <p>As a guide, we expect the initial assessment to be completed within 28 days of the report being received. However, we recognise that a longer timeframe may be appropriate if a matter is more complex.</p>

Stage	Description
<p><b>Stage 3: Investigation</b></p> <p>See RG 269.128–RG 269.136</p>	<p>The monitoring body carries out an investigation to form a view on whether the financial adviser breached the code.</p> <p>As a guide, we expect the investigation to be completed within 90 days of the matter being referred for further investigation. However, we recognise that a longer timeframe may be appropriate if a matter is more complex.</p>
<p><b>Stage 4: Determination and sanctions</b></p> <p>See RG 269.137–RG 269.148</p>	<p>The monitoring body refers the matter to the governing body to:</p> <ul style="list-style-type: none"> <li>• make a determination, in writing, about whether the financial adviser breached the code; and</li> <li>• determine an appropriate sanction (if relevant).</li> </ul> <p>As a guide, we expect the determination to be made within 60 days of the matter being referred to the governing body. A decision on the appropriate sanction may follow. However, we recognise that there may be circumstances when a longer timeframe may be appropriate, especially if a matter is more complex.</p>

### Stage 1: Receipt of report

- RG 269.119 Reports indicating that particular financial advisers may have breached the code may come from a number of sources, including consumers who have engaged the services of the financial adviser, other members of the financial advice profession, AFS licensees who have observed a financial adviser's conduct or AFCA. They may also arise internally, such as from the proactive monitoring activities that a monitoring body has carried out in accordance with its annual work plan.
- RG 269.120 A monitoring body should offer a mechanism by which:
- anyone can make a report of a possible failure by a financial adviser to comply with the code; and
  - the information about these reports, which the monitoring body must report to the public annually and to ASIC every six months (as set out in RG 269.167–RG 269.171), is captured.
- RG 269.121 This mechanism may be an online form or email inbox, a phone line that is answered during business hours, or a combination of these things. The mechanism must be specified in the compliance scheme document: see s921G(6).

### Clear public messaging on consumer options

- RG 269.122 Because compliance schemes do not provide consumer redress, it may be less likely that consumers will be aware of their ability to, or motivated to, notify monitoring bodies of complaints that they have about particular financial advisers.

RG 269.123 We expect a monitoring body to develop and implement a communications strategy to improve the public's knowledge of the scheme's role and what consumers' options are. For instance, the communications strategy should cover how the monitoring body will provide clear public messaging about:

- (a) how members of the public (including consumers and other financial advisers) can make a report alleging that a particular financial adviser may not have complied with the code;
- (b) the role of compliance schemes and the fact that consumer outcomes or redress are not provided under the scheme; and
- (c) where consumers can go if they would like to seek redress.

Note: EDR may be an appropriate option for consumers seeking redress. AFCA will replace existing EDR schemes and is expected to start accepting complaints from 1 November 2018.

### Stage 2: Initial assessment of report

RG 269.124 Because not all reports relating to financial advisers' conduct will fall within the compliance scheme's monitoring and enforcement remit, a monitoring body should have a process for conducting an initial assessment of all reports to identify:

- (a) whether the financial adviser that is the subject of the report is covered by the compliance scheme; and
- (b) whether the conduct that the reporter identifies would constitute a breach of the code.

RG 269.125 If these criteria are met, the monitoring body should recommend that further investigations be carried out.

RG 269.126 The monitoring body's resources should be sufficient to enable it to conduct this assessment and refer it for further investigation if warranted. The initial assessment should be conducted in a timely way and as quickly as possible without compromising the quality of the assessment. What is a reasonable timeframe will depend on the nature of the matter.

RG 269.127 As a guide, a monitoring body should generally conduct this initial assessment within 28 days of receiving the report. However, we recognise that a longer timeframe may be appropriate if the matter is more complex.

### Stage 3: Investigation

RG 269.128 When a monitoring body becomes aware of a failure or possible failure by a covered financial adviser to comply with the code (e.g. the initial assessment of the report indicates that there is a possible failure to comply with the code by a covered financial adviser), it must:

- (a) notify the financial adviser that it:
  - (i) is aware of the possible failure; and
  - (ii) will make a determination about whether the financial adviser complied with the code (see s921L(2)); and
- (b) make a determination in writing (within a reasonable period of becoming aware of the possible failure) on whether the financial adviser has failed to comply with the code (see s921L(1) and (5)).

RG 269.129 To make the required determination, monitoring body staff must first carry out an investigation and, if the investigation suggests that a code breach has occurred, refer the matter for a decision by the governing body.

RG 269.130 The Corporations Act gives the monitoring body power to require AFS licensees, authorised representatives and financial advisers to provide the monitoring body with information, documents or other reasonable assistance it requests in writing: see s921L(3). Examples of the information that could be gathered include:

- (a) documents;
- (b) written responses to questions posed by the monitoring body; and
- (c) verbal evidence given in interviews carried out by the monitoring body.

Note: We will be amending s921L(3) and 921M(2) of the Corporations Act to also require AFS licensees and authorised representatives to comply with a request for information, documents or other reasonable assistance from a monitoring body made before a failure to comply with the code, or possible failure, has been identified. This will enable monitoring bodies to carry out their proactive monitoring activities. We will modify the law by executing a legislative instrument before code monitoring commences.

RG 269.131 The staff of the monitoring body should carry out the investigation using the information-gathering powers referred to in RG 269.130 and by reviewing and assessing the information gathered through this process.

RG 269.132 We expect that the monitoring body would typically then prepare a report about the investigation it has conducted, which sets out its views on whether the financial adviser has complied with the code. If the report concludes that a code breach has occurred, the matter should be referred to the governing body, which will make a determination on the matter.

RG 269.133 Whether or not the investigator forms the view that a code breach has occurred, we expect that the report would detail the following issues at a minimum:

- (a) background information about the covered financial adviser to which the matter relates (we expect all of the information on the financial advisers register for the financial adviser to be relevant, as well as whether the financial adviser's conduct has previously been investigated under the compliance scheme and what the outcomes were of that investigation);

- (b) a description of the alleged failure to comply with the code;
- (c) the background to the matter (e.g. how it came to the monitoring body's attention);
- (d) what actions the monitoring body has taken and what findings it has uncovered in the investigation (e.g. information gathered, inquiries undertaken, people interviewed and other relevant people contacted); and
- (e) a recommendation about whether a finding should be made that the financial adviser did or did not comply with the code and the reasons for this.

Note: The report may also include other information.

RG 269.134 The investigation should be conducted in a timely way and as quickly as possible without compromising the quality of the investigation. What is a reasonable timeframe will depend on the nature of the matter.

RG 269.135 As a guide, monitoring body staff should, within 90 days of the initial assessment of the matter recommending that further investigation should take place:

- (a) complete their investigation; and
- (b) if the monitoring body concludes that a code breach has occurred, refer the matter to the governing body.

Note: While we will use the timeframes in our guidance when assessing whether a monitoring body has failed to make a determination in a reasonable period under s921L(5), a failure to meet the benchmarks we set in our guidance does not necessarily indicate that a monitoring body has not complied with its obligation to make a determination within a reasonable period. There may be good reasons for the delay (e.g. a longer timeframe may be appropriate if the matter is more complex).

RG 269.136 To help ensure that appropriate standards are being applied at the investigation stage, we expect governing bodies to regularly review a random sample of matters that were investigated but not referred to the governing body for decision.

#### **Stage 4: Determination and sanctions**

RG 269.137 The governing body is responsible for making a determination about whether a covered financial adviser has failed to comply with the code and imposing any sanctions. This determination must be made in writing: see s921L(1).

RG 269.138 It is not essential for all members of the governing body to be involved in making a determination. The governing body may form an internal panel comprising a subset of members of the governing body who, collectively, have the appropriate diversity of knowledge, skills, experience and professional backgrounds to make a determination on a particular matter.

- RG 269.139 It is also open to the governing body to appoint an external panel to make determinations. Any internal or external panel appointed by the governing body should satisfy the requirements for governing body independence (see RG 269.71–RG 269.73) and expertise of the initial governing body (see RG 269.80).
- RG 269.140 As a guide, a governing body or its appointed panel should make its determination within 60 days of receiving a referral from monitoring body staff. However, we recognise that there are circumstances when a longer timeframe may be appropriate, especially if the matter is more complex.
- RG 269.141 We consider that a governing body or its appointed panel should apply principles consistent with procedural fairness in their decision-making process. This is to give financial advisers confidence in the fairness and soundness of the decision-making process and to give credibility to the decisions of the governing body or its appointed panel.
- RG 269.142 In particular, we propose that governing bodies adopt the principles set out in Table 5.

