



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 1

AFS Licensing Kit: Part 1— Applying for and varying an AFS licence

May 2010

About this guide

This is a guide for applicants applying for an Australian financial services (AFS) licence or to vary their AFS licence.

Applicants should also read Part 2 (RG 2), which outlines how to complete the AFS licence application form (FS01) or variation application form (FS03) and prepare 'core' supporting proof documents. Applicants will need to read Part 3 (RG 3) if they are asked to send us 'additional' proofs.

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 version was issued on 7 May 2010 and is based on legislation and regulations as at 7 May 2010.

Previous versions:

- Superseded Regulatory Guide 1, issued as a regulatory guide July 2007, reissued November 2007 and January 2008
- Superseded AFS Licensing Kit Part 1, issued February 2002 (version 1), updated October 2002 (version 2), April 2003 (version 3), October 2003 (version 4), March 2004 (version 5) and September and December 2004 (version 6), revised November 2005 (version 7)
- *How do you get an Australian financial services licence?—Process guideline*, issued October 2001

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

If you want to run a financial services business, you generally need an AFS licence: see RG 1.1–RG 1.4.

To get an AFS licence, you must complete an application form (FS01), lodge it with ASIC and pay the application fee: see RG 1.5–RG 1.15.

What is an AFS licence?

- RG 1.1 An Australian financial services (AFS) licence authorises you and your representatives to provide financial services to clients. Without an AFS licence, you generally can't carry on a financial services business. You will provide financial services if you:
- (a) provide financial product advice;
 - (b) deal in a financial product;
 - (c) make a market for a financial product;
 - (d) operate a registered scheme;
 - (e) provide a custodial or depository service;
 - (f) provide traditional trustee company services.
- RG 1.2 AFS licences are regulated under the *Corporations Act 2001* (Corporations Act). The requirements you must meet before we can grant you an AFS licence are set out in s913B. You can find a copy of the Corporations Act at www.comlaw.gov.au.
- RG 1.3 ASIC assesses applications for AFS licences as part of our role as regulator of the financial services industry. When we assess a licence application we consider whether you:
- (a) are competent to carry on the kind of financial services business you are applying for;
 - (b) have sufficient financial resources to carry on the business you are proposing—unless you're regulated by the Australian Prudential Regulation Authority (APRA); and
 - (c) can meet your other obligations as a licensee if we grant you a licence.

- RG 1.4 When you operate under an AFS licence, it means that:
- (a) you must meet the AFS licensee requirements under the Corporations Act; and
 - (b) if something goes wrong, consumers have protections under the law.

How do I get an AFS licence?

- RG 1.5 If you need an AFS licence you must complete an application form (ASIC form FS01), lodge it with ASIC and pay the application fee. However, before you do that you must make sure that you:
- (a) know your business and understand which financial services and products you need to select in your application to enable you to carry on that business;
 - (b) understand the obligations of an AFS licensee and have appropriate systems and processes in place to meet them; and
 - (c) are able to support your application with any documents we request to prove that you can meet the licensee obligations. We call these supporting documents ‘proofs’.
- RG 1.6 How long it takes us to decide your application for an AFS licence will vary depending on our analysis of your business and the market you propose to operate in.
- RG 1.7 You can minimise the time we’ll need to spend on your application by properly describing your proposed business, selecting all appropriate authorisations for that business, providing all information that we ask for in the proofs and promptly responding to all other queries we may have. If you don’t do these things, it will delay our decision or we might not even accept your application for lodgement.

Know your business and think about the financial services and products you will provide

- RG 1.8 Choosing the financial services and products that you want to be authorised for is very important. You should only apply for authorisations that cover the financial services and financial products that are relevant to the business you want to carry on. The authorisations that you can choose are explained in more detail in Part 2 of the AFS Licensing Kit. Part 2 is Regulatory Guide 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence application or variation application* (RG 2).
- RG 1.9 Don’t apply for authorisations just in case you might want them in the future—if your business changes, you can apply to vary your licence at that time. Section F of this guide explains how to apply for a licence variation.

