

ABA Member Feedback on ASIC RG181 Consultation. 5 September 2025

Proposal	
<p>B1: We propose to include guidance clarifying that the conflicts management obligation is broad and is intended to apply to <i>all</i> conflicts of interest other than those wholly outside the financial services business of a licensee or its representatives.</p> <p>ABA feedback: We support ASIC’s proposed clarification that the conflicts management obligation is intended to apply broadly to all conflicts of interest, except those wholly outside the financial services business of a licensee or its representatives. This approach aligns with the legislative intent and reinforces the intended scope without expanding its application.</p> <p>The reframing in draft RG 181 is a positive development. It promotes consistency in interpretation and implementation across the industry. This supports greater certainty for licensees in understanding the breadth of their obligations under the law.</p>	
Question	ABA Feedback
B1Q1: Is our guidance clear?	The guidance regarding the scope is clearly articulated. It effectively communicates that the obligation is not being expanded, but clarified to reflect the original intent of the legislation.
B1Q2: Do you suggest changes to our guidance? If so, please provide details.	Paragraph 181.10 would benefit from clearer wording to indicate that the conflicts management obligation pertains to the provision of financial services.
Proposal	
<p>B2: We propose to include guidance clarifying how the conflicts management obligation operates in connection with other legal obligations of an AFS licensee (including other AFS licensing obligations). This guidance is supported by a non-exhaustive list of legal obligations and information (a ‘roadmap’) that may relate to the conflicts management obligation.</p> <p>ABA feedback: We support ASIC’s proposal to clarify how the conflicts management obligation interacts with other legal obligations of an AFS licensee. The inclusion of a nonexhaustive list of relevant legal obligations and regulatory materials (the ‘roadmap’) is a valuable addition that enhances the practical utility of the guidance.</p> <p>The draft guidance appropriately recognises that the adequacy of a licensee’s arrangements to manage conflicts must be informed by a broader legal and regulatory context. This includes obligations arising from common law, equity, and statutory conduct provisions.</p>	
Question	ABA Feedback

<p>B2Q1: Is our guidance clear in draft RG 181?</p>	<p>The guidance regarding how the conflicts management obligation operates in connection with other of the licensee’s legal obligations is generally clear and well-structured. The roadmap is a helpful tool for licensees in understanding the broader legal landscape relevant to conflicts management.</p> <p>However, we would welcome further clarification in certain areas, as outlined in our response to B2Q2 below.</p>
<p>B2Q2: Do you suggest changes to our guidance in draft RG 181? If so, please provide details.</p>	<p>While we support the inclusion of the roadmap, further guidance would be beneficial in clarifying:</p> <ul style="list-style-type: none"> • What constitutes a failure to comply with the conflicts management obligation (as referenced in RG 181.25 Note) should be clearly defined. Section 912(1) (aa) is a core obligation and a civil penalty provision, meaning any breach is a deemed significant breach. It is therefore important to provide clear guidance to licensees. • The factors ASIC considers in determining whether a failure or a potential failure to manage a conflict of interest is material or serious (RG 181.27 and RG 181.33). While RG 181.33 lists factors such as the nature of relationship between parties, the scale, and the outcome of a conflict, it does not provide illustrative examples. Clear examples would help clarify what constitutes a failure or potential failure to manage a conflict of interest. • A clearer delineation between a high-risk conflict of interest and a ‘failure to manage’ a high-risk conflict of interest would help. Additional guidance on what constitutes a conflict of interest that is so ‘serious’ or ‘material’ in terms of risk, that it must be avoided rather than managed in other ways would also be beneficial. • RG 181.27 as it would benefit from clearer guidance on what constitutes a systemic failure to manage conflicts of interest. <p>Providing additional detail or illustrative examples in these areas would assist licensees in applying the guidance consistently and confidently.</p>