**Table 5: Key principles for making decisions about failures to comply with the code**

Principle	Explanation
The opportunity to be heard	<p>Generally, the financial adviser should have the opportunity to be heard before the governing body or its appointed panel makes a decision that may be adverse to their interests (such as a decision that they have failed to comply with the code or a decision to impose a sanction). The opportunity should include a right for them to appear before the governing body or its appointed panel and present:</p> <ul style="list-style-type: none"> <li>• submissions, either in writing or verbally; and</li> <li>• material that addresses the issues of significance or concern to the governing body.</li> </ul>
The entitlement to a notice	<p>The financial adviser should be entitled to:</p> <ul style="list-style-type: none"> <li>• know the subject matter of the hearing and, in particular, the issues that are of concern to the governing body or its appointed panel and for which there is a risk of an adverse finding;</li> <li>• know the circumstances that may cause the governing body or its appointed panel to make a decision against them; and</li> <li>• have reasonable time to prepare their response.</li> </ul>

Principle	Explanation
The right to an impartial decision maker	<p>The financial adviser should have the right to have the decision made by a person who has an open mind on the matter.</p> <p>We expect a monitoring body to address this by:</p> <ul style="list-style-type: none"> <li>• having an independent governing body, or a panel appointed by the governing body, with the composition described in RG 269.71–RG 269.73; and</li> <li>• ensuring that people who sit on the governing body or its appointed panel do not have responsibility for investigating and gathering information and evidence about the financial adviser’s possible failure to comply.</li> </ul>
Findings of fact to be made on a sound basis	Any findings of fact that the governing body or its appointed panel is required to make in a hearing must be based on material that is relevant, credible and probative, but the rules of evidence need not apply.

### Sanctions

- RG 269.143 The sanctions imposed by monitoring bodies are not intended to provide redress to consumers. That is the role of internal dispute resolution processes, AFCA or AFS licensee remediation programs.
- RG 269.144 However, appropriate sanctions have the potential to deter financial advisers from breaching the code, and develop their ability and willingness to comply with the code in future. They are therefore an important tool that can be used to improve the ethical behaviour of financial advisers.
- RG 269.145 We expect that the range of sanctions governing bodies may select from would include:
- (a) a warning or reprimand;
  - (b) additional training or counselling;
  - (c) additional supervision;
  - (d) corrective action (e.g. requiring the financial adviser to undertake rectification or implementation of directives within a reasonable period of time determined by the monitoring body);
  - (e) requiring an independent compliance audit of the financial adviser;
  - (f) ordering the financial adviser to provide the services to the consumer again at no cost, or to reduce or waive the costs for the adviser’s work;
  - (g) requiring the financial adviser to pay a financial sanction;
  - (h) suspending the financial adviser’s coverage by the compliance scheme; and
  - (i) in extreme circumstances, revocation of the financial adviser’s membership of the industry association and/or coverage by the compliance scheme.

Note: AFS licensees must ensure all of their financial advisers are covered by a compliance scheme within 30 business days of ceasing to be covered by another scheme: see s921H. If a monitoring body is considering revoking a financial adviser's coverage by the compliance scheme, we would expect it to work with the financial adviser's AFS licensee(s) to ensure that they are aware of and can manage the risk of potentially breaching this obligation.

RG 269.146 We will not set strict guidelines about which sanction(s) should be imposed for which kind of failure to comply with the code, but we will expect that governing bodies will have a sanctions guide or policy that requires them to consider the factors set out in Table 6 when making these decisions. This should ensure some degree of consistency.

**Table 6: Key factors that should be considered in deciding on sanctions to impose**

Factor	Relevant considerations
Nature and seriousness of the failure to comply with the code	<ul style="list-style-type: none"> <li>• Whether the failure to comply was simply a mistake, or whether it involved dishonesty or recklessness</li> <li>• The amount of any benefit gained as a result of the financial adviser's failure to comply</li> <li>• The amount of any loss caused to consumers</li> <li>• The impact of the misconduct on the market, including potential loss of public confidence</li> <li>• Whether the financial adviser has a poor compliance record</li> <li>• The duration of the failure to comply</li> </ul>
Conduct after the failure to comply with the code occurred	<ul style="list-style-type: none"> <li>• How the failure to comply came to the attention of the monitoring body (e.g. whether it was self-identified)</li> <li>• The extent to which the financial adviser has been cooperative with the monitoring body during the investigation</li> </ul>
Likelihood of behaviour change	<ul style="list-style-type: none"> <li>• Whether the behaviour of the particular financial adviser is likely to change in response to imposition of the sanction</li> <li>• Whether other covered financial advisers are likely to be generally deterred from similar conduct by the sanction</li> </ul>
Mitigating factors	<ul style="list-style-type: none"> <li>• Whether there would be any personal hardship as a result of imposing the sanction</li> <li>• Whether the misconduct was inadvertent and the financial adviser undertakes to cease or correct the misconduct</li> </ul>

RG 269.147 The sanctions guide or policy a monitoring body must submit with its application for compliance scheme approval should set out:

- how the monitoring body will determine sanctions, including considering the factors in Table 6;
- some hypothetical situations in which each sanction would be imposed (e.g. in the case of sanctions that require the cooperation of a covered financial adviser's AFS licensee, a relevant circumstance might be whether the licensee has agreed to cooperate to impose the sanction); and

- (c) the monitoring body's process for informing ASIC of sanctions it imposes for failures to comply with the code (as required under s922HD).

RG 269.148 If the report of a financial adviser's conduct was received from an external source (e.g. from a member of the public), we encourage the monitoring body to notify the complainant about the governing body's determination and the sanction that has been imposed.

## Appeals and dispute resolution

RG 269.149 A compliance scheme document must set out how a dispute is to be resolved between the monitoring body and a covered financial adviser: see s921G(5). We have set out a suggested high-level process to allow each monitoring body to determine its own, more detailed appeal and dispute resolution procedures.

### Appeals process

RG 269.150 We expect that the disputes that would most likely be raised would concern a financial adviser's disagreement with:

- (a) a determination made by the governing body that the financial adviser has failed to comply with the code; or
- (b) a sanction that a governing body has imposed on the financial adviser.

RG 269.151 The monitoring body must therefore have a documented appeals process that sets out how it will:

- (a) accept a complaint from a financial adviser about either of these matters (similar to a right of appeal);
- (b) gather information from the financial adviser about the basis for its complaint; and
- (c) allow the governing body another opportunity to consider the matters raised by the financial adviser's complaint. We expect the governing body to be empowered to resolve the financial adviser's complaint by either amending the determination or sanction it has imposed or upholding it.

RG 269.152 Where possible, the governing body should appoint people who were not involved in making the original decision to consider the matters raised by the financial adviser's complaint.

RG 269.153 For example, if the matter was originally considered by an internal panel comprising a subset of members of the governing body, those members of the governing body who were not involved in making the original decision could consider the complaint. If the matter was originally considered by an external panel appointed by the governing body, the governing body or an internal

panel comprising a subset of members of the governing body could consider the complaint.

- RG 269.154 The monitoring body should consider preparing a guide for covered financial advisers that summarises the appeal process and sets out the reasons and information that are and are not likely to lead to a governing body amending its previous decision.
- RG 269.155 The guide to the appeals process should enhance covered financial advisers' understanding of, and confidence in, the appeals process.

### **Process for dealing with other disputes**

- RG 269.156 Other disputes (non-appeal disputes) may also arise between a covered financial adviser and the monitoring body that operates their compliance scheme. For instance, a financial adviser may object to a request for information made by the monitoring body.
- RG 269.157 The monitoring body should also have a documented process for dealing with these other kinds of disputes. The process should be specified in the compliance scheme document, along with the appeals process: see s921G(5). We would expect the monitoring body to provide a final response to the financial adviser within 45 days.