Understand the AFS licensee obligations

- RG 1.10 Licensees have obligations under s912A and 912B of the Corporations Act requiring them to:
- (a) operate their business efficiently, honestly and fairly;
 - (b) maintain the organisational competence to provide the financial services covered by their licence;
 - (c) ensure their representatives are competent and adequately trained to provide the financial services;
 - (d) have adequate financial, technological and human resources to provide the financial services;
 - (e) have risk management systems;
 - (f) have arrangements in place for managing conflicts of interest;
 - (g) have dispute resolution systems and compensation arrangements for retail clients;
 - (h) comply with the financial services laws and ensure their representatives comply with them; and
 - (i) comply with the conditions on their AFS licence.
- RG 1.11 If we grant you an AFS licence, you must comply with each of these obligations from day one in relation to all of the financial services and products covered by your licence. You need to have systems and processes in place that will enable you to comply with these obligations at the time you apply for your licence. When you complete your application form, you'll be asked to make declarations and certifications to this effect.
- RG 1.12 If we grant you an AFS licence, it will include conditions that support the AFS licensee obligations. You can find a description of the standard conditions that may be put on your licence in Pro Forma 209 *Australian financial services licence conditions* (PF 209). This is available on our website at www.asic.gov.au/afsl.
- RG 1.13 You'll find more information about complying with the AFS licensee obligations in the ASIC regulatory guides available on our website at www.asic.gov.au/rg. For a list of relevant regulatory guides see 'Related information' at the back of this guide.
- RG 1.14 You can also contact your industry association for more help. You'll find a list of contact details at www.asic.gov.au/fsrhelp.

Be able to support your application with proofs

RG 1.15 When you apply for an AFS licence you need to support your application with proofs. How many and what type will depend on the complexity of the financial services and products you apply for as well as our analysis of your business and the market you propose to operate in. This is explained in more detail in Section C. The various proof documents are explained in more detail in Part 2 of the AFS Licensing Kit (RG 2) and Part 3 (Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3)).

B Where do I get an application form?

Key points

The application form (form FS01) is an electronic form that you complete online. The form automatically tailors itself to your business so that you're only asked questions that might be relevant to you: see RG 1.16–RG 1.24.

If you can't apply online you can complete a paper pre-application form (FS05), but it will take longer and cost more for you to apply this way: see RG 1.25–RG 1.26.

- RG 1.16 The AFS licence application, form FS01, is an electronic form that you complete online using our eLicensing system. To access it you need to go to our website at www.asic.gov.au/afsl.
- RG 1.17 Part 2 (RG 2) explains how to get a user name and password for the eLicensing system so that you can start your application. Once you've started your application you can save and resume it as many times as you like before you finalise and submit it to us. You can also print off a copy of your draft application at any time. The information you enter in your online application is protected by industry-standard encryption and stored on a secure server at ASIC.

What questions will I be asked?

- RG 1.18 The eLicensing system tailors the FS01 to your business so that you're only asked questions about the financial services and products you're applying for. It's important to make sure that you select the correct authorisations.
- RG 1.19 The FS01 has five parts:
- (a) Part A is where you enter your details as the applicant and the details of a contact person, select the financial services and products you want to be authorised to provide and answer questions that give us a basic description of your business.
 - (b) Part B is where you will be asked questions that relate to the obligations you will have as an AFS licensee and your ability to meet them.
 - (c) If you've selected certain complex financial services or products in Part A, the system will trigger more detailed questions about those services or products in Part C.

- (d) In Part D the system will generate declarations and certifications based on your answers in Parts A and B (and C, if relevant). You will be signing these declarations when you sign a print-out of your application.
- (e) Part E is where the system identifies the core proofs you need to send with your application, as well as listing some other proofs. If we later ask you to provide additional proofs, these will generally be one or more of the other proofs listed in Part E.

RG 1.20 You can see all of the possible questions in the FS01 by looking at the sample application on our website. You can download this from **www.asic.gov.au/afsl** or click on a link to it when you are in the online application. Looking at the sample application is particularly useful if someone else is filling out your application for you. Remember that the eLicensing system tailors your application to your business, so you won't be asked all of the questions in the sample application.

RG 1.21 You'll need to refer to Part 2 (RG 2) before you start your online application and as you work your way through it. It's a good idea to print it off and have it next to you while you're filling out your application. For help with our eLicensing system, phone the ASIC Infoline on 1300 300 630.

What happens when I've finished my application?

RG 1.22 After you've answered all of the questions it's important to print off your application and review it carefully before you finalise it. Make sure your answers are correct and you understand the certifications and declarations (Part D) that you'll be signing. It's a criminal offence to make false or misleading statements in your application. Once you've finalised your application you won't be able to change your answers.

