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| TheFold_Logo_BlkMushroom-Corner-Image06 July 2017 | The Fold Legal Pty LtdABN 13 106 708 856 |
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| submission on position and consultation |
| paper—asic enforcement review. |

Dear Sirs,

I enclose the attached submission on Position and Consultation Paper 3 “Strengthening ASIC’s Licensing Powers”.

Yours sincerely

Jaime Lumsden Kelly

Solicitor Director

About the Fold Legal

The Fold Legal are financial services specialists – highly regarded for our industry knowledge and for strategic, pragmatic advice that addresses clients’ commercial needs.

The Fold’s licensing specialists have prepared over 500 Licence Applications, Variations, Responsible Manager appointments and Key Person Condition Removals since 2003 and is one of the top three firms managing applications to ASIC nationally.

Our Managing Director, Claire Wivell Plater, is a member of the Business Advisory Committee to ASIC’s Licensing Division and the Federal Government’s FinTech Advisory Committee, which gives us unique insight into and the ability to contribute to regulatory policy development. Claire regularly meets with ASIC to provide feedback on their policies and systems for licensing, and regulation of financial services businesses.

Jaime Lumsden Kelly, Director of the Fold, assists clients with issues arising out of the AFS and consumer credit legislation, and supervises the Fold’s licensing division. She advises a broad range of industry participants including accountants, lenders, FinTechs, insurance brokers, underwriting agencies, financial planners, mortgage brokers, discretionary mutuals, payment providers and other non-standard financial services businesses such as religious charitable institutions.

She is a frequent author, commentator and public speaker on regulatory and licensing matters.

submission

| **Position 1: ASIC should be able to refuse a licence application (or, for existing licensees, take licensing action) if it is not satisfied controllers are fit and proper.** |
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| We consider the consistent introduction of an appropriate fit and proper test across both licensing regimes to be appropriate. As part of that regime, we consider it appropriate for ASIC to refuse a licence application if the controller is not a fit and proper person. We do not consider it appropriate for ASIC to suspend or cancel a licence if a controller ceases to be a fit and proper person. Instead we consider a system modelled on the Hong Kong system referenced in Annexure A to the Consultation Paper to be more appropriate. Suitability of the TestIn adopting that position, we consider that further assessment should be made of the test to be applied. Currently, the Consultation Paper proposes a test said to be based on the APRA “fit and proper person” test, however it appears that this test will be applied to Australian financial services and credit licensees in a more onerous manner than currently applies to APRA-regulated entities. Prudential Standard APS 520 applies to require authorised deposit-taking institutions to self-assess (and then reassess annually) whether a “responsible person” is a fit and proper person. APRA does not itself assess whether such persons are fit and proper, although the ADI’s self-assessment is subjected to audit scrutiny. The ADI has an obligation to self-report if a responsible person ceases to be a fit and proper person. By contrast, the proposed position for licensees is that assessment be conducted by ASIC on a negative assurance basis i.e. ASIC should have no reason not to believe the controller is a fit and proper person. This appears to impose a higher obligation than is currently imposed on prudentially-regulated entities. We question if this is appropriate. At most, it appears reasonable that the test applied to licensees should be consistent with, but no more onerous, than that applied to prudentially-regulated entities. Definition of ControlThe current definition of “control” in section 50AA of the Corporations Act contemplates a singular person or entity in “control”. The Act even explicitly states that if one person, together with a third party, can determine the outcome of decisions, then neither entity in that case has “control”. Therefore, the concept introduced in the Consultation Paper of a “group” of controllers is unclear. How can a group “control” a licensee? Additionally, if a group collectively controls a licensee, we question the materiality of one member of that group failing to meet the fit and proper test when that individual cannot, alone, exert control over the licensee. The policy concerns this test is meant to address do not appear to arise in a setting where a group controls an entity, unless more than half of the group fails the fit and proper test. Therefore, where a group controls an entity, it may not be appropriate for ASIC to take action merely because one of them fails the test; the threshold should be more than 50% of the group failing to meet the fit and proper person test. However, our preferred view is that group control does not, substantively, exist. Practical Assessment of ControlThe question of “control” is not merely a question of what rights an entity can enforce, and extends to practical influence as well as patterns of behaviour. Despite this broad definition, it has been our observation that change of control notices are made almost exclusively in instances involving a change of ownership of more than 50% of the issued share capital. This happens for a variety of reasons:* While ownership of share capital is objectively assessed, practical control is a difficult subjective assessment;
* The person responsible for reporting, such as a Compliance Manager, may have no oversight of practical control (e.g. does not attend Board meetings or management meetings where practical control may be observed);
* Human ego often inhibits legal compliance, and a majority owner may not be prepared to admit that, practically, he/she has ceded control to another.