## **Enforceability of monitoring body's decisions**

- RG 269.158 It is crucial that a monitoring body ensures that financial advisers comply with its decisions and the requirements of the compliance scheme. However, the law does not compel financial advisers to comply with the directions of a monitoring body (aside from an obligation to provide information, documents or other reasonable assistance to the monitoring body on request when it is carrying out its reactive monitoring activities).
- RG 269.159 A monitoring body should enter into a legally binding agreement with each covered financial adviser in which the adviser:
- (a) agrees to share all information and documents and provide such reasonable assistance as the monitoring body reasonably requests (e.g. those required for proactive monitoring);
  - (b) agrees to report any significant breaches of the code by them;
  - (c) agrees to comply with the terms of the compliance scheme;
  - (d) agrees to be bound by the decisions made under the compliance scheme; and
  - (e) consents to the monitoring body sharing any information about them with:
    - (i) ASIC;

- (ii) the monitoring body for any compliance scheme that they move to;
- (iii) the Tax Practitioners Board (TPB);
- (iv) AFCA; and
- (v) their authorising AFS licensee.

RG 269.160 By obtaining financial advisers' consent to sharing information with other bodies, monitoring bodies should be able to provide personal information about those financial advisers in accordance with any privacy law obligations they have.

RG 269.161 The monitoring body should also have procedures in place for dealing with a financial adviser's non-compliance with a decision or request of the monitoring body. These procedures should be detailed in the compliance scheme document itself.

RG 269.162 However, if a financial adviser has failed to comply with the agreement it has entered into with the monitoring body, the monitoring body should issue a 'notice to comply', which:

- (a) describes the financial adviser's act of non-compliance;
- (b) allows the financial adviser a reasonable time (e.g. 10 business days) to comply; and
- (c) notifies the financial adviser of the implications if they fail to comply within that time period.

Note: These procedures would only apply when the financial adviser has not raised a dispute about the matter. If the financial adviser has raised a dispute, this would be dealt with in accordance with the dispute resolution procedures for the compliance scheme: see RG 269.149–RG 269.157.

RG 269.163 If a financial adviser fails to comply with the notice to comply, the monitoring body may consider revoking a financial adviser's coverage by the compliance scheme.

RG 269.164 However, as noted at RG 269.145, we would expect a monitoring body that is considering doing so to work with the financial adviser's AFS licensee(s) to ensure that it is aware of and can manage the risk of potentially breaching its obligation to ensure all of its financial advisers are covered by a compliance scheme within 30 business days of ceasing to be covered by another scheme: see s921H.

## E Ongoing operation of a compliance scheme

### Key points

This section sets out our expectations about the ongoing operation of a compliance scheme, including measures for review, reporting and consultation, and the ongoing support and education that may be offered to covered financial advisers.

A monitoring body should:

- produce annual public reports and six-monthly reports to ASIC using the data it collects, stores and analyses (see RG 269.165–RG 269.175);
- report to ASIC serious contraventions or systemic issues that it identifies with compliance with the code by covered financial advisers, within 45 days of becoming aware that the issue is serious or systemic (see RG 269.176–RG 269.180);
- cause its compliance scheme to be independently reviewed at least every five years (see RG 269.181–RG 269.184);
- consult broadly about its compliance scheme (see RG 269.185–RG 269.188);
- share information with other monitoring bodies when a covered financial adviser seeks to be covered by a new compliance scheme (see RG 269.189–RG 269.190); and
- consider how it can best support and encourage covered financial advisers to behave ethically and in accordance with the code (see RG 269.191–RG 269.193).

## Data collection, analysis and regular reporting

### Collection and analysis of data

RG 269.165 A monitoring body should have measures in place to ensure that it can effectively collect, store and analyse:

- (a) data collected during the proactive monitoring activities carried out by the monitoring body under its annual work plan (including data collected in the course of conducting thematic own-motion inquiries, as well as insights gleaned from analysing that data);
- (b) reports of potential failures to comply with the code received by the monitoring body (including, for example, the nature of the reports, when they are made and details about the persons making the reports);
- (c) information gathered in the course of investigations carried out into whether a particular financial adviser has failed to comply with the code (i.e. reactive monitoring activities);

- (d) the results of the investigations carried out by the monitoring body (including, for example, the sanctions imposed on financial advisers and financial advisers' compliance with those sanctions); and
- (e) the results of independent reviews conducted of the compliance scheme's operation in accordance with s921S.

RG 269.166 This data should be able to be analysed to provide insights about:

- (a) the proactive monitoring activities carried out under the compliance scheme, including the results and findings from those activities;
- (b) the reports received of potential failures to comply with the code, including:
  - (i) their type and frequency;
  - (ii) the characteristics of the reporters (e.g. whether they are consumers, peer financial advisers or AFS licensees);
  - (iii) the time taken to assess and refer them; and
  - (iv) the information provided by the reporter;
- (c) investigations into possible failures to comply with the code, including:
  - (i) the number of investigations conducted, their subject, and the timeframes in which they were conducted;
  - (ii) whether and how often the benchmark timeframes set out in our guidance are being met; and
  - (iii) the outcomes of the investigations, such as how often investigations are resulting in a finding that a covered financial adviser has breached the code;
- (d) serious contraventions of the code and systemic issues identified with compliance with the code by covered financial advisers;
- (e) trends and emerging issues with compliance with the code by covered financial advisers; and
- (f) good practice that the monitoring body observes regarding compliance with the code.

Note: Monitoring bodies will be required to commence data collection from 1 January 2020 and to start analysing the data collected from 1 April 2020.

## Reporting on the data collected and analysed

RG 269.167 We expect a monitoring body to report on the data it has collected and analysed to:

- (a) the public on an annual basis; and
- (b) ASIC on a six-monthly basis.

**Annual reporting to the public**

- RG 269.168 A monitoring body should produce an annual report on its operations under the compliance scheme. This should be made publicly available (e.g. on the website for the compliance scheme) and should set out the results of the data analysis it has undertaken in accordance with RG 269.166.
- RG 269.169 We do not expect a monitoring body to include all information in the report (e.g. all information about the systemic issues and serious contraventions the monitoring body has found need not be made public).

**Six-monthly reporting to ASIC**

- RG 269.170 The monitoring body should report to ASIC on a six-monthly basis on:
- (a) the matters that would be covered in its annual report (adjusted for a six-monthly timeframe);
  - (b) the resources and expertise of the monitoring body and any expected future changes to this (this is in addition to the formal notification that monitoring bodies must make about significant reductions to resources and expertise under s921T, which is discussed further in Section G); and
  - (c) any future proposed changes to the compliance scheme (again, in addition to the formal notification that we must receive under s921R, which is discussed further in Section G).

Note 1: A monitoring body is only required to report to ASIC on the matters in RG 269.170(b)–RG 269.170(c) in its first six-monthly report in the first year of code monitoring. A monitoring body must report to ASIC on all the matters in RG 269.170 in subsequent six-monthly reports.

Note 2: We expect that monitoring bodies will also report to the TPB on a six-monthly basis on the matters that would be covered in RG 269.170 because some covered financial advisers will also be tax (financial) advisers.

- RG 269.171 We plan to have a quarterly meeting with each monitoring body that has an approved compliance scheme at which the six-monthly reports can be discussed, as well as other matters relevant to the operation of the monitoring body under the compliance scheme. We may reconsider the need for six-monthly reporting to ASIC and quarterly meetings with ASIC after a compliance scheme has been operating for a few years and its processes are embedded.

Note: We expect that monitoring bodies will also meet with the TPB on a quarterly basis to discuss these matters because some covered financial advisers will also be tax (financial) advisers.

**Record-keeping obligations**

- RG 269.172 A monitoring body also has record-keeping obligations under general law that it must comply with (e.g. under corporations law or the rules governing associations).

RG 269.173 In addition, we expect a monitoring body to keep all records relevant to the operation of its compliance scheme for a minimum of seven years.

### **Confidentiality of information**

RG 269.174 A monitoring body must take reasonable steps to protect the confidentiality of reports about potential failures to comply with the code and any associated information that it receives.

RG 269.175 A monitoring body should also consider how the *Privacy Act 1988* and the Australian Privacy Principles apply to it when handling personal information.

## **Reporting of serious contraventions and systemic issues**

RG 269.176 We will also expect a monitoring body to report to ASIC serious contraventions or systemic issues that it identifies with compliance with the code by covered financial advisers, within 45 days of becoming aware that the issue is serious or systemic.

### **Serious contraventions**

RG 269.177 We consider that a contravention will be serious, and therefore reportable by a monitoring body to ASIC, if:

- (a) there are sufficient facts or information to found an objectively reasonable belief that it is serious; or
- (b) the monitoring body in good faith forms the view that a serious contravention of the code may have occurred.

RG 269.178 A reasonable belief will be formed if a reasonable person would expect a monitoring body to report the contravention to ASIC.