RG 1.23 When you're satisfied that your application is complete, the system will lead you through steps to finalise, print and submit it. You need to sign the print-out and assemble the core proofs listed in Part E.

RG 1.24 The system also calculates the statutory fee you need to pay and generates a payment remittance advice (this is not a tax invoice because statutory fees are GST-free). You can either pay the fee by BPAY or send a cheque when you lodge your application print-out and proofs with us. To find out how much the fee will be, click on the 'Fees for lodging documents and how to pay them' link at **www.asic.gov.au/afsl**.

What if I can't apply online?

- RG 1.25 There's no equivalent paper form for applying for an AFS licence. If you can't apply online, e.g. because you don't have access to the internet, you'll need to complete a paper pre-application form (FS05). You can either phone the ASIC Infoline on 1300 300 630 and ask them to send you one or ask someone to download it for you from our website at www.asic.gov.au/afsl.
- RG 1.26 Note that it takes considerably longer to process paper applications because we have to enter your data into the eLicensing system so that it creates a tailored paper application for you to complete. The statutory application fee is also higher when you apply this way.

C What do I need to send to ASIC?

Key points

Once you've completed the online application, you need to send us a signed copy of your application form and the application fee (if you haven't already paid online). You also need to send us copies of four core proofs within the specified time frame: see RG 1.27–RG 1.28 and RG 1.30–RG 1.37.

We won't begin to assess your online application until we receive all of these documents: see RG 1.29 and RG 1.38–RG 1.39.

In some cases, you might need to send us additional proofs within the specified time frame before we can complete our assessment: see RG 1.43–RG 1.45.

- RG 1.27 After you've finalised and submitted your online application, you need to send us, in one bundle:
- (a) the signed print-out of your FS01 (or the signed paper application we've tailored to you if you can't apply online);
 - (b) a cheque (if you haven't already paid the application fee by BPAY), and
 - (c) copies of the four core proofs outlined in RG 1.30 (for some proofs you'll need to provide certified copies). Part 2 (RG 2) explains these proofs in more detail, including the information you must include in them. You'll need to read Part 2 before you prepare your core proofs.
- RG 1.28 If you're applying online, we'll need to receive this bundle **within 20 business days** of you submitting your online application. You should also keep a copy of your application and core proofs for your own records.
- RG 1.29 We won't begin to assess your online application until we receive this bundle. If we don't receive it within 20 business days, we will automatically reject your application and you'll need to re-apply.

Core proofs

- RG 1.30 The four core proofs you must send us are:
- (a) A5 Business Description;
 - (b) People Proofs for each responsible manager;
 - (c) B1 Organisational Competence—this includes a Table of Organisational Competence and, if relevant, a Submission on a Responsible Manager's Competence; and

- (d) B5 Financial Statements and Financial Resources—you don't need to send this proof if you're regulated by APRA.

RG 1.31 We'll scan your core proofs into our document imaging system and then destroy them, so only send us copies of your proofs (or, where required, certified copies), not your original documents.

A5 Business Description

RG 1.32 This core proof relates to the questions at A5 in the application. It should provide an overview of your financial services business and include an organisational chart. We need this information so that we can understand the business you're applying to be licensed for. This core proof is explained in more detail in Section E of Part 2 (RG 2).

People Proofs

RG 1.33 These help us to assess your organisational competence and the good fame and character of your responsible managers. Your responsible managers are the people you've nominated in your application as being responsible for significant day-to-day decisions about your financial services business.

RG 1.34 You need to provide the following People Proofs for each responsible manager:

- (a) Statement of Personal Information, including certified copies of qualification certificates;
- (b) certified copy of a bankruptcy check;
- (c) certified copy of a national criminal history check; and
- (d) certified copies of two business references (at least one of these should be from someone external to the responsible manager's current organisation).

RG 1.35 It can take six weeks or more to get national criminal history checks, so you need to organise these before you start your licence application. This core proof is explained in more detail in Section E of Part 2 (RG 2).

B1 Organisational Competence

RG 1.36 We need this core proof to make sure you have the organisational competence to provide the financial services and products you've selected in your application. We assess your organisational competence by looking at the competence of your responsible managers. In this core proof you need to detail each responsible manager's experience and qualifications relevant to each authorisation you've selected in your application. Appendix 2 in Part 2

(RG 2) includes an example of how to set out this information in the table format we require.