	We also note in Table 7 of the roadmap under the Statement of Advice (SOA) obligation, it would be more accurate to describe the requirement to provide information in the SOA as disclosing information about interests that may be relevant to potential conflicts, rather than disclosing conflicts of interest.
Proposal	
<p>B3: We propose to update our guidance on types of conflicts of interest that an AFS licensee should consider.</p> <p>ABA feedback: We support ASIC’s intention to provide updated guidance on the types of conflicts of interest that AFS licensees should consider. Clear categorisation of conflict types can assist licensees in identifying, assessing, and managing conflicts more effectively across a range of business activities.</p> <p>However, we consider that some of the proposed categories, specifically ‘Structural’ and ‘Proprietary’ conflicts are not clearly distinguishable from more commonly used industry classifications, such as ‘Conflicts with clients or members’ or ‘Conflicts between clients, members, or classes of persons.’</p> <p>In particular, examples provided under ‘Structural conflicts’ appear to overlap with those listed under ‘Conflicts between clients, members, or classes of persons’ while ‘Proprietary conflicts’ closely resemble ‘Conflicts with clients or members.’</p> <p>Additionally, there is no discussion of internal conflicts where one area of the licensee may be perceived to have influence over another area of the licensee which could be used to its advantage and to the detriment of clients or market integrity.</p>	
Question	ABA Feedback
B3Q1: Is our guidance clear?	<p>The guidance is generally clear in its intent to broaden and clarify the types of conflicts that should be considered.</p> <p>However, the inclusion of overlapping or duplicative categories may reduce clarity and create confusion in practical application.</p> <p>Greater alignment with commonly used industry terminology such as ‘Bank versus Client’ and ‘Client versus Client’ would enhance usability.</p>

B3Q2: Do you suggest changes to our guidance? If so, please provide details.	<p>We recommend removing the categories of ‘Structural conflicts’ and ‘Proprietary conflicts’ and instead incorporating the illustrative examples under the more widely recognised categories of ‘Bank versus Client’ and ‘Client versus Client.’</p> <p>This would streamline the guidance and support more consistent interpretation across the industry.</p>
Proposal	
<p>B4: We propose to include illustrative examples of the types of conflicts of interest that an AFS licensee may need to consider.</p> <p>ABA feedback: We support ASIC’s proposal to include illustrative examples of the types of conflicts of interest that an AFS licensee needs to consider. Illustrative examples are a valuable tool in helping licensees interpret and apply the guidance in real-world scenarios, particularly where the nature of the conflict may be complex or context specific.</p>	
Question	ABA Feedback
B4Q1: Is our guidance clear?	<p>Certain examples use terminology that may be ambiguous without further explanation. For instance in Table 1:</p> <ul style="list-style-type: none"> • The second bullet under ‘Conflicts between clients, members, or classes of persons’ refers to a “conglomerate.” This term should be defined more precisely (e.g., does it refer to a diversified financial group or a banking institution?). • The third bullet under ‘Conflicts between clients, members, or classes of persons’ is unclear in its application to Over The Counter (OTC) markets. In OTC markets prices for financial products are agreed bilaterally. In bilateral transactions, differentiated pricing is common and acceptable if it is fair, reasonable, and properly disclosed. For example, it takes into account credit and operational risks. • The fourth bullet under ‘Conflicts with clients or members’ would benefit from a more concrete scenario.
B4Q2: Do you suggest changes to our guidance? If so, please provide details.	We recommend the following refinements to improve clarity and relevance:

	<ul style="list-style-type: none"> • Structure examples by licensee type (e.g., superannuation, investment banking, financial advice) to make it easier to use from a licensee’s perspective. • Clarify and reword specific examples, such as: <ul style="list-style-type: none"> ○ Under ‘Structural conflicts’, revise the first bullet to “Sellside client information being used to benefit buy-side clients.” The final bullet could also be rewritten for better clarity. ○ Under ‘Proprietary conflicts,’ the second bullet point should clarify when client detriment is undue and is caused by deliberate or reckless conduct by the licensee. That is, in certain situations client detriment is not caused by any actions taken by the licensee but by factors in the market and outside the licensee’s control. ○ Under ‘Individual conflicts’, the first bullet, ASIC should note that traders are typically on the public side and do not have access to confidential information about a company. A clearer example might involve a trader whose spouse works for a competitor of the client.
Proposal	
<p>B5: We propose to include additional guidance on what ‘adequate arrangements’ involve. That is, adequate arrangements:</p> <p>(a) should identify, assess and respond to (i.e. effectively manage) conflicts of interest; and</p> <p>(b) require an AFS licensee to implement, monitor, maintain, and review these arrangements.</p> <p>ABA feedback: We support ASIC’s proposal to provide additional guidance on what constitutes ‘adequate arrangements’ for managing conflicts of interest.</p>	
Question	ABA Feedback
B5Q1: Is our guidance clear?	Yes, the guidance is generally clear and the additional detail is helpful. More detailed guidance on each step in relation to materiality and what constitutes a risk assessment, would further enhance practical application by licensees.
B5Q2: Do you suggest changes to our guidance? If so, please provide details.	<p>We suggest the following enhancements to improve the guidance:</p> <p>Step 1 – Identify:</p>