RG 269.179 There may be some 'grey areas' in which the need to report to ASIC is not straightforward. If there is any doubt about whether it is necessary to report a particular contravention to ASIC, we would encourage the monitoring body to report the contravention.

### **Systemic issues**

RG 269.180 A systemic issue is an issue that may:

- (a) affect more than one client of a covered financial adviser;
- (b) involve many reports of a failure by the covered financial adviser to comply with the code that are similar in nature;
- (c) affect all current or potential clients of the covered financial adviser; or
- (d) affect more than one covered financial adviser.

## Independent review of an approved compliance scheme

- RG 269.181 A monitoring body must cause its approved compliance scheme to be reviewed by an independent person at least every five years: see s921S. The independent reviewer cannot be an associate of the monitoring body, a person covered by the compliance scheme, an AFS licensee whose advisers are covered by the scheme, or a professional association whose members are covered by the scheme: see s921S(2).
- RG 269.182 The type of matters the independent person could review include:
- (a) the governance and administration of the compliance scheme;
  - (b) assessing whether the monitoring body is adequately resourced to effectively carry out its activities under the compliance scheme; and
  - (c) a selection of matters to ensure that the monitoring body is effectively monitoring and enforcing compliance with the code.
- RG 269.183 We expect a monitoring body to consult with ASIC about the terms of the independent review it proposes to commission and the appointment of the independent reviewer.
- RG 269.184 The independent review must be made public, and a copy must be given to ASIC as soon as reasonably practical after the review has been completed.

## Consultation on compliance scheme development and amendment

- RG 269.185 We expect a monitoring body to undertake consultation with a range of stakeholders when it is:
- (a) developing its compliance scheme; and
  - (b) proposing to make changes to its compliance scheme.
- Note: A monitoring body also has an obligation to notify ASIC of any proposed modifications to its compliance scheme: see s921R. Our expectations are explained further in Section G.
- RG 269.186 Stakeholders that may be affected by the content of a compliance scheme document and the way the compliance scheme operates in practice include:
- (a) financial advisers who are or who may become covered by the compliance scheme;
  - (b) AFS licensees under whose licences those financial advisers operate;
  - (c) consumers who may use the services of financial advisers (and who may be consulted through associations representing consumers of financial services);
  - (d) TPB, which is responsible for the regulation of tax (financial) advisers among others;

- (e) AFCA, to which consumers may be referred when they contact the monitoring body and are seeking redress; and
- (f) other monitoring bodies that may be affected by the monitoring body's processes (e.g. for transferring financial advisers between compliance schemes).

RG 269.187 A monitoring body should consult with representatives of these groups when it is developing or proposing changes to its compliance scheme, except when a proposed change to its compliance scheme is minor or machinery in nature. However, if this is the case, we nevertheless expect a monitoring body to notify any affected stakeholders about a change to its compliance scheme.

RG 269.188 We recognise that it may not be possible to identify some of the parties listed above when the monitoring body is initially developing its compliance scheme (e.g. the financial advisers who will be covered by the scheme and their AFS licensees because no financial advisers will have yet signed up to the compliance scheme). However, we consider that it is still worthwhile for the monitoring body to consult with some financial advisers and AFS licensees. For example, in the case of a monitoring body that is a professional association, it could consult with its members who are financial advisers and their AFS licensees (even though some of them may elect not to be covered by that monitoring body's compliance scheme).

## Information sharing between monitoring bodies

RG 269.189 Financial advisers are prevented from moving compliance schemes while they are under investigation: see s921J, 921L(4) and 921M(3).

RG 269.190 To support this prohibition, if a financial adviser seeks to be covered by a compliance scheme, we expect the scheme's monitoring body to:

- (a) confirm that the financial adviser is not currently under investigation; and
- (b) request information about the financial adviser's compliance history under their previous compliance scheme(s) (e.g. information about any investigations that were conducted into the financial adviser and the outcomes of those investigations).

Note: The financial adviser will have consented to the sharing of this information when they signed up to the previous compliance scheme: see RG 269.159(e).

## Ongoing support and education for advisers

RG 269.191 A key part of improving the ethical behaviour of financial advisers is supporting and motivating financial advisers to act in an ethical manner and in

accordance with the code specifically. This complements the primary role of a monitoring body, which is to monitor and enforce the code of ethics.

RG 269.192 A monitoring body should consider how it can encourage and develop covered financial advisers' ethical decision-making skills. Examples of the support that could be offered to covered financial advisers include:

- (a) an ethics assistance line or online support service that can provide financial advisers with practical and confidential guidance to deal with ethical issues that arise in their dealings with clients;
- (b) face-to-face seminars where examples of good and poor ethical behaviour are discussed, and financial advisers can discuss how best to approach similar issues; and
- (c) webinars and digital content to support and encourage financial advisers to act in accordance with their ethical obligations.

RG 269.193 These services should be designed in light of the key risks to ethical behaviour that a monitoring body has identified.

## F Revocation of and conditions on compliance scheme approval

### Key points

ASIC has the power to revoke the approval of a compliance scheme, or to vary or impose conditions on a compliance scheme's approval, in various circumstances.

This section sets out how we will exercise these powers, including:

- the information we will rely on (see RG 269.194–RG 269.197); and
- how we will assess whether it is appropriate to use these powers (see RG 269.198–RG 269.201).

### Information we will use to make a decision

RG 269.194 ASIC has the power, under s921K, to revoke our approval of a compliance scheme, vary any conditions on the approval or impose new conditions if we are satisfied that the monitoring body:

- (a) is not appropriately monitoring or enforcing compliance with the code under the scheme;
- (b) does not have sufficient resources or expertise to appropriately monitor or enforce compliance with the code under the scheme;
- (c) fails to notify ASIC of a significant change to the monitoring body's resources or expertise;
- (d) has not complied with a request from ASIC to provide us with information; or
- (e) fails to notify ASIC or the relevant AFS licensee of a covered financial adviser's failure to comply with the code.

RG 269.195 To make a decision to revoke approval or vary or impose a condition on the approval of a compliance scheme, we expect to rely primarily on:

- (a) the information that the monitoring body must provide to ASIC about the compliance scheme on an ongoing basis, including notifications about:
  - (i) significant reductions to the resources or expertise it uses to monitor or enforce compliance with the code under the scheme (see s921T); and
  - (ii) any proposed modifications to the compliance scheme (see s921R);

Note: While we are not required to approve changes to a compliance scheme, ASIC has the power to disallow a change if we are not satisfied that compliance with the code will continue to be monitored and enforced under the modified scheme.

- (b) the annual public reports and six-monthly reports to ASIC that the monitoring body prepares in accordance with our proposed expectations (set out in RG 269.167–RG 269.171);
- (c) the information that the monitoring body provides during the course of our quarterly meetings about the operations of the monitoring body under the compliance scheme;
- (d) the independent reviews of the compliance scheme that must be carried out at least every five years (see s921S);
- (e) any complaints that we have received about the compliance scheme;
- (f) the monitoring body’s responses to any requests for information that we make under s921Q; and
- (g) in the case of conditions that we may impose on the approval of a compliance scheme at its commencement, the information provided in the monitoring body’s application for compliance scheme approval.

RG 269.196 To revoke approval or vary or impose a condition, we must provide the monitoring body with a written notice that:

- (a) provides reasons why we are considering taking that action; and
- (b) states that the monitoring body has 90 business days to make submissions to ASIC, in accordance with the notice, about the possible action.

RG 269.197 We must then consider any submissions made by the monitoring body before revoking approval or varying or imposing a condition.

## Threshold for making a decision

RG 269.198 We recognise that taking action to revoke the approval of a compliance scheme or deciding to vary or impose a condition on the approval of a compliance scheme is potentially serious—particularly in the case of revocation of approval, which would affect covered financial advisers covered and their authorising AFS licensees.

RG 269.199 Accordingly, using the information detailed at RG 269.195, we will assess the following to decide whether to exercise ASIC’s power to revoke the approval of a compliance scheme or whether and how to vary or impose a condition on the approval of a compliance scheme:

- (a) whether the monitoring body and compliance scheme meet the criteria for approval set out in the Corporations Act and our expectations (as set out in Sections C, D and E and summarised in the ‘if not, why not’ checklist);
- (b) if the monitoring body and compliance scheme do not meet these criteria and expectations, how serious the failures to meet them are—for example:

- (i) whether the failure to meet them has had a direct effect on the ability of the monitoring body under the compliance scheme to identify failures to comply with the code and deal with them within a reasonable time;
- (ii) the period for which the failure will persist or has persisted;
- (iii) whether the failure reveals serious or systemic weaknesses in the monitoring body's procedures for monitoring and enforcing compliance with the code; and
- (iv) whether the failure was deliberate or reckless.

