

How are responsible entities affected by ASIC's guidance on risk management?

On 27 March 2017 ASIC released Regulatory Guide 259: *Risk management systems of responsible entities (RG 259)*. RG 259 provides guidance for responsible entities (REs) on how to comply with their AFS Licence obligation to maintain adequate risk management systems. A copy of RG 259 can be found [here](#).

In ASIC's view the requirements of RG 259 are not new. They reflect ASIC's current view of the requirements for adequate risk management for REs. As a consequence, there is no transition period for compliance with its requirements. ASIC will, however, take a facilitative approach to any breaches of the guidance for a 12 month period from 27 March 2017 if the RE can show that it is taking steps to make its risk management systems comply with this guidance.

Post March 2018 ASIC will expect all REs to have arrangements in place to meet the guidance in RG 259. It is expected ASIC will undertake reviews of REs in relation to their compliance with RG 259 as part of its general surveillance work.

What do REs have to do?

If you haven't done so already, every RE must review their risk management framework and systems to make sure they reflect the requirements of RG 259. This will include ensuring:

- risk identification, analysis, evaluation and treatment is addressed at both the RE and scheme levels;
- the RE has documented its risk appetite in a policy or statement including the risk tolerance for each material risk;
- there is a documented process in place to review the risk management framework as frequently as appropriate given the nature, scale and complexity of the business and scheme(s) operated, with an expectation that this be done at least annually;
- all material risks faced by the business (RE) and each scheme are addressed. Material risks may include, but are not limited to:
 - strategic risk
 - governance risk
 - operational risk
 - market and investment risk
 - liquidity risk;
- stress testing and/or scenario analysis of the liquidity risks identified for each scheme as frequently as appropriate, but at least annually;
- at the RE level, conduct ongoing assessments of compliance with the financial requirements of your AFS Licence; and

- there is regular reporting and escalation of issues to the Board, risk committee and compliance committee as appropriate.

ASIC also encourages REs, as good practice, to:

- include procedures for ensuring that the material risks identified for the scheme(s) are relevant and managed in the compliance plan; and
- include a summary of the key aspects of the risk management systems in PDSs.

ASIC stated in its recent Report 531: *Review of compliance with asset holding requirements in funds management and custodial services*, that ASIC expects REs to give high priority to custody functions and relationships (whether internal or external) by integrating RG 133 compliance requirements into their risk management framework.

Background

The release of RG 259 follows lengthy consultation with the industry most recently via Consultation Paper 263: *Risk management systems for responsible entities: Further proposals* (July 2016) and Consultation Paper 204: *Risk management systems of responsible entities* (March 2013).

As the holder of an AFS Licence, s912A(1)(h) of the Corporations Act 2001 imposes an obligation on every RE to have "adequate risk management systems".

RG 104 - *Licensing: Meeting the general obligations* (July 2015) sets out ASIC's general guidance for risk management systems to meet this obligation. RG 166 - *Licensing: Financial requirements* sets out ASIC's requirements for addressing the risk that a RE may not have available adequate financial resources to provide the financial services covered by its AFSL (see s912A(1)(d)).

ASIC acknowledge while RG 104 gives general guidance on risk management systems for AFS licensees, RG 259 "focuses specifically on the business of REs, the schemes they operate and the particular risks they face."

RG 259 sets out ASIC's expectation for compliance with the obligations under the Corporations Act as well as suggestions for good practice.

Source - Henry Davis York