B5 Financial Statements and Financial Resources

RG 1.37 Unless you're regulated by APRA, you also need to provide this core proof to show that you have the financial resources to carry on the business you're proposing. In it you need to identify which financial requirements apply to you and provide documents, including financial statements, demonstrating that you can comply with them. This core proof is explained in more detail in Section E of Part 2 (RG 2).

Pre-lodgement check

RG 1.38 After we receive your signed application and core proofs we'll do a 'pre-lodgement check' on them to ensure that they are complete and acceptable for lodgement. If your application (including your core proofs) doesn't pass the pre-lodgement check, we'll send it back to you and you'll have to re-apply.

RG 1.39 To pass pre-lodgement you need to ensure that:

- (a) you've signed the print-out of your FS01;
- (b) you've included copies of all of the core proofs outlined earlier (providing certified copies where required);
- (c) your core proofs are complete, contain all of the information requested in Section E of Part 2 (RG 2) and are tailored to your business (i.e. they must not be generic proofs and, if you are part of a corporate group, they must cover your particular financial services business);
- (d) we receive your signed print-out and core proofs **within 20 business days** of you submitting your online application (if you're applying online); and
- (e) you've paid the application fee.

Assessment process

RG 1.40 Once your application passes pre-lodgement we'll assign it to one of our licensing analysts for assessment.

RG 1.41 When we assess applications our level of assessment will vary depending on our analysis of your business and the market you propose to operate in. We've developed this approach to make our assessment process as efficient and effective as possible.

- RG 1.42 If we need more information, such as additional proofs or any other information to support your application, we'll send you an email or letter or contact you by telephone. You should respond to all our requests promptly and within any timeframe we specify. If you don't, it will delay our decision, or we may decide your application on the basis of the information we do have.

Additional proofs

- RG 1.43 In some cases, we might need to ask you to send us additional proofs before we can complete our assessment of your application. You'll need to make sure we receive them within 10 business days of our request.
- RG 1.44 To understand what information you need to give us in each additional proof we request, you'll need to refer to Part 3 (RG 3). Also make sure that your additional proofs are tailored to your business. They must not be generic proofs and, if you are part of a corporate group, they must cover your particular financial services business.
- RG 1.45 The additional proofs will generally be one or more of the proofs listed in Part E of your application print-out. However, we might need to ask you for other proofs not listed on your print-out if, for example, you haven't selected your authorisations correctly.

What happens to the information and proof documents I send to ASIC?

- RG 1.46 The information you provide in your application is confidential, except for basic information about your business that is uploaded to a searchable public register after you receive your licence. See the privacy statement on our website for more information.
- RG 1.47 Your proofs are also confidential. These will be scanned into our document imaging system and then destroyed, so please do **not** send us your originals, unless we specifically ask for them.

What if my application is rejected at pre-lodgement?

- RG 1.48 If your application is rejected at the pre-lodgement stage, we'll send your documents back to you with a letter explaining why we've rejected your application. You can then re-apply for an AFS licence. We'll hold your fee payment for your next application unless you write to us for a refund. See

Part 2 (RG 2) for information on how to reapply using a copy of your original application.

Can I withdraw my application?

RG 1.49 You can withdraw your application at any stage of the application process. If you withdraw it at the pre-lodgement stage, we'll send your documents back to you. We'll also hold your fee payment for your next application unless you write to us for a refund.

RG 1.50 If you withdraw your application after it has been accepted for lodgement, we won't be able to send your proof documents back to you, nor refund your application fee or hold it over if you decide to re-apply.

D When will I get my licence?

Key points

If we decide to grant you a licence, we'll first send you a draft licence. Once you've confirmed that you wish to proceed, we'll send you your final licence: see RG 1.51–RG 1.59.

If we're thinking of refusing your application for a licence, we'll send you a letter explaining why and your options: see RG 1.60–RG 1.61.