RG 269.200 In the case of conditions that we may impose on the approval of a compliance scheme when initially approving it, we will consider:

- (a) whether the monitoring body and compliance scheme are likely to meet the criteria for approval set out in the Corporations Act and our expectations; and
- (b) whether a condition we are proposing to impose would give us more confidence that these criteria and expectations will be met.

RG 269.201 A situation in which we may wish to impose a condition on a compliance scheme's approval initially is where the members of the governing body have not yet been selected or appointed, and we are therefore not confident that the monitoring body has sufficient expertise to appropriately monitor or enforce compliance with the code under the scheme. In this case, we may impose a condition that specifies who should be appointed, or the attributes of the persons who should be appointed, to the governing body.

## G Notifications to ASIC

### Key points

A monitoring body must make formal notifications to ASIC about:

- failures by covered financial advisers to comply with the code, where the monitoring body has made a determination that there has been a failure to comply or imposed a sanction (see RG 269.202–RG 269.203);
- significant reductions to the resources or expertise it uses to monitor or enforce compliance with the code under the compliance scheme (see RG 269.204–RG 269.212); and
- modifications to a compliance scheme (see RG 269.213–RG 269.218).

These notifications are in addition to the less formal reporting expectations detailed in other sections of this guide.

This section summarises the notifications that must be made and sets out how monitoring bodies should determine whether a reduction in their resources or expertise is significant for the purposes of s921T.

### Adverse determinations and sanctions

RG 269.202 A monitoring body must notify ASIC about failures by covered financial advisers to comply with the code, where the monitoring body has made a determination that there has been a failure to comply or imposed a sanction: see s922HD.

RG 269.203 Failures to comply with the code and any consequent sanctions will be made public on the financial advisers register, which is administered by ASIC. This allows consumers to find out whether a financial adviser whose services they have engaged, or intend to engage, has failed to comply with the code in the past. A monitoring body must provide this information to ASIC for the information to be displayed on the financial advisers register.

### Significant reductions in resources and expertise

RG 269.204 A monitoring body must notify ASIC of significant reductions to the resources or expertise it uses to monitor or enforce compliance with the code under the compliance scheme when compared with the level of resources or expertise it had at the time it submitted its final application to ASIC for approval of its compliance scheme: see s921T.

RG 269.205 A monitoring body need only notify ASIC of reductions in resources or expertise that are ‘significant’: see s921T. This notification should be made within 45 days of the monitoring body becoming aware that such a reduction is likely.

- RG 269.206 We expect that a determination about whether a reduction to the resources or expertise that a monitoring body uses to monitor or enforce compliance with the code under the scheme is ‘significant’ should be made by the governing body. We expect the governing body to be responsible for ensuring that the monitoring body remains adequately resourced on an ongoing basis: see RG 269.93. It is therefore in the best position to be able to make this determination.
- RG 269.207 When the governing body undertakes an assessment as to whether a reduction is significant, we expect it to:
- (a) consider the circumstances and likely impact of the reduction;
  - (b) decide if the reduction is significant; and
  - (c) document the reasons for its decision.
- RG 269.208 In determining whether the reduction is significant, the governing body should consider:
- (a) the monitoring body’s existing level of resources and expertise (e.g. in the case of a reduction in human resources, whether there are already a number of existing vacant roles or whether there are other staff members who can take on the role of a departing staff member);
  - (b) the monitoring body’s workload and any changes in its workload (e.g. whether the monitoring body appears to be managing its workload before the reduction); and
  - (c) the size of the reduction in the monitoring body’s resources or expertise (e.g. in the case of a reduction in fee revenue and financial resources available to the monitoring body, due to financial advisers no longer being covered by the scheme, the percentage the reduction represents to the revenue used to run the operations under the compliance scheme).
- RG 269.209 An example of a matter we would expect to be notified about is the governing body deciding to outsource a core function of the compliance scheme that the monitoring body previously carried out internally.
- RG 269.210 Providing a notification about a significant reduction to the resources or expertise that a monitoring body uses to monitor or enforce compliance with the code is important. We may revoke the approval of the compliance scheme, or impose or vary conditions on the approval, if we are not notified of such a reduction: see s921K.
- RG 269.211 If a governing body is not sure whether the reduction in resources or expertise is significant, we encourage it to notify ASIC of the reduction.
- RG 269.212 We may also revoke the approval of the compliance scheme, or impose or vary conditions on the approval, if the monitoring body notifies ASIC of a reduction to the body’s resources and expertise and we form the view that the

monitoring body is no longer able to appropriately monitor and enforce compliance with the code. For more information on our use of these powers, see Section F.

## Modifications to a compliance scheme

RG 269.213 A monitoring body must notify ASIC of modifications to its compliance scheme: see s921R.

RG 269.214 A monitoring body may propose to modify an approved compliance scheme by giving a written notice to the ASIC contact with whom its quarterly meetings are held. The notice must:

- (a) set out the text of any proposed modification to the compliance scheme document;
- (b) contain an explanation of the purpose of the proposed modification (see s921R(1) and (2)); and
- (c) explain any consultation the monitoring body has carried out on the proposed modification to the compliance scheme.

Note: For more information on our expectations for consultation, see RG 269.185–RG 269.188.

RG 269.215 ASIC has the power to disallow a proposed modification if we are satisfied on reasonable grounds that:

- (a) compliance with the code will not be appropriately monitored or enforced under the scheme as modified; or
- (b) if the proposed modification is a new monitoring body for the compliance scheme, the new monitoring body does not have sufficient resources or expertise to appropriately monitor or enforce compliance with the code under the scheme.

RG 269.216 We have a 28-day period, beginning on the day we receive the notice, in which to disallow the modification. If we exercise that power within the 28-day period, the part of the proposed modification that is disallowed will not come into effect.

RG 269.217 As well as consulting with stakeholders, in line with our guidance in RG 269.185–RG 269.188, a monitoring body should engage with ASIC early about any proposed modification to its compliance scheme.

RG 269.218 Consulting early with ASIC about a proposed modification to a compliance scheme should ensure that any concerns we have about the modification can be addressed before a formal modification notification is made, thereby reducing the likelihood that we will disallow a modification.

## Appendix: ‘If not, why not’ checklist

- RG 269.219 This appendix sets out the ‘if not, why not’ checklist, based on our guidance in Sections C, D and E of this guide:
- (a) Table 7 sets out an ‘if not, why not’ checklist for compliance scheme governance and administration;
  - (b) Table 8 sets out an ‘if not, why not’ checklist for compliance scheme monitoring and enforcement; and
  - (c) Table 9 sets out an ‘if not, why not’ checklist for the ongoing operation of a compliance scheme.
- RG 269.220 This will require the monitoring body to either confirm that it will comply with the expectations in our guidance or, if not, explain why this is the case and the alternative approach the monitoring body will take.

**Table 7: Compliance scheme governance and administration (see Section C)**

Expectation	Confirmation	Explanation	Reference
<b>Governance: Responsibilities of governing body and staff of monitoring body (see RG 269.63–RG 269.68)</b>			
The governing body is responsible for the matters identified in the 'Governing body responsibility' column of Table 3.	<i>[Does the governing body have those responsibilities?]</i>	<i>[Explain the responsibilities of the governing body.]</i> <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Add references to the charter, terms of reference or any other documents that set out the responsibilities of the governing body. Attach these documents.]</i>
The staff of the monitoring body are responsible for the matters identified in the 'Monitoring body staff responsibility' column of Table 3.	<i>[Do the monitoring body staff have those responsibilities?]</i>	<i>[Explain the responsibilities of the monitoring body staff.]</i> <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Add references to any documents that set out the responsibilities of the monitoring body staff. Attach these documents.]</i>
The governing body has not and will not delegate responsibility for: <ul style="list-style-type: none"> <li>• overseeing the operation of the compliance scheme; or</li> <li>• making the ultimate determination about whether a covered financial adviser has failed to comply with the code and what sanctions should be imposed.</li> </ul>	<i>[Has the governing body retained responsibility for these matters and will it retain responsibility for these matters?]</i>	<i>[Explain how the governing body will retain these responsibilities.]</i> <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Add references to any documents that set out the responsibilities. Attach these documents.]</i>
The governing body has a charter or terms of reference that sets out the matters in RG 269.68.	<i>[Does the governing body have a charter or terms of reference that sets out the matters in RG 269.68?]</i>	<i>[Explain the charter or terms of reference.]</i> <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Add references to the charter or terms of reference that sets out the matters in RG 269.68. Attach the charter or terms of reference.]</i>