Additionally, practical control may change more often than share capital. For example, in a company with two equal shareholders, one shareholder may be dominant and hold practical control, but in that shareholder’s absence, for holidays, long-term illness, business travel etc., control may shift back to the other shareholder. Control could change a number of times a year in this scenario, and it may not be desirable, or a good use of ASIC resources, for multiple notifications and assessments of compliance with the fit and proper test to occur with high frequency.We note that the regimes referenced in the Consultation Paper (UK, Hong Kong and Singapore) all apply their requirements to controllers who are shareholders, and in our view, for the purposes of assessing if a controller is a “fit and proper person”, the definition of control should be limited to shareholders. Commoditisation of LicencesWe agree that in recent times both AFS and credit licences have been commoditised. However, we do not agree that implementing a fit and proper test for controllers will change this situation. It is our observation that licences have become commoditised due to lengthy application processes for licence applications. For our client base, these processing times are currently sitting at between 8 and 12 months for AFS licences, and upwards of 7 months for credit licence applications. ASIC announced at its Licensing Forum in March, 2017 that a standard application is taking 8 months from lodgement to grant of licence. These timeframes are substantially up from our previous averages of 4 – 8 weeks pre-2016.Most licence applicants have no visibility of these timeframes prior to speaking to a licensing specialist. At that point, they are often committed to a business plan and a launch timetable that does not allow a further timeframe of 8 – 12 months. In those circumstances, applicants seek to purchase a licence in order to get to market on time. They are not generally seeking to avoid ASIC’s compliance requirements. It is our view that the de-commoditisation of the licence market requires a reduction in application processing time rather than an increase in compliance requirements. ApplicationWe consider it is appropriate to review if the fit and proper test should apply to all AFS and credit licensees. On review of the overseas regimes compared, it is apparent that those regimes, broadly, do not apply to the following industries:* General insurance;
* Life insurance;
* Payments systems;
* Basic deposit products;
* Simple foreign exchange; and
* Financial planning.

It may be appropriate to consider if the fit and proper person test should extend to licensees who only exclusively provide these services.  |
| 1. *Should ASIC be able to refuse a licence application if it is not satisfied that applicant’s controllers are fit and proper to control a licensee?*

Yes, where the licensee is controlled by a single controller. If the proposal were to proceed on the basis of some concept of “group” control, we do not consider ASIC should be able to refuse a licence application unless more than 50% of the group failed to meet the fit and proper person test.  |
| 1. *What would be the impact of this position on licence applicants?*

It is our view that requiring some assessment of who “controls” a licensee, and then the “fit and proper” status of those controllers, will increase licence application processing times, which will exacerbate the commoditisation of licences. It will also increase the burden upon ASIC resources at the point of notice of change of control, when this assessment must take place. We also expect that making submissions to ASIC on each controller to establish there is no reason for ASIC to not consider them fit and proper could add costs of $1500 to $5000 per controller, at each change of control, as well as during the licence application process (depending upon the form of that assessment). For this reason, we consider that a self-assessment process, such as that imposed on authorised deposit-taking institutions, is more appropriate to avoid further burdening ASIC resources. Such an assessment could be subject to review during the financial audit. Prudential Standard APS 520 details such an appropriate self-assessment process.  |
| 1. *When notifying ASIC of a change of control should licensees be required to provide ASIC with sufficient information to enable ASIC to assess whether:*
	1. *The proposed new controllers are fit and proper to control a licensee? and/or*

We suggest that licensees self-assess the fit and proper status of their controllers and then have this subjected to audit scrutiny as per Prudential Standard APS 520.* 1. *The licensee remains competent to provide the financial services covered by the licence and able to comply with its obligations under the new controller?*