Getting a draft licence

- RG 1.51 If we decide to grant you an AFS licence, we'll first send you a draft licence containing the proposed service and product authorisations and other conditions on your licence. We'll send your draft licence by email to the address that you've given us in Part A of your application.
- RG 1.52 You need to carefully check the authorisations and other conditions on your draft licence. If there's a problem with your draft licence, you need to let us know as soon as possible.
- RG 1.53 If your draft licence looks right, you must formally confirm that you wish to proceed before we can send you your final licence. Do this by printing off the accompanying confirmation notice, signing it and sending it back to us.
- RG 1.54 Your draft licence will also be accompanied by a 'requirements letter' listing any outstanding matters you need to finalise before we can grant your final licence. For example, you might need to provide us with details of your professional indemnity insurance. You'll need to finalise these outstanding matters as quickly as possible. If you don't do this in a reasonable timeframe, we may withdraw our offer of a licence. You'll need to contact us if you have any problems finalising these outstanding matters.
- RG 1.55 If your service authorisations include operating a registered managed investment scheme, you need to register your scheme with us **after** you receive your draft licence. Don't lodge your scheme documents for registration before then. Once you've received your draft licence you have up to four months to lodge your scheme documents. You'll find more information about registering a managed investment scheme on our website at www.asic.gov.au/mis.

Getting a final licence

- RG 1.56 After we've received your signed confirmation notice, and any other requirements set out in the requirements letter have been addressed, we'll send your final licence by email to the address that you've given us in Part A of your application.
- RG 1.57 If you've applied to operate a registered managed investment scheme and we agree to register the scheme, we'll grant your final licence and register the scheme on the same day, provided that you have met the licensing requirements and supplied the signed confirmation notice. It's likely that the scheme registration application will be refused if you have not met the licensing requirements or have not provided the signed confirmation notice within 14 days of you applying for registration of the scheme.
- RG 1.58 If you want to frame your licence, you'll need to print off and frame the first page. This shows your name, ABN (or ACN or ARBN), licence number, the date your licence takes effect and your financial service and product authorisations. The rest of your licence sets out the other conditions that apply to your licence. While we've tried to standardise as many AFS licence conditions as possible (see PF 209), your application may require some specific conditions that reflect your particular business. We'll discuss these with you during the assessment process.
- RG 1.59 When we grant you an AFS licence it doesn't mean that we endorse:
- (a) any information you've provided to us in your application or proofs; or
 - (b) any additional information you've provided during the assessment of your application.

What if my application is refused?

- RG 1.60 When we assess your application we may conclude that you don't meet all of the requirements in s913B of the Corporations Act. For example, if we have reason to believe you don't have the capacity to provide the financial services and products you've asked to be authorised for, and therefore won't be able to comply with your licensee obligations, we must refuse to grant you an AFS licence.
- RG 1.61 Before we can refuse to grant an AFS licence, we will refer your application to an ASIC 'delegate', who is an impartial person authorised to make the final decision. If the delegate is thinking of refusing to grant you an AFS licence, they'll send you a letter explaining why and giving you two options:
- (a) You can appear at a hearing and/or make submissions. This will give you an opportunity to further explain why you believe you should be granted an AFS licence. If, after considering any submissions, the

delegate decides not to grant you an AFS licence, they will send you a further letter setting out their decision and reasons why. They'll also tell you how to apply to the Administrative Appeals Tribunal for a review if you're unhappy with the final decision.

- (b) You can choose to withdraw your application. If you take this option, we won't be able to send your proof documents back to you, nor refund your application fee or hold it over if you decide to re-apply.

E What do I need to tell ASIC after I get my licence?

Key points

Once we've granted you an AFS licence, you are obliged under the Corporations Act to notify us about certain things: see RG 1.62–RG 1.64 and RG 1.67.

You can notify us using the Licensees portal on our website. If you can't access the Licensees portal, you can use a paper form, but this will cost you more and will take longer for us to process: see RG 1.65–RG 1.66.

- RG 1.62 ASIC maintains public, searchable registers of information such as the details of AFS licensees, AFS authorised representatives and ASIC-registered auditors. For more information, see www.asic.gov.au/search.
- RG 1.63 After you receive your AFS licence, you are obliged under the Corporations Act to notify us about certain things. For instance, you need to tell us when:
- (a) you appoint an auditor (if you haven't already done so in your licence application);
 - (b) you appoint authorised representatives to operate under your licence, or you revoke their appointment, or their details change (e.g. address or other contact information); and
 - (c) the details of your responsible managers change.
- RG 1.64 You can find out what forms you need to lodge and the timeframes and fees that apply by checking the summary of notification and lodgement requirements on our website at www.asic.gov.au/fscompliance.
- RG 1.65 To lodge the relevant form, go to the Licensees portal at www.asic.gov.au/licensees. To access the Licensees portal you'll need the user name and password you selected when you applied for your licence. If you've forgotten them or you need extra ones for staff, apply for them online via the Licensees portal.
- RG 1.66 If you can't access the Licensees portal, phone the ASIC Infoline on 1300 300 630 for a paper form. Note that it takes longer to process paper forms and the statutory fee is higher than for forms lodged online.
- RG 1.67 The summary of notification and lodgement requirements on our website also outlines other important licensee notification obligations, such as the need to:
- (a) lodge your annual accounts and audit report each year; and