Expectation	Confirmation	Explanation	Reference
<b>Governance: Independence and impartiality (see RG 269.69–RG 269.76)</b>			
<p>The governing body:</p> <ul style="list-style-type: none"> <li>• is made up of non-executive members;</li> <li>• has a minimum of three members, including an independent chair within the meaning of RG 269.72; and</li> <li>• has an equal balance of members with relevant background and experience in the financial advice industry, and consumer representative experience (see RG 269.71(b)).</li> </ul>	<i>[Is the governing body independent in this manner?]</i>	<p><i>[Explain the profile of the governing body.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<i>[Refer to any documents that set out the composition of the governing body. Attach these documents.]</i>
Staff responsible for carrying out monitoring and enforcement activities for the compliance scheme do not also have other conflicting roles within the entity acting as the monitoring body.	<i>[Are staff prevented from having conflicting roles?]</i>	<p><i>[Explain the extent to which and how this is prevented (e.g. which roles are separated).]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<i>[Refer to any documents that set out this role separation. Attach these documents.]</i>
The monitoring body has a policy for identifying and preventing such conflicting roles both at the level of the governing body and at the monitoring staff level.	<i>[Does the monitoring body have a policy for identifying and preventing conflicting roles?]</i>	<p><i>[Explain the policy.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<i>[Attach the policy.]</i>
<b>Governance: Expertise (see RG 269.77–RG 269.89)</b>			
There is, and will continue to be, a member of the governing body who, at some point in the five years before being appointed to the governing body, met the training and competence standards that would have allowed them to give personal advice to retail clients on relevant financial products.	<i>[Is there a member of the governing body who has this attribute?]</i>	<p><i>[Explain who the member is and their professional background.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<i>[Refer to any documents that set this out (e.g. a rule in the compliance scheme document).]</i>

Expectation	Confirmation	Explanation	Reference
There is, and will continue to be, a member of the governing body who has experience in and knowledge of the principles of procedural fairness and administrative law.	<i>[Is there a member of the governing body who has this attribute?]</i>	<i>[Explain who the member is and their professional background.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Refer to any documents that set this out (e.g. a rule in the compliance scheme document).]</i>
The monitoring body has provided with its application for compliance scheme approval: <ul style="list-style-type: none"> <li>• a curriculum vitae for each member of the proposed initial governing body; and</li> <li>• an explanation of why the member was chosen, in light of the criteria that its policy says it will consider when selecting a member of the governing body (see RG 269.82).</li> </ul>	<i>[Has the monitoring body provided the relevant information to ASIC?]</i>	<i>[Explain the composition of the initial proposed governing body, and why its members were chosen, taking into account the criteria in the policy.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach the curriculum vitae for each proposed member of the governing body.]</i>
The monitoring body has a policy or procedure that documents: <ul style="list-style-type: none"> <li>• how the members of the governing body are appointed and replaced; and</li> <li>• what criteria are used to determine whether a person should be appointed to the governing body (the criteria specified in RG 269.84 should be included at a minimum).</li> </ul>	<i>[Does the monitoring body have a policy or procedure that documents these matters?]</i>	<i>[Explain what the policy says about these matters.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach the policy or procedure and include references to these matters.]</i>
The monitoring body has job descriptions (covering, at a minimum, the matters in RG 269.87) for each role with responsibility for carrying out the core functions of the compliance scheme.	<i>[Has the monitoring body developed such job descriptions?]</i>	<i>[Explain the basis upon which the job descriptions are developed.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach the job descriptions.]</i>

Expectation	Confirmation	Explanation	Reference
<p>The governing body has a policy or procedure covering maintenance of the expertise of the monitoring body's staff.</p>	<p><i>[Is there a policy or procedure covering maintenance of the expertise of the monitoring body's staff?]</i></p>	<p><i>[Explain what the policy or procedure provides and requires.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach the policy or procedure.]</i></p>
<p><b>Resources (see RG 269.90–RG 269.93)</b></p>			
<p>The monitoring body has provided, with its application for compliance scheme approval, a statement setting out the basis on which it considers that its financial, human and technological resources are, and will continue to be, adequate to allow it to appropriately monitor and enforce compliance with the code under the compliance scheme.</p>	<p><i>[Has the monitoring body provided such a statement?]</i></p>	<p><i>[Explain the basis on which the monitoring body considers that its financial, human and technological resources are, and will continue to be, adequate.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any documents that form the basis on which the monitoring body has reached this conclusion—for example, a business plan including projections of the number of financial advisers the scheme will cover, fee revenue, the scope of the scheme (e.g. what kind of advisers), organisational chart and role descriptions.]</i></p>
<p>The governing body is responsible for overseeing on an ongoing basis whether the monitoring body is adequately resourced to carry out its functions under the compliance scheme.</p>	<p><i>[Does the governing body have this responsibility?]</i></p>	<p><i>[Explain how the governing body will discharge this responsibility.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Add references to any policy, procedure or other document that sets out this responsibility. Attach these documents.]</i></p>

Expectation	Confirmation	Explanation	Reference
<b>Outsourcing (see RG 269.94–RG 269.100)</b>			
<p>The governing body has not and will not outsource its responsibility to:</p> <ul style="list-style-type: none"> <li>oversee the operation of the compliance scheme; or</li> <li>make determinations about code non-compliance and impose sanctions.</li> </ul>	<p><i>[Has or will the monitoring body outsource these responsibilities?]</i></p>	<p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Add references to any policy, procedure or other document that sets out this restriction on outsourcing. Attach these documents.]</i></p>
<p>The monitoring body has conducted and will conduct due diligence on:</p> <ul style="list-style-type: none"> <li>whether it is appropriate to outsource any activity that is proposed to be outsourced; and</li> <li>the outsourced service provider before appointing it.</li> </ul> <p>The monitoring body will also keep appropriate records of its consideration and reasons for deciding to proceed with appointing the outsourced service provider.</p>	<p><i>[Has the monitoring body carried out, and will the body continue to carry out, the due diligence expected and keep appropriate records?]</i></p>	<p><i>[Explain any due diligence that has been undertaken and/or the scope of due diligence that will be undertaken.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any policy or procedure that sets this out and any records of due diligence already carried out.]</i></p>
<p>The monitoring body has entered, or will enter, into a binding contractual arrangement with the outsourced service provider that:</p> <ul style="list-style-type: none"> <li>sets out the terms on which it will provide the outsourced services; and</li> <li>addresses the matters set out in RG 269.100.</li> </ul>	<p><i>[Has the monitoring body entered, or will the body enter, into such contractual arrangements?]</i></p>	<p><i>[Explain the basis on which the monitoring body gives this confirmation (e.g. is there any policy, procedure or template agreement that makes this likely?).]</i></p> <p><i>[Explain any services that the monitoring body has outsourced or will outsource, the reason for doing so, and the due diligence that was undertaken.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any policy or procedure that sets this out and any agreements or template agreements already prepared.]</i></p>

**Table 8: Compliance scheme monitoring and enforcement (see Section D)**

Expectation	Confirmation	Explanation	Reference
<b>Proactive monitoring activities: Annual work plan (see RG 269.101–RG 269.116)</b>			
<p>The monitoring body will prepare, each year, an annual work plan that details:</p> <ul style="list-style-type: none"> <li>• the compliance risks and objectives that the annual work plan will focus on;</li> <li>• the scope and focus of the proactive monitoring activities that the monitoring body will carry out in the year;</li> <li>• the work involved in carrying out the proactive monitoring activities; and</li> <li>• when the activities will be carried out and the resources that will be used to carry them out.</li> </ul>	<p><i>[Will the monitoring body prepare an annual work plan each year?]</i></p>	<p><i>[Explain the process and requirements that relate to this.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Refer to any documents that set this out and attach them.]</i></p>
<p>The monitoring body will provide its annual work plan to ASIC each year.</p>	<p><i>[Will the monitoring body provide its annual work plan to ASIC?]</i></p>	<p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any policies, procedures or other documents that set this out.]</i></p>
<p>The monitoring body will make public an overview of its key areas of focus each year.</p>	<p><i>[Will the monitoring body make public each year an overview of its key areas of focus?]</i></p>	<p><i>[Explain how the monitoring body will make public an overview of its key areas of focus (e.g. on its website).]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any policies, procedures or other documents that set this out.]</i></p>