We do not consider the appropriate test upon change of control is one of “competence”—or rather, it should not be limited to “competence”. The assessment of competence for AFS and credit licensees is a narrow question relating to the experience and qualifications of the Responsible Managers. Certainly, this may be a relevant question when control changes if the Responsible Managers change. However, for AFS licensees, the removal (and appointment) of Responsible Managers must be notified to ASIC within 20 business days of the date of effect. This means that if a new controller changes the Responsible Managers, these changes must be notified to ASIC, and the question of competence will be assessed. Except in cases where a key person is removed (a Responsible Manager whose competence is so key to compliance the licensee cannot function without it) it is unclear to us the extent to which ASIC reassess compliance where a Responsible Manager is removed, however, where new Responsible Managers are added, ASIC requires full details of the new Responsible Manager’s qualifications and experience, and will assesses whether that person is competent to act as Responsible Manager. However, in the credit regime there is no obligation to notify to ASIC of a change to Responsible Managers until the submission of the next annual compliance certificate—which might be as much as 12 months away. In this instance, ASIC has no oversight of the continued compliance with the organisational competency obligation and relies on licensees to self-assess. This self-assessment is also not subjected to audit scrutiny, nor is a failure to comply with the organisational competency obligation reportable to ASIC (other than in the annual compliance report, if the breach subsists at the time of lodgement). This means there is a window of opportunity for licensees to fail to comply with their organisational competency obligations where new controllers change the Responsible Managers of a credit licensee without ASIC having any oversight. Therefore, it is our view that the question of competency is adequately addressed in the regime for AFS licensees where new Responsible Managers are added, although it may be that further review needs to be conducted by ASIC where non-key person Responsible Managers are removed. For credit licensees, we would suggest that there be an obligation to notify Responsible Manager changes within 20 business days after they occur, and that ASIC request similar information as for Responsible Managers of AFS licensees. This would ensure that ASIC will have oversight of the competency obligation when new controllers of credit licensees make changes to Responsible Managers (including where those changes are made after the lodgement of the change of control notice). In concurrence with those observations, we note that AFS Responsible Managers are subject to much more scrutiny at the micro-level as to their experience, which forms a substantial amount of the time spent assessing Responsible Managers. It is unclear why it is sufficient for credit Responsible Managers to advise where they worked, in what role, and for how long, while AFS Responsible Managers need to describe their duties and role in granular detail, and then substantively defend their experience to ASIC.We should also suggest that Responsible Managers be given the power to notify their own removal from a licence. Responsible Managers who move on from licensees are highly motivated to ensure the records remain up-to-date so that they cannot be associated with conduct after their departure, and also because ASIC will generally only allow a Responsible Manager to act for a limited number of licensees. This would give ASIC access to a source of additional information in circumstances where controllers attempt to conceal the departure of Responsible Managers. More broadly, however, we do not consider that the pertinent question upon a change of control is whether the licensee remains “competent”; we consider the relevant question is “whether the licensee remains likely to comply with its licence conditions and the financial services laws”. This would then address situations where a licensee has relied heavily upon group resources for compliance to which it no longer has access. In light of these comments, we:* Consider that it is appropriate to introduce a fit and proper person test on the same basis as Prudential Standard APS 520:
* Consider it appropriate to introduce the test in 3b. on broader terms, being that there should be an assessment of the licensee’s ability to comply with its licence conditions and the financial services laws; and
* Consider it appropriate to align the treatment of credit and AFS Responsible Managers to improve oversight of the organisational competency obligation upon a change of control;
* Consider that it would be appropriate to allow Responsible Managers to notify ASIC of their departure from a licensee, to give ASIC an alternate source of information.
 |
| 1. *Should ASIC be able to take action to suspend or cancel an AFS or credit licence (after offering a private hearing) if it is no longer satisfied that the controllers of the licensee are fit and proper to control the licensee?*

We do not agree that ASIC should be able to suspend or cancel a licence if the controller, or group of controllers, is no longer fit and proper. This is because persons may make investments in the belief that they are fit and proper, only to lose their investment if ASIC disagrees. Other investors (such as other shareholders) may also lose their investments. This can result in substantial harm to persons who have not, in relation to the licensee acquired, engaged in any actual misconduct (and who may never have done so, in the past or the future).Additionally, there may be substantial harm to consumers if they are unable to be appropriately serviced when the licence is suspended or cancelled, particularly clients who:* May be in the middle of a transaction (e.g. clients who have been advised on life insurance and the placement of the policy is pending);
* Are actively managed e.g. managed discretionary accounts;
* Rely on the licensee’s systems to manage their own investments e.g. users of IDPS services.