- (b) advise us of any significant breaches or likely breaches of your obligations as a licensee. You can find out more about breach reporting by referring to Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78).

F How do I vary my licence if my business changes?

Key points

If your business changes, you need to apply to vary your licence by completing and lodging an application form and paying the required fee: see RG 1.68–RG 1.70 and RG 1.73–RG 1.105.

You can apply online using ASIC form FS03: see RG 1.71.

If you can't apply online you can complete the paper form FS03X, but it will take longer and cost more for you to apply this way: see RG 1.72.

- RG 1.68 If your business changes, e.g. you want your AFS licence to cover more financial services or products, you need to apply to vary your licence.
- RG 1.69 To vary your licence you need to complete and lodge ASIC form FS03. The process for this is very similar to the process for completing and lodging form FS01, which is outlined in earlier sections of this guide.
- RG 1.70 Before you complete form FS03 you need to:
- (a) understand which authorisations to select for any financial services or products you want to add to your licence (you should refer to Part 2 (RG 2) before you apply);
 - (b) understand the obligations that apply to the variation you are requesting and be able to meet them (remember that you'll be making declarations and certifications when you apply); and
 - (c) be able to provide proofs that demonstrate your capacity to provide the additional financial services or products.

Where can I find form FS03?

- RG 1.71 FS03 is an electronic form that you complete online using our eLicensing system. To access it you need to go to the Licensees portal at **www.asic.gov.au/licensees**. You'll need your licence number, plus the user name and password you selected when you initially completed your AFS licence application. If you've forgotten your user name or password or you need extra ones for staff, apply for them online via the Licensees portal.
- RG 1.72 If you can't apply online, e.g. because you don't have access to the internet, you can phone the ASIC Infoline on 1300 300 630 for the paper application

form, FS03X. You can also download it from our website. Note that it takes longer and the statutory fee is higher when you apply this way.

What kind of variation do I want?

- RG 1.73 Whether you apply online or fill out the paper application form, you need to select whether you are applying to vary:
- (a) the authorisation conditions on your licence (i.e. your financial service and/or product authorisations);
 - (b) the other conditions on your licence (e.g. key person or standard licence conditions); or
 - (c) both.

Varying financial service and/or product authorisations

- RG 1.74 If you're applying online, the system will fill in the current authorisations on your licence. You need to check that these are correct and add any new financial services and/or products by clicking on them. If you want to remove any financial services or products, click on them to de-select them.
- RG 1.75 If you're filling in the paper form, tick all of the financial services and products you want to be authorised to provide (including the authorisations already on your licence that you want to keep). Leave blank any financial services and products that you want to remove from your licence.

Varying other licence conditions

- RG 1.76 If you're applying online the system will provide you with a free-text box to type in so that you can explain to us which conditions you want to vary and why you should be allowed to do this.
- RG 1.77 Try to make your answer as clear and concise as possible so that we won't have to ask you for more information. You need to provide the same information if you're filling out the paper form.

Finalising and submitting your application

- RG 1.78 After you've completed your variation application, it's important to print it off and review it carefully before you finalise it. Make sure that your answers are accurate because you won't be able to change them after you've finalised your application. You'll also be making declarations and

certifications about the accuracy of your answers and your ability to provide the financial services and products affected by the variations to your licence. It's a criminal offence to make false or misleading statements in your application.

- RG 1.79 If you're applying online, the system will lead you through steps to finalise, print and submit your variation application. You should sign the print-out and pay the fee if you're paying by BPAY. **The signed print-out is for your own records—unlike the FS01, you don't need to send this to us.** However, you'll need to send one or two core proofs to support your application, and we might ask you for additional proofs when we assess your application.