Expectation	Confirmation	Explanation	Reference
The monitoring body will carry out, at a minimum, one thematic own-motion inquiry each year (which results in a report covering the matters ASIC expects).	<i>[Will the monitoring body carry out this activity each year?]</i>	<p><i>[Explain the process and requirements that relate to this and other proactive monitoring activities the monitoring body expects to carry out (e.g. how the topic and scope of the activities is decided).]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<i>[Refer to any documents that set this out and attach them.]</i>
<b>Reactive monitoring activities: Receipt of reports (see RG 269.119–RG 269.123)</b>			
<p>The monitoring body offers a mechanism by which:</p> <ul style="list-style-type: none"> <li>• reports can be made and recorded; and</li> <li>• the monitoring body can capture the necessary information from these reports.</li> </ul>	<i>[Does the monitoring body have such a mechanism?]</i>	<p><i>[Explain what the mechanism is and how it works.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<i>[Refer to any documents that set this out (if relevant) and attach them.]</i>
<p>The monitoring body has a communications strategy that covers how it will provide clear public messaging about:</p> <ul style="list-style-type: none"> <li>• how members of the public can make reports;</li> <li>• the role of compliance schemes; and</li> <li>• where consumers can go if they would like to seek redress.</li> </ul>	<i>[Does the monitoring body have a communications strategy that covers these matters?]</i>	<p><i>[Explain what the communications strategy says about, and requires, for those three matters.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<i>[Attach the communications strategy.]</i>

Expectation	Confirmation	Explanation	Reference
<b>Reactive monitoring activities: Initial assessment of reports (see RG 269.124–RG 269.127)</b>			
The monitoring body has sufficient resources to enable the reports to be initially assessed (for whether the financial adviser the subject of the report is covered by the compliance scheme and whether the report indicates a possible failure to comply with the code) and, if so, to refer them for further investigation, generally within 28 days of first being notified, although we recognise that a longer timeframe may be appropriate if a matter is more complex.	<i>[Does the monitoring body have sufficient resources to allow this to occur?]</i>	<i>[Explain what resources will be devoted to the receipt and initial assessment of reports.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Refer to any documents that set this out (if relevant) and attach them.]</i>
<b>Reactive monitoring activities: Investigation (see RG 269.128–RG 269.136)</b>			
Monitoring body staff will carry out an investigation and produce a report about the investigation, generally within 90 days of the matter being referred for further investigation, although we recognise that a longer timeframe may be appropriate if a matter is more complex.	<i>[Will monitoring body staff produce a report of the investigation they have carried out?]</i>	<i>[Explain what the investigation and report might entail.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Refer to any documents that set this out (if relevant) and attach them.]</i>
The governing body will regularly review a random sample of matters that were investigated but not referred to the governing body.	<i>[Will the governing body carry out such reviews?]</i>	<i>[Explain the kind and frequency of reviews that the governing body will carry out.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Refer to any documents that set this out (if relevant) and attach them.]</i>

Expectation	Confirmation	Explanation	Reference
<b>Reactive monitoring activities: Determination and sanctions (see RG 269.137–RG 269.148)</b>			
<p>The governing body or its appointed panel will comply with the following principles in making determinations about whether a financial adviser failed to comply with the code:</p> <ul style="list-style-type: none"> <li>• the opportunity to be heard;</li> <li>• the entitlement to a notice;</li> <li>• the right to an impartial decision maker; and</li> <li>• findings of fact to be made on a sound basis.</li> </ul>	<p><i>[Will the governing body or its appointed panel comply with such principles?]</i></p>	<p><i>[Explain the governing body's process for decision making or the process for decision making that would apply to an appointed panel.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Refer to any documents that set this out (if relevant) and attach them.]</i></p>
<p>The governing body or its appointed panel will generally make a determination about whether a financial adviser failed to comply with the code within 60 days of receiving a report from the monitoring body staff, although we recognise that a longer timeframe may be appropriate if a matter is more complex.</p>	<p><i>[Will this timeframe be met in most cases?]</i></p>	<p><i>[Explain the basis on which the monitoring body believes this timeframe will be met.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Refer to any documents that set this out (if relevant) and attach them.]</i></p>
<p>The monitoring body has access to a range of sanctions.</p>	<p><i>[Does the monitoring body have access to a range of sanctions?]</i></p>	<p><i>[Explain what sanctions may be applied.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Include a compliance scheme document reference for the list of sanctions.]</i></p>
<p>The monitoring body has a sanctions guide or policy that covers:</p> <ul style="list-style-type: none"> <li>• how the monitoring body will determine sanctions;</li> <li>• some hypothetical situations in which each sanction would be imposed; and</li> <li>• the monitoring body's process for informing ASIC of sanctions it imposes for failures to comply with the code.</li> </ul>	<p><i>[Does the monitoring body have a sanctions guide or policy covering those matters?]</i></p>	<p><i>[Explain what the sanctions guide or policy says about those matters.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Refer to relevant sections in the sanctions guide or policy and attach it.]</i></p>

Expectation	Confirmation	Explanation	Reference
<b>Appeals and dispute resolution (see RG 269.149–RG 269.157)</b>			
The compliance scheme document sets out how disputes will be resolved between a monitoring body and a financial adviser.	<i>[Does the compliance scheme document set out how a dispute will be resolved?]</i>	<i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Include a compliance scheme document reference for the dispute resolution process.]</i>
The monitoring body has a documented appeal process setting out how it will: <ul style="list-style-type: none"> <li>• accept a complaint from a financial adviser;</li> <li>• gather information about the complaint; and</li> <li>• allow the governing body another opportunity to consider the matter.</li> </ul>	<i>[Does the monitoring body have a documented appeal process setting out these matters?]</i>	<i>[Explain the appeals process.]</i> <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach the documented process.]</i>
The monitoring body has considered preparing a guide summarising the appeals process.	<i>[Has the monitoring body considered preparing such a guide?]</i>	<i>[Explain whether a guide has been prepared and, if so, what it says.]</i> <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach the guide if relevant.]</i>
The monitoring body has a documented process for dealing with non-appeal disputes that allows the monitoring body to provide a final response to the financial adviser within 45 days.	<i>[Does the monitoring body have such a documented process?]</i>	<i>[Explain the dispute resolution process.]</i> <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach the documented process.]</i>

Expectation	Confirmation	Explanation	Reference
<b>Enforceability of monitoring body's decisions (see RG 269.158–RG 269.164)</b>			
<p>The monitoring body will enter into a legally binding agreement with each covered financial adviser in which the adviser:</p> <ul style="list-style-type: none"> <li>• agrees to share all information and documents and provide such reasonable assistance as the monitoring body reasonably requests;</li> <li>• agrees to report any significant breaches of the code by them;</li> <li>• agrees to comply with the terms of the compliance scheme;</li> <li>• agrees to be bound by the decisions made under the compliance scheme; and</li> <li>• consents to the monitoring body sharing information about them.</li> </ul>	<p><i>[Will all covered financial advisers enter into such an agreement?]</i></p>	<p><i>[How will the monitoring body ensure that each covered financial adviser enters into such an agreement?]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach the template agreement.]</i></p>
<p>The compliance scheme document details a procedure for dealing with the non-compliance by a covered financial adviser with a decision or request of the monitoring body under which the monitoring body issues a 'notice to comply', which:</p> <ul style="list-style-type: none"> <li>• describes the financial adviser's act of non-compliance;</li> <li>• allows the financial adviser a reasonable time to comply; and</li> <li>• notifies the financial adviser of the implications if they fail to comply within that time period.</li> </ul>	<p><i>[Does the compliance scheme document detail such a procedure?]</i></p>	<p><i>[Explain the procedure that will be applied.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Include references to the compliance scheme document and any other document that details this procedure.]</i></p>

