

FACT SHEET

Comparison: buying an existing AFS licence vs applying for a new one

This factsheet provides an outline of the issues associated with buying an existing AFS licence compared to applying for a new AFS licence.



BUYING AN EXISTING LICENSEE

It is often believed that by buying an existing licensee, you can more easily and quickly enter the financial services industry.

Whilst this concept has some merit, there are a number of risks and requirements many prospective purchasers may not be aware of.

Transferability of AFS licence

An AFS licence is issued to a particular entity, having regard to their organisational expertise (ie responsible managers), resources and compliance arrangements. An AFS licence cannot simply be transferred to another entity, even within the same group of companies.

Prospective purchasers often acquire a licensee with the intention to “transfer” the AFS licence to a new entity. However, they don’t realise this actually requires the intended holder of the AFS licence to apply for its own, new AFS licence.

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) are still the company’s responsibility.

It is therefore vital for the purchaser to conduct due diligence on the licensee, to reduce the risk of any unpleasant post-transaction 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 operations prior to the sale. For licensees that have significant transaction and operational history, the due diligence required can be extensive, costly and time consuming.

AFS licence authorisations

As part of the due diligence enquiries, the purchaser of a licensee will need to assess whether the AFS licence allows the purchaser to conduct the proposed financial services business.

These enquiries may result in the AFS licence needing to be varied to include additional authorisations or the removal of authorisations if the proposed responsible managers do not have the expertise to provide all of the current financial services.

Purchase price

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.

In the case of “shell” licensees with no recurrent income streams, business (ie no funds under advice or management) or distribution network, the purchase price has generally ranged from \$25,000 to \$250,000.

When you compare this to the cost for a new AFS licence and take into account the associated risks, acquiring existing licensees can be an expensive process.

Responsible managers

One of the most important components of an AFS licence application is the competence of the responsible managers. Without an adequate number of suitable responsible managers, an AFS licence 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 responsible managers to either leave on settlement or transition out of the business.

In either situation, the purchaser will generally need to replace the outgoing responsible managers. If the purchaser does not have any officers or employees that are suitable for the role, then it will risk losing the AFS licence. In such situations, the purchaser may need

to hire responsible managers with the requisite experience which adds an additional cost to the business.

ASIC considerations

As part of the acquisition of a licensee, the new owners are required to notify ASIC of the change in control. This notice then triggers a series of enquiries from ASIC. ASIC will focus on the nature of the financial services business to be operated, the responsible managers involved and the licensee’s resources.

This series of enquiries puts the licensee through a “mini AFS licence application”, whereby ASIC assesses these relevant issues.

Prospective purchasers should be aware of ASIC’s activities in this area. An AFS licence may be cancelled if a licensee ceases to carry on a financial services business as this is contrary to the purpose of the financial services licensing regime. While the sale of a licensee is not prohibited, the sale of a licensee to allow the purchaser to bypass the checks ASIC undertakes when issuing a licence undermines its financial services regime.

ASIC has become very vigilant in monitoring and investigating sales of AFS licenses. There is also a proposal that a change of control triggers a licence variation

application process which will be more rigid and formal than the current system.

APPLYING FOR AN AFS LICENCE

The legal and regulatory requirements to obtain an AFS licence are complex and require the preparation of a range of documents, including responsible manager details.

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

COMPARATIVE SUMMARY

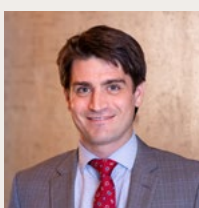
ISSUE	BUYING AFSL	APPLYING FOR AFSL
Transferability of AFS licence	The purchaser of the licensee cannot transfer the AFS licence into a new entity.	This is not an issue as the applicant will hold the AFS licence. The structure of the financial services business can be settled prior to the AFS licence application being lodged.
AFS licence authorisations	The purchaser will need to assess whether the AFS licence allows the purchaser to conduct the proposed financial services business. If an AFS licence variation is required, then this will add additional time and cost to the process.	This is not an issue as the AFS licence application will include all of the required authorisations.
Due diligence	Due diligence should be conducted on the acquisition of any company. The extent of the due diligence enquiries will be determined by the transaction and operational history of the licensee.	Due diligence is not required as the applicant can be a newly established company.
Responsible manager requirements	The responsible manager requirements for the licensee need to be assessed as part of the due diligence enquiries of the purchaser. If the purchaser requires the services of an external responsible manager, then this will add an additional cost to the business.	The responsible managers will be settled prior to the application being prepared. McMahon Clarke will assess the proposed responsible managers at the start of the application process to ensure the applicant has an adequate number of suitable responsible managers.

COMPARATIVE SUMMARY

ISSUE	BUYING AFSL	APPLYING FOR AFSL
Cost	<p>The cost to acquire a licensee varies depending on a range of factors. The purchase price for “shell” licensees has generally ranged from \$25,000 to \$250,000.</p> <p>The cost for any due diligence must also be factored into the overall cost for the transaction.</p>	<p>The total cost to prepare an AFS licence application will vary between \$35,000 to \$50,000 depending on the nature of the proposed financial services business and the issues raised by ASIC during the application process.</p>
Time frame	<p>The time frame required to acquire a licensee will largely be dependent on the extent of the due diligence enquiries.</p> <p>Additional time will be needed to replace the responsible managers, address any issues raised by ASIC and to vary the AFS licence authorisations (if required).</p> <p>A typical acquisition will generally take three to four months. However, if the AFS licence needs to be varied, then the process can take a further two to three months.</p>	<p>Applicants should allow five to six months to obtain an AFS licence. This time frame includes the time to prepare the application, deal with any ASIC issues and obtain the finalised issued AFS licence.</p>

HOW CAN WE HELP?

We have prepared and managed a large number of AFS licence 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.



Elliott Stumm Partner, Funds Management

T 61 7 3239 2929 **E** elliott.stumm@mcmahonclarke.com

This factsheet is current as at May 2021. It is produced for your information only and should not be relied on as providing legal advice. Before making any decision, you should seek legal advice specific to your circumstances and we invite you to contact McMahon Clarke if you do require assistance. © McMahon Clarke 2021.