What do I need to send to ASIC?

- RG 1.80 After you've finalised your application you need to send us, in one bundle:
- (a) copies of the core proofs outlined below;
 - (b) a cheque (if you haven't already paid the application fee by BPAY); and
 - (c) if you're completing a paper application, a signed and completed FS03X. If you're applying online you should keep the signed print-out of the FS03 for your own records.
- RG 1.81 If you've submitted an online application, we'll need to receive this bundle **within 20 business days** of you submitting your online application. You should also keep a copy of your core proofs for your own records.

Core proofs

- RG 1.82 If you're applying to vary your financial service or product authorisations, the core proofs you need to send us are:
- (a) A5 Business Description (so that we can understand how your business will work); and
 - (b) B1 Organisational Competence (to demonstrate that you have the organisational competence to provide your financial services and products, including any new ones).
- RG 1.83 These proofs should cover all of the financial services and products that will be provided under your licence, not just the variation you're requesting.
- RG 1.84 If you're applying to vary the other conditions on your licence, you only need to send us an A5 Business Description.

RG 1.85 For a brief explanation of these core proofs, see RG 1.30–RG 1.37. Section E of Part 2 (RG 2) explains them in more detail, including the information you need to include in them. You should read the information in Section E of Part 2 (RG 2) before you apply for your licence variation. Remember that the information in your core proofs needs to cover the changed circumstances you are describing in your variation application.

Pre-lodgement check

RG 1.86 After we receive your variation application and core proofs we'll do a 'pre-lodgement check' on them to ensure that they are complete and acceptable for lodgement. If your application doesn't pass the pre-lodgement check, we'll send it back to you and you'll have to re-apply.

RG 1.87 To pass pre-lodgement you need to ensure that:

- (a) you've included copies of the core proofs outlined earlier;
- (b) your core proofs are complete, contain all of the information requested in Section E of Part 2 (RG 2) and are tailored to your business (i.e. they must not be generic proofs and, if you are part of a corporate group, they must cover your particular financial services business);
- (c) we receive copies of your core proofs **within 20 business days** of you submitting your online application (if you're applying online); and
- (d) you've paid the application fee.

RG 1.88 If your variation application is rejected at the pre-lodgement stage, we'll send it back to you and you'll have to re-apply. We'll hold your fee payment for your next application unless you write to us for a refund. See Part 2 (RG 2) for information on how to reapply using a copy of your original variation application.

Assessment process

RG 1.89 Once your application passes pre-lodgement we'll assign it to one of our licensing analysts for assessment.

RG 1.90 When we assess applications our level of assessment will vary depending on our analysis of your business and the market you propose to operate in. We've developed this approach to make our assessment process as efficient and effective as possible.

RG 1.91 If we need more information, we'll contact you by telephone, or send you an email or letter. You should respond to all our requests promptly and within any timeframe we specify. If you don't, it will delay our decision, or we may decide your application on the basis of the information we do have.

Additional proofs

- RG 1.92 In some cases, we might need to ask you to send us additional proofs before we can complete our assessment of your variation application. These will generally be one or more of the proofs listed in Part E of your application print-out. However, we might need to ask you for other proofs not listed on your print-out if, for example, you haven't selected your authorisations correctly.
- RG 1.93 You'll need to make sure we receive these **within 10 business days** of our request. It's important that you understand what information you need to give us in each additional proof we request. You'll need to refer to Part 3 (RG 3) and remember that your additional proofs also need to cover the changed circumstances you're describing in your variation application. Also make sure that your additional proofs are tailored to your business. They must not be generic proofs and, if you are part of a corporate group, they must cover your financial services business.

What happens to the information and proof documents I send to ASIC?

- RG 1.94 The information you provide in your variation application is confidential, except for basic information about your business that is uploaded to a searchable public register on our website after you receive your varied licence. See the privacy statement on our website for more information.
- RG 1.95 Your core and additional proofs are also confidential. These will be scanned into our document imaging system and then destroyed, so please do not send us your originals, unless we require them.

What if my licence variation involves changes to my responsible managers?