**Table 9: Ongoing operation of compliance scheme (see Section E)**

Expectation	Confirmation	Explanation	Reference
<b>Data collection, analysis and regular reporting (see RG 269.165–RG 269.175)</b>			
<p>The monitoring body has measures in place to ensure that it can effectively collect, store and analyse:</p> <ul style="list-style-type: none"> <li>• data collected during its proactive monitoring activities;</li> <li>• reports of potential failures to comply with the code;</li> <li>• information gathered in the course of investigations;</li> <li>• the results of the investigations; and</li> <li>• the results of independent reviews conducted of the compliance scheme's operation.</li> </ul>	<p><i>[Does the monitoring body have measures to ensure that it captures, stores and analyses this information?]</i></p>	<p><i>[Explain how the data is captured, stored and analysed.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Refer to any documents that set this out (if relevant) and attach them.]</i></p>
<p>The monitoring body will report publicly on the matters it analyses from its data on an annual basis.</p>	<p><i>[Will the monitoring body prepare a public annual report covering those matters?]</i></p>	<p><i>[Explain what the annual report will cover and any processes or procedures for preparing it.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any processes or procedures for preparing the annual report.]</i></p>
<p>The monitoring body will prepare a six-monthly report covering the specified matters in RG 269.170 and provide it to ASIC.</p>	<p><i>[Will the monitoring body prepare a six-monthly report to ASIC covering those matters?]</i></p>	<p><i>[Explain what the six-monthly report will cover and any processes or procedures for preparing it.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any processes or procedures for preparing the six-monthly report.]</i></p>

Expectation	Confirmation	Explanation	Reference
The monitoring body will keep records relevant to the operation of its compliance scheme for a minimum of seven years.	<i>[Will the monitoring body maintain such records for a minimum of seven years?]</i>	<i>[Explain how the monitoring body will ensure that this occurs.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach any record-keeping policies and procedures.]</i>
The monitoring body will take reasonable steps to protect the confidentiality of reports about potential failures to comply with the code and any associated information that it receives.	<i>[Will the monitoring body take reasonable steps to protect the confidentiality of reports and any associated information it receives?]</i>	<i>[Explain how the monitoring body will ensure that this occurs.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach any policies and procedures for keeping the information it receives confidential.]</i>
<b>Reporting of serious contraventions and systemic issues (see RG 269.176–RG 269.180)</b>			
The monitoring body will report to ASIC serious contraventions and systemic issues with code compliance within 45 days of becoming aware that the matter is serious or systemic.	<i>[Will the monitoring body report such matters to ASIC within 45 days?]</i>	<i>[Explain how the monitoring body will ensure that this occurs.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach any processes or procedures for reporting on serious contraventions and systemic issues.]</i>
<b>Independent review of an approved compliance scheme (see RG 269.181–RG 269.184)</b>			
The monitoring body will cause its compliance scheme to be reviewed by an independent person at least every five years.	<i>[Will the monitoring body cause its compliance scheme to be independently reviewed at least every five years?]</i>	<i>[How will the monitoring body ensure that an independent review takes place?]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach any policies, procedures or other documents that set this out.]</i>

Expectation	Confirmation	Explanation	Reference
The monitoring body will consult with ASIC about the terms of the independent review and the appointment of the independent reviewer.	<i>[Will the monitoring body consult with ASIC on these matters?]</i>	<i>[Explain any proposed measures for consulting with ASIC on these matters.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Add references to the compliance scheme document or policies and procedures that support this. Attach any documents referred to.]</i>
The monitoring body will make the review public and give ASIC a copy as soon as reasonably practicable after the review has been completed.	<i>[Will the monitoring body make the independent review public and provide a copy to ASIC as expected?]</i>	<i>[Explain how the monitoring body will make the independent review public (e.g. on its website).]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Attach any policies, procedures or other documents that set this out.]</i>
<b>Consultation on a compliance scheme (see RG 269.185–RG 269.188)</b>			
The monitoring body has consulted on the content of the compliance scheme with: <ul style="list-style-type: none"> <li>• financial advisers;</li> <li>• AFS licensees;</li> <li>• consumers;</li> <li>• the TPB;</li> <li>• AFCA; and</li> <li>• other monitoring bodies.</li> </ul>	<i>[Has the monitoring body consulted with these stakeholders?]</i>  Note: A monitoring body may not have had the opportunity to consult with all of these stakeholders by the time it submits its draft application for compliance scheme approval. When this is the case, it is sufficient at the draft application stage for the monitoring body to explain the consultation that will be undertaken. However, a monitoring body will be expected to have consulted with these stakeholders by the time it submits its final application.	<i>[Explain the consultation that has been undertaken with stakeholders on the compliance scheme during its development.]</i>  <i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i>	<i>[Add references to the compliance scheme document or policies and procedures that support this. Attach any documents referred to.]</i>

Expectation	Confirmation	Explanation	Reference
<p>The monitoring body will consult with the above stakeholders when changes are made to the compliance scheme, except when a proposed change to its compliance scheme is minor or machinery in nature. However, when this is the case, a monitoring body should nevertheless notify any affected stakeholders about any change to the compliance scheme.</p>	<p><i>[Will the monitoring body consult with these stakeholders when changes are made to the compliance scheme?]</i></p>	<p><i>[Explain any proposed measures for consulting with stakeholders on subsequent modifications to the compliance scheme.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Add references to the compliance scheme document or policies and procedures that support this. Attach any documents referred to.]</i></p>
<p><b>Information sharing between monitoring bodies (see RG 269.189–RG 269.190)</b></p>			
<p>If a financial adviser seeks to be covered by a new compliance scheme, the scheme's monitoring body will:</p> <ul style="list-style-type: none"> <li>confirm that the financial adviser is not currently under investigation; and</li> <li>request information about the financial adviser's compliance history under their previous compliance scheme(s).</li> </ul>	<p><i>[Does the monitoring body have such processes?]</i></p>	<p><i>[Explain the processes.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Add references to the compliance scheme document or policies and procedures that support this. Attach any documents referred to.]</i></p>
<p><b>Ongoing support and education for advisers (see RG 269.191–RG 269.193)</b></p>			
<p>The monitoring body has considered how it can encourage and develop covered financial advisers' ethical decision-making skills</p>	<p><i>[Has the monitoring body considered offering such support?]</i></p>	<p><i>[Explain what support was considered and what will be provided.]</i></p> <p><i>[If this does not meet our expectations, explain why not and the alternative approach the monitoring body will take to satisfy this expectation.]</i></p>	<p><i>[Attach any documents setting out the support that will be provided.]</i></p>

## 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
AFCA	Australian Financial Complaints Authority—the EDR scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
annual work plan	A document that sets out the key risks to compliance with the code in the forthcoming year and the proactive monitoring activities that a monitoring body will carry out to address them
code	The code of ethics developed and published by FASEA with which financial advisers must comply under s921E of the Corporations Act
compliance scheme	A scheme under which compliance with the code is monitored and enforced
compliance scheme document	A single, high-level document that expresses how the compliance scheme operates
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
covered financial adviser	A financial adviser covered by a particular compliance scheme
EDR	External dispute resolution
entity acting as the monitoring body	An entity that has an approved compliance scheme, in the context of its broader role beyond just acting as a monitoring body
Explanatory Memorandum	Explanatory Memorandum to the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016
FASEA	Financial Adviser Standards and Ethics Authority
financial adviser	An individual who is authorised to give personal advice to retail clients on relevant financial products
governing body	The internal governance body that is responsible for oversight of the monitoring body

<b>Term</b>	<b>Meaning in this document</b>
monitoring body	A body that operates a compliance scheme, in the context of its administration of the scheme
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations 2001
s921B (for example)	A section of the Corporations Act (in this example numbered 921B), unless otherwise specified
thematic own-motion inquiry	An inquiry carried out by a monitoring body, in accordance with its annual work plan, for the purposes of monitoring compliance with one or more aspects of the code by its covered financial advisers
TPB	Tax Practitioners Board

## Related information

### Headnotes

AFS licensees, code, compliance scheme, compliance scheme document, covered financial adviser, external dispute resolution, governing body, internal dispute resolution, monitoring body, record keeping, serious contravention, systemic issue, thematic own-motion inquiry

### Regulatory guides

[RG 139](#) *Approval and oversight of external dispute resolution schemes*

[RG 146](#) *Licensing: Training of financial product advisers*

[RG 183](#) *Approval of financial services sector codes of conduct*

[RG 267](#) *Oversight of the Australian Financial Complaints Authority*

### Legislation

Corporations Act, s912A, 913B, 921E, 921G, 921H, 921J, 921K, 921L, 921M, 921P, 921Q, 921R, 921S, 921T, 922HD, 1546F, 1546G

*Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*

*Privacy Act 1988*

### Consultation papers and reports

[CP 300](#) *Approval and oversight of compliance schemes for financial advisers*

[REP 595](#) *Response to submissions on CP 300 Approval and oversight of compliance schemes for financial advisers*