



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 39

Licensed investment advisers—security deposit

Chapter 7 — Securities

Issued 16/11/1992

From 5 July 2007, this document may be referred to as Regulatory Guide 39 (RG 39) or Policy Statement 39 (PS 39). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 39.1) or their policy statement number (e.g. PS 39.1).

Headnotes

Section 786(2)(d); s786(9); reg 7.3.04(1); investment advisers; securities licensees; security deposit; performance bond; investor compensation; application of security deposit; securities adviser.

Contents

Introduction.....	2
Background.....	2
Amendment to the regulations.....	2
New policy.....	3
Existing licensed investment advisers.....	3
Form of security deposit.....	3
Applications.....	3

Introduction

RG 39.1 In this guide, the ASC sets out the reasons for using its discretionary power under s786(2) of the Corporations Law (Law) to impose a condition on a securities adviser's licence which requires the lodgement of a security deposit.

Background

RG 39.2 Section 786(2)(d) provides that the ASC may impose a condition on a dealer's or an investment adviser's licence requiring the holder to lodge and maintain with the ASC a security deposit, currently \$20,000. The purpose of the deposit is to compensate clients who have suffered a pecuniary loss due to the failure of the licensee to carry on the securities or investment advice business adequately and properly.

RG 39.3 While most dealer's licences have always contained a condition requiring lodgement of a security deposit, under the *Securities Industry Act 1980* (SIA) regime, a similar condition was not imposed on adviser's licences.

Amendment to the regulations

RG 39.4 With the enactment of the Law, the new Corporations Regulations effected changes to the manner in which the security deposit may be applied, producing a broadening of the grounds on which an aggrieved client may apply for compensation. Corporations reg 7.3.04(1) provides that the security may be applied to compensate a person who has suffered pecuniary loss due to the failure of the licensee, or an agent or employee of the licensee, to carry on business under the licence adequately and properly.

RG 39.5 Previously, under SIA reg 18(3), compensation was limited to where the loss resulted from defalcation or fraudulent misuse of securities or documents of title to securities, in relation to money or other property received by the licensee, employee or servant of the licensee. Advisers had a condition imposed on their licences prohibiting the handling of client's money or scrip.

RG 39.6 Thus, whereas an adviser was not caught by SIA reg 18(3), the adviser will now be liable under reg 7.3.04 for claims resulting from, for instance, inappropriate investment advice as well

as defalcation or failure to carry on the business adequately and properly.

New policy

RG 39.7 The ASC considers that a client of an investment adviser or of the adviser's authorised representative is entitled to the same level of investor protection and opportunity for compensation as a client of a licensed dealer. A condition will be imposed on all new adviser's licences requiring lodgement of the security deposit.

Existing licensed investment advisers

RG 39.8 The new condition will not be imposed immediately on existing licences held by investment advisers. Instead, it will be imposed when each licence is varied or if the ASC has reason to decide that the deposit should be lodged in particular cases. Existing licensees have the right to appear at a private hearing to discuss the variation of licence conditions, pursuant to s837 of the Law.

Form of security deposit

RG 39.9 The amount of the security deposit is \$20,000 and must be lodged in the form approved by the ASC. The approved form is a performance bond issued by an Australian bank, an insurance company registered with the Insurance and Superannuation Commission under the *Life Insurance Act 1995*, or a state insurance office. Full details of the approved form of deposit are contained in Regulatory Guide 33.

Applications

RG 39.10 An applicant for an investment adviser's licence will be required to lodge the deposit in the form of an executed performance bond with a letter of acceptance of the ASC's offer of a licence at the ASC Regional Office where the original application was lodged. Existing licensees will be required to lodge the performance bond as directed by the relevant Regional Office.