While this is always a concern when a licence is suspended or cancelled, we consider that it should be avoided where other alternatives are available. Instead, we consider that it is appropriate to introduce a system such as the Hong Kong model, where the Securities and Futures Commission may direct a licensee corporation to prevent the involvement of a substantial shareholder from being involved in the management of the business, deem void any votes cast by the person and their associates at meetings, and to take any other steps the SFC may specify (which might include cancelling the licence in circumstances where there is no other reasonable action). |
| 1. *Should a change of control require pre-approval by ASIC?*

We do not consider that changes of control should be subject to pre-approval as, given the current level of resourcing at ASIC, this is likely to unreasonably delay transactions. However, we would consider pre-approval an acceptable alternative to suspension or cancellation of licences if a timeframe was imposed upon ASIC for making a decision, as this protects investors from making an investment, only to have the value of that investment destroyed by the licence being suspended or cancelled. As a practical consideration, it would be difficult to mandate pre-approval of changes of control which result as a matter of practical influence rather than shareholdings. For example, it is possible to delay a change of control occurring by refusing to effect a transfer of shares. It is not possible to prevent a change of control resulting from shifts in practical influence if, for example, the controller is badly injured and the remaining shareholder immediately gains control by virtue of needing to make all the decisions. We reiterate our position that change of control requirements should only apply to shareholders, as per the considered models in the UK, Singapore and Hong Kong. We would expect that the post-change assessment of controllers or groups of controllers as fit and proper persons to be as resource-intensive as assessing prior to allowing the change of control to occur, but given ASIC’s current level of resourcing it will be less of an interference with business. However, if additional resources are not provided, it is our view that the processing of licence applications could be slowed even further, which will then increase the commoditisation of licences.  |

| **Position 2: Introduce a statutory obligation to notify change of control within 10 business days of control passing and impose penalties for failure to notify.** |
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| 1. *Would it be appropriate for the requirement to notify ASIC of licensee changes in control to be a statutory obligation rather than a statutory licence condition.*

So far as we can determine, the only benefit would be to allow the imposition of a penalty. See our further commentary below on the desirability of imposing penalties.  |
| 1. *Would it be appropriate for the obligation to require notification within 10 business days of the change of control taking effect?*

The current obligation is to make the notification within ten business days of becoming aware of the change. The proposal is to introduce an obligation to notify within ten days of the change occurring, instead of ten business days of becoming aware of the change. As a practical consideration, it is unclear how a licensee would be able to notify a change of which it is not aware.Licensees could be required to have systems in place to monitor this, and this is relatively straightforward where a change of control occurs due to share capital changes. However, we refer to our comments above about the challenges of identifying changes of control arising due to a shift in who exerts practical influence, and how to assess if control exists in situations where a licensee is said to be controlled by a group. If this position were to be adopted, it is our view that comprehensive guidance would need to be issued to assist licensees to comply. However, in our view, this strengthens the argument that change of control obligations should only be linked to shareholdings.  |
| 1. *Would it be appropriate to introduce penalties for failure to notify ASIC of a change in licensee control?*

We do not consider it would be appropriate to introduce penalties for a failure to notify a change of control unless change of control were limited to shareholdings. |
| 1. *If so, what penalties should apply? Should the penalty be criminal, civil penalty or both?*

We do not consider that a criminal penalty would be appropriate except in cases where there is an intent to circumvent the law. In all other cases, any penalty should be civil. |

| **Position 3: Align the assessment requirements for AFS licence applications with the enhanced credit licence requirements.** |
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| 1. *Should the assessment requirements for AFS and credit licence applications be uniform? Or are there factors relevant to each sector that justify differences?*

We do not consider that there are good reasons for differences between the regimes. In some cases the credit regime imposes a higher standard (such as the “fit and proper person” test), and in other cases the AFS regime imposes the higher standard (such as in ASIC’s assessment of Responsible Managers for AFS licences, where detailed work histories and submissions of expertise are required to be submitted). There are no substantive differences, in our view, to justify the different treatments.  |
| 1. *If so, should the Corporations Act be amended to reflect the provisions of the Credit Act with respect to licence applications? In particular should:*
	1. *directors, secretaries and senior managers, rather than only responsible officers be assessed for AFS licence applications?*

We consider this is appropriate, given the influence such persons may exert over the business. We are aware of instances where Responsible Managers have found it necessary to defend their compliance decisions to directors and management—although we note this has occurred in AFS and credit licensees, notwithstanding that the directors and management of the credit licence had been assessed as “fit and proper” persons. The current proposal does not appear to give ASIC any oversight of the continued fit and proper status of persons in the business, whereas an APS 520 style model would require self-assessment and reporting to ASIC, compliance with which obligations must also be audited. * 1. *individuals be assessed against a ‘fit and proper’ rather than a test of ‘good fame or character’ for AFS licence applications?*

