

# BUYING AN AFSL

## *vs applying for a new one*

We are often asked about the pros and cons of buying an existing AFSL compared to applying for a new AFSL.

Some believe buying an existing licensee provides easier and quicker entry into the financial services industry.

Although this has some merit, it is not always the case. As Elliott Stumm explains, prospective purchasers need to know about the risks and issues associated with buying an existing licensee.

### ***Transferability of an AFSL***

An AFSL is issued to a particular entity, having regard to their organisational expertise (ie responsible managers (RMs)), resources, and compliance arrangements. An AFSL cannot simply be transferred to another entity, even within the same group of companies. When a person buys an existing licensee, what they are really doing is buying the shares issued in the company that holds the AFSL.

### ***Due diligence***

When purchasing shares in a company, as opposed to buying the assets of a business, the debts or liabilities associated with the business (even if they relate to events before the shares were acquired) remain the company's responsibility.

So, it is vital for the purchaser to conduct due diligence on the licensee to reduce the risk of any unpleasant post-settlement surprises.

The costs and time frames to conduct a thorough due diligence on a licensee will depend on the nature and extent of the licensee's activities

prior to the sale. For licensees that have significant transaction and operational history, the due diligence required can be extensive, costly, and time consuming.

### ***AFSL authorisations***

AFSLs are not 'one size fits all'. An AFSL only authorises the holder of that licence to provide the financial services specified in its licence conditions. As part of the due diligence enquiries, the purchaser needs to assess whether the relevant AFSL will allow the purchaser to provide the services it intends to provide under the licence. Often, an existing AFSL will either not contain the authorisations a prospective buyer requires or may contain more authorisations than the prospective buyer requires. The authorisations on a licence are one factor that influences the levies payable to ASIC each year, and having a broader licence than is necessary may lead to unnecessary ongoing costs.

If the existing AFSL is not 'fit for purpose', then an application may need to be lodged with ASIC to vary the authorisations on the licence. If this is necessary, then any timing benefits of purchasing an AFSL (as opposed to applying for a new licence) are eroded.



### ***Purchase price and associated costs***

The purchase price for licensees varies depending on a range of factors, including the nature of the financial services provided, the amount of funds under advice or management, future income, client base, and distribution network.

When considering whether to purchase a licensee, as opposed to applying for a new AFSL, the purchase price should be taken into account, together with other costs which may be incurred in order to facilitate the ownership transition, including due diligence costs and any potential need for the AFSL to be varied. Generally, purchasing a licensee is more costly than applying for a new AFSL, as a 'premium' is generally paid to account for the time savings associated with acquiring a licensee and the work and costs already incurred in obtaining and maintaining the licence.

### ***Responsible managers***

One of the most important components of an AFSL application is the competence of the RMs. Without an adequate number of suitable RMs, an AFSL will not be granted (or may be revoked in the case of an existing licensee).

As part of the sale of a licensee, it is common for the current RMs to either leave on settlement or transition out of the business. In either situation, the purchaser will generally need to nominate one or more RMs to support the licence. If the purchaser does not have any staff suitable for the role, then it may be unable to support the AFSL going forward using its existing resources. In these situations, the purchaser may need to hire RMs with the requisite experience which adds an additional cost to the business.

Further, it may be that one or more of the current RMs are named in the conditions of the AFSL as a 'key person'. A key person is an individual that the licensee is heavily dependent upon to meet its obligations. If this is the case, then once a key person exits the business, a variation application will need to be lodged to remove their name from the licence conditions. The presence of a key person condition typically protracts the sale process and results in additional cost to the purchaser.

### ***ASIC considerations***

As part of the acquisition of a licensee, the new owners are required to notify ASIC of the change in control.

If it is necessary to vary the AFSL, then in order to grant the variation, ASIC needs to be satisfied the licensee can meet its obligations as an AFS licensee. Where the business carried on by the licensee is to materially change following the acquisition, then this process may be very involved and akin to applying for a new licence.

Prospective purchasers should be aware of ASIC's activities and powers in this area. While the sale of a licensee is not prohibited, the sale of a licensee often allows the purchaser to bypass the checks ASIC undertakes when determining whether to grant an AFSL. As a result of recent changes to the financial services laws, ASIC now has power to immediately cancel an AFSL where a licensee has not provided a financial service within six months after being granted its AFSL. Depending on the circumstances, the acquisition of a licensee, and the notifications required to be provided to ASIC as part of the sale process, may prompt ASIC to enquire about the activities of the company to date, and this process may result in the licence being cancelled by ASIC.

### ***Applying for an AFSL***

The legal and regulatory requirements to obtain an AFSL are complex and require the preparation of a range of documents, including RM details.

Please feel free to contact us about the AFSL application process and details of the requirements and timing.

### ***How can we help?***

We have prepared and managed hundreds of AFSL applications and supporting documents for financial planners, product issuers, responsible entities, research houses, promoters and stockbrokers. Please contact a member of our Funds Management team for assistance or more information.



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