- RG 1.96 If you're applying to vary your authorisations or other conditions, and you also want to add or remove one or more responsible managers, you need to also complete and submit form FS20 as well as form FS03. This form is available from the Licensees portal at www.asic.gov.au/licensees.
- RG 1.97 If you're adding responsible managers, you'll need to provide People Proofs for each new person. People Proofs include:
- (a) a Statement of Personal Information, including certified copies of qualification certificates;
 - (b) certified copy of a bankruptcy check;
 - (c) certified copy of a national criminal history check; and

- (d) certified copies of two business references (at least one of these must be from someone external to the responsible manager's organisation).

RG 1.98 Section E of Part 2 (RG 2) explains these proofs in more detail. Note that it can take **six weeks or more** to get national criminal history checks, so you need to organise these before you submit your FS20.

Can I withdraw my application?

RG 1.99 You can withdraw your application at any stage of the application process. If you withdraw it at the pre-lodgement stage, we'll send your documents back to you. We'll also hold your fee payment for your next application unless you write to us for a refund.

RG 1.100 If you withdraw your application after it has been accepted for lodgement, we won't be able to send your proof documents back to you, nor refund your application fee or hold it over if you decide to re-apply.

When will I get my varied licence?

RG 1.101 If we decide to grant the variation to your licence, we'll first send you a draft varied licence. You'll need to check the authorisations and other conditions on your draft licence and formally consent to it before we can send you your final licence. Do this by printing off the accompanying consent notice, signing it and sending it back to us. If you withdraw your variation application, your current licence will remain in operation.

RG 1.102 Your draft licence will also be accompanied by a 'requirements letter' listing any outstanding matters you need to finalise before we can grant the final varied AFS licence. For example, you might need to provide details of your professional indemnity insurance if you didn't have these under your initial licence. You'll need to finalise these outstanding matters as quickly as possible. If you don't do this in a reasonable timeframe, we may withdraw our offer of a varied licence. You'll need to contact us if you have any problems finalising these outstanding matters.

What if my variation application is refused?

RG 1.103 We may refuse your variation application if we don't believe you have the capacity to provide the additional financial services or products you've asked to be authorised for, or we think your request to change your other (non-authorisation) conditions isn't appropriate.

- RG 1.104 If we refuse to grant your variation, we'll write to you and explain the reasons why. We'll also tell you how to apply to the Administrative Appeals Tribunal for a review of our decision. Under the Corporations Act we aren't required to offer you a private hearing or the opportunity to make submissions if we refuse to grant a variation to your AFS licence.
- RG 1.105 If we refuse your variation application, your current licence will still be valid.

Key terms

Term	Meaning in this document
AFS licence	Australian financial services licence granted under s913B of the Corporations Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
body regulated by APRA	Has the meaning given in s3(2) of the <i>Australian Prudential Regulation Authority Act 1998</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of this Act
financial services laws	Has the meaning given in s761 of the Corporations Act
general obligations	The obligations of a licensee under s912A(1) of the Corporations Act
licensee	A person who holds an AFS licence
PF 209 (for example)	An ASIC pro forma (in this example numbered 209)
reg 7.6.04 (for example)	A regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04)
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
representative	Has the meaning given in s910A of the Corporations Act
RG 166 (for example)	An ASIC regulatory guide (in this example numbered 166)
traditional trustee company services	Has the meaning given in s601RAC(1) of the Corporations Act
trustee company	Has the meaning given in s601RAB(1) of the Corporations Act
you	Applicant for an AFS licence or a variation to an AFS licence

Related information

Headnotes

Australian financial services licence, application form, variation, financial services, financial products, authorisations, core proofs, additional proofs, organisational competence, responsible managers, compliance arrangements, representatives, adequacy of resources, dispute resolution, risk management, compensation arrangements

Pro formas

Pro Forma 209 *Australian financial services licence conditions* (PF 209)

Regulatory guides

RG 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application*

RG 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs*

RG 36 *Licensing: Financial product advice and dealing*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 146 *Licensing: Training of financial product advisers*

RG 165 *Licensing: Internal and external dispute resolution*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 181 *Licensing: Managing conflicts of interest*

Legislation

Corporations Act; Ch 5D, Ch 7, s9, 761A, 910A, 911B, 912A, 912B, 913B, 914A; *Australian Prudential Regulation Authority Act 1998*, s3(2)

Information releases

IR 05-61 *ASIC cuts paperwork for AFS licence applicants* (24 November 2005)

ASIC forms

FS01 *Australian Financial Services licence application*

FS03 *Licence authorisation variation application*

FS20 *Change of details for an Australian financial services licence*