Yes, but we consider a Prudential Standard APS 520 approach more appropriate, rather than that proposed in the consultation paper. We do not consider it appropriate to impose a higher standard than that applying to prudentially regulated entities. * 1. *the requirement to consider whether an AFS licence applicant’s ability to provide financial services would nevertheless not be significantly impaired after forming a reasonable belief that individuals are not of good fame and character (or fit and proper) be removed?*

The extension of the good fame and character (or fit and proper test) to directors, secretaries and senior managers, and their subsequent removal for failing to comply, should not have any material impact on a licensee’s ability to provide financial services. Licensees rely upon their Responsible Managers to demonstrate competence, and therefore the removal of a director, secretary or senior manager should not have any impact. Where a Responsible Manager also fills one of these roles, the licensee’s organisational competence would be re-assessed after the person’s removal. The removal of a director, secretary or senior manager would therefore only impact the general resourcing obligation, a problem which would generally be readily resolved by recruiting to replace the person. We note that Prudential Standard APS 520 does not impose a similar obligation, presumably on the assumption that the person would simply be replaced. * 1. *ASIC be able to require an audit report from AFS licence applicants?*

ASIC’s powers to request documents currently appear to be more or less unfettered, with ASIC frequently requesting numerous documents which do not strictly form part of the “Core Proof” and “Additional Proof” set for AFS licensees. * 1. *a failure to provide additional information requested by ASIC result in a deemed withdrawal of an AFS licence application?*

It is unclear at what point a licensee can be regarded as having “failed” to provide information. Currently ASIC sets deadlines on licence applicants which are often unreasonable, from as low as 2 business days to, on average, 5 business days. Sometimes these deadlines can be extended to 10 to 15 business days by request. At the same time, no deadlines are set on ASIC, and it can take 2 – 3 months to hear from ASIC in some cases.In our view, it would be unreasonable to treat a licence applicant as having failed to provide information where short deadlines are set after long periods of inactivity. Licence applicants often devote their attention to business development, strategy, or product development while waiting for a response from ASIC, and to provide substantial amounts of information on short notice can present a challenge.If this proposal were to be implemented, we would urge setting a reasonable minimum timeframe before which the application is treated as withdrawn. We would also recommend that if partial information is supplied, the timeframe resets, as the applicant is evidently working on supplying the information. There should also be an exception, or a longer timeframe, for information that needs to be obtained from third parties e.g. agreements, correspondence or confirmation supplied by third parties. Any such policy should account for the fact that substantial time and resources are devoted to licence applications, and it would be unreasonable to adopt an approach which unreasonably results in applications being deemed as withdrawn.  |
| 1. What will be the impact on AFS licence applicants?

It is likely that licence processing times for AFS licensing will further increase as a result of ASIC assessing a greater number of people against a higher standard i.e. The fit and proper person test. It is likely this will drive further commoditisation of AFS licences.  |

| **Position 4: ASIC to be empowered to cancel or suspend a licence if the licensee fails to commence business within six months.** |
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| 1. *Should ASIC be able to immediately suspend or cancel an AFS or credit licence if the licensee fails to commence engaging in a financial services or credit business within six months of being granted a licence?*

We do not consider this is appropriate. While it is possible that in some cases applicants are applying for licences with the intent of “warehousing” them, it has been our experience that applicants who do not commence trade within six months do so for valid commercial reasons rather than out of any intent to sell off the licence as a commodity. We do agree that AFS and credit licences have been commoditised, however, as per our earlier comments, it is our observation that this has occurred due to long delays and extended processing times when applying for a licence. Rather than incentivising entities to apply for licences for the express purpose of sale, we have observed an increase in prices being offered for established licences, as well as the sale of dormant or retired licences that would otherwise have been handed back upon the sale or winding up of a business. The long application timeframes is also the dominant cause of licences remaining dormant after the grant of a licence. Applicants need to make crude estimates as to when to start their application to ensure the licence is granted in time. As there is no way to accurately predict the date of a grant of a licence, applicants often:* Apply too late—in which case, by the time the licence is granted, a business opportunity has been missed. There is no value in withdrawing the application, due to the substantial time and cost investment, and so the applicant will continue to grant of a licence. The licensee then tends to remain dormant as it negotiates new arrangements to replace those lost during the licensing process or to await a new market opportunity. For managed investment scheme licences, engineering a new opportunity can take up to two years. Another example is insurance—if a market opportunity is missed, or another industry participant gets to market first, the insurer may lose interest and/or withdraw from the arrangement, leaving an insurance licensee without an underwriter;
* Applying too early—in which case the licence is ready for launch, but that launch is some time in the future because the licensee has not finished its necessary preparations, such as business development, product development, technical development, strategic partnerships and capital raising.

We do not agree that cancelling licences will appropriately address the issue of dormant licences, as we do not agree that “warehousing” is a significant problem. To the extent that it is an issue, it is our view that the proposed changes to the “fit and proper person” test for controllers, and the change of control test, will address this issue. For the rest, the lengthy application process is the cause of dormant licences and we do not agree that suspending or cancelling them is an appropriate solution. Providing applicants with more certainty and faster processing times would, in our view, do more to reduce the number of licences sitting dormant after grant. Cancelling them, conversely, will only create additional workload for ASIC when those applicants need to re-apply in time for their business launch or to take advantage of the next market opportunity, while increasing red tape for businesses. Even if warehousing is a legitimate issue, it is occurring not to avoid compliance requirements, but to speed the application process. To consider that ASIC is investing resources in applications that would not otherwise be made is incorrect—it is just the timing of the application that would change.  |
| 1. *If so, should licensees be given an opportunity to seek an extension of time?*

Not applicable.  |
| 1. *Is six months an appropriate initial time frame?*

Not applicable.  |

| **Position 5: Align consequences for making false or misleading statements in documents provided to ASIC in the AFS and credit contexts.** |
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| 1. *Should the consequences for making false or misleading statements in documents provided to ASIC in the AFS and credit contexts be aligned?*

Yes. There is, in our opinion, no good reason for discrepancies between the regimes in this respect. 1. *Should the same penalties, including a combination of criminal and civil penalties, apply?*

Yes. There is, in our opinion, no good reason for discrepancies between the regimes in this respect. |

| **Position 6: Making a materially false or misleading statement in a licence application should be a specific basis for refusing to grant the licence.** |
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| 1. *Should ASIC be able to refuse to grant an AFS or credit licence if the application or documents accompanying the licence application are false or materially misleading?*

We consider this is appropriate provided the provision of false or materially misleading information or documents was deliberate. The licence application process is often confusing, and ASIC’s documents and requests are frequently not communicated in plain English. It is all too easy for an applicant to unintentionally make a false or misleading representation or statement due to failing to understand the request.  |

| **Position 7: Introduce an express obligation requiring applicants to confirm that there have been no material changes to information given in the application before the licence is granted.** |
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| 1. *Should applicants seeking an AFS or credit licence or to vary an existing licence have an express obligation to confirm, before the licence is granted, that there have been no material changes in the applicant’s circumstances that would render statements or information in the application false or materially misleading?*

Agreed, however we suggest that consideration be given to the treatment of outdated information. Certain information in the application will become false merely by reason of being outdated, for example, cash flow projections prepared at the beginning of the process will no longer be current at the end, 8 to 12 months later. As actual outcomes never exactly match the forecast, the projections will become false as time passes. Consideration needs to be given to the circumstances in which an applicant would be required to declare such changes, or the extent to which ASIC will request updated information. For example, is it only a material change if it results in the applicant failing to be able to comply with their financial obligations under a licence?  |
| 1. *Alternatively, should applicants be required to notify ASIC of material changes in the applicant’s circumstances on an ongoing basis between the time of lodging an application for a licence or licence variation and ASIC making a decision with respect to the application?*

In some ways, an ongoing obligation would have better outcomes because it means ASIC can assess changes as they occur, rather than being presented with one or more material changes at the point where ASIC is about to grant a draft licence. Depending on the significance of the change, this could further delay the grant of the licence by months. In the interests of not further extending the time it takes to grant a licence, we suggest that further consideration be given to the materiality threshold. If the materiality threshold is improperly set, it could result in a situation where applicants need to notify too many changes. If the obligation is on an ongoing basis, and the threshold is too low, an applicant could find themselves in a situation where they are notifying further changes before ASIC has assessed the last set, given that assessment of new information by ASIC can take several months. Provided the materiality threshold is set at an appropriate level, we agree it would be more beneficial to impose an ongoing obligation. However, this, and other proposals contained within the Consultation Paper, will impose a greater burden on ASIC, and therefore in the interests of not further delaying licence applications we suggest it is important to consider the resourcing of ASIC’s licensing department. In our view, an appropriate materiality threshold is one that would capture significant changes that would result in the applicant failing to comply with their licence conditions.  |