	<p>More detailed guidance is needed on how to assess the ‘materiality’ of a conflict. This could include whether the conflict:</p> <ul style="list-style-type: none"> • Could cause serious or significant harm to clients or other affected parties. • May result in a breach of other legal obligations such as insider trading, misleading or deceptive conduct, market manipulation, or failure to meet the “efficiently, honestly and fairly” obligation. • Creates incentives to benefit the licensee’s bottom line but lead to unfair client outcomes or materially compromise the objectivity of a financial service. <p>Step 2 – Assess: Further guidance is needed on what factors elevate a conflict to a higher risk category. This would assist licensees in prioritising mitigation efforts.</p> <p>Step 3 – Respond: We recommend including guidance on when a conflict is so high-risk that it must be avoided entirely, rather than managed.</p> <p>Step 4 – Implement: The statement that “merely having or possessing arrangements is not sufficient” would benefit from illustrative examples derived from judicial precedent on the adequacy of conflict management arrangements.</p>
Proposal	
<p>B6: We propose to include guidance on a proportionate and risk-based approach to having and applying adequate arrangements.</p> <p>ABA feedback: We support ASIC’s proposal to include guidance that recognises the need for a proportionate and risk-based approach to managing conflicts of interest. The acknowledgment that adequate arrangements will differ between small and large licensees, and should be tailored to the materiality and risk of the conflict, is both practical and necessary. This approach encourages licensees to focus on higher-risk scenarios.</p>	
Question	ABA Feedback

B6Q1: Is our guidance clear?	The guidance clearly articulates that proportionality should be considered in designing and applying conflict management arrangements.
B6Q2: Do you suggest changes to our guidance? If so, please provide details.	We refer to our B5 response above, which outlines areas where further guidance in relation to assessing materiality, identifying high-risk conflicts, and determining when avoidance is necessary. These considerations are central to applying proportionality effectively
Proposal	
B7: We propose to update our guidance to outline a more holistic and nuanced approach that AFS licensees can adopt to effectively manage their conflicts, consistent with existing legal principles and policy.	
ABA feedback: We support ASIC’s proposal to update the guidance to reflect a more holistic and nuanced approach to conflict management.	
Question	ABA Feedback
B7Q1: Is our guidance clear?	The guidance is generally clear. However, certain terms and examples would benefit from further clarification to ensure consistent interpretation across the industry.
B7Q2: Do you suggest changes to our guidance? If so, please provide details.	<p>We suggest the following clarifications and enhancements:</p> <ul style="list-style-type: none"> • Use of the term “favoured” (RG 181.63): <p>The term “favoured” may be interpreted inconsistently. For example, in OTC bilateral transactions one counterparty could provide a better credit risk hedge than another counterparty. It is unclear whether this constitutes “favouring” that client.</p> <ul style="list-style-type: none"> • Communication policies (Table 3): <p>The reference to “communication policies” as a control mechanism may cause confusion. The guidance should distinguish between policies and operational controls.</p> <ul style="list-style-type: none"> • Approval requirements (Table 3):

This control mechanism would benefit from a description of when and how approval mechanisms should be applied to manage conflicts effectively.

- Rotation of staff (Table 3):

While staff rotation may be appropriate in some contexts, it may conflict with other obligations such as ensuring staff are adequately trained and competent. The guidance should provide direction on how to balance these obligations.

- Disclosures (RG 181.71):

This paragraph states that disclosures are unlikely to be sufficient to effectively manage conflicts which is too broad a statement. A more accurate statement to reflect the fact that conflict management can be proportionate to the risk posed would be “in some cases, mere disclosure is unlikely to be sufficient to effectively manage conflicts”.

These refinements would enhance the clarity and practical utility of the guidance and support more consistent implementation across licensees of varying